

ORIGINAL

**RESIDENTIAL RECYCLING
COLLECTION SERVICE
CONTRACT**

Executed between

City of Oakland

and

California Waste Solutions, Inc.

July 1, 2015

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TABLE OF CONTENTS

Residential Recycling Collection Services Contract

Article 1. DEFINITIONS	3
Article 2. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR	12
Article 3. TERM OF CONTRACT	14
Article 4. CONTRACTOR'S COVENANTS; CITY OPTION TO TERMINATE	14
Article 5. SERVICES PROVIDED BY CONTRACTOR	14
Article 6. SERVICE STANDARDS	16
Article 7. CHARGES AND RATES	24
Article 8. MATERIAL DIVERSION STANDARD	37
Article 9. SFD RECYCLING SERVICES	39
Article 10. MFD RECYCLING SERVICES	41
Article 11. COMMERCIAL NON-EXCLUSIVE RECYCLING COLLECTION SERVICE ..	44
Article 12. CITY RECYCLING COLLECTION SERVICE	46
Article 13. COLLECTION ROUTES	48
Article 14. COLLECTION EQUIPMENT	49
Article 15. LOCAL OFFICE	52
Article 16. CUSTOMER SERVICE	52
Article 17. PUBLIC OUTREACH SERVICES	53
Article 18. EMERGENCY SERVICE PROVISIONS	56
Article 19. RECORD KEEPING & REPORTING REQUIREMENTS	56
Article 20. NONDISCRIMINATION	59
Article 21. SERVICE INQUIRIES AND COMPLAINTS	59
Article 22. QUALITY OF PERFORMANCE OF CONTRACTOR	60
Article 23. FRANCHISE FEE AUDIT AND PERFORMANCE REVIEWS	65
Article 24. PERFORMANCE SECURITY	66
Article 25. INSURANCE	67
Article 26. INDEMNIFICATION	70
Article 27. DEFENSE OF CONTRACTOR'S RIGHTS	73

Article 28. OBLIGATION TO PROVIDE SERVICE	74
Article 29. DEFAULT OF CONTRACT	77
Article 30. CONTRACT MODIFICATIONS AND CHANGES IN SCOPE.....	80
Article 31. [RESERVED]	83
Article 32. FINANCIAL INTEREST.....	83
Article 33. CONTRACTOR'S PERSONNEL.....	84
Article 34. UNACCEPTABLE WASTE.....	84
Article 35. INDEPENDENT CONTRACTOR	84
Article 36. LAWS TO GOVERN	85
Article 37. CONSENT TO JURISDICTION.....	85
Article 38. ASSIGNMENT	85
Article 39. COMPLIANCE WITH LAWS	87
Article 40. PERMITS AND LICENSES	87
Article 41. OWNERSHIP OF WRITTEN MATERIALS.....	87
Article 42. WAIVER.....	88
Article 43. POINT OF CONTACT	88
Article 44. CONFLICT OF INTEREST.....	88
Article 45. NOTICES	88
Article 46. TRANSITION TO NEXT CONTRACTOR.....	90
Article 47. CONTRACTOR'S RECORDS.....	90
Article 48. ENTIRE CONTRACT	90
Article 49. SEVERABILITY.....	90
Article 50. RIGHT TO REQUIRE PERFORMANCE	91
Article 51. [RESERVED]	91
Article 52. EMPLOYEE RETENTION REQUIREMENTS	91
Article 53. SUBCONTRACTING	91
Article 54. DISPUTE RESOLUTION	92
Article 55. LOCAL HIRE COMPLIANCE	94
Article 56. RELIGIOUS PROHIBITION	94
Article 57. POLITICAL PROHIBITION AND CAMPAIGN CONTRIBUTIONS	94

Article 58. BUSINESS TAX CERTIFICATE.....	94
Article 59. ATTORNEYS FEES.....	94
Article 60. LIMITATION OF FELONY DISCLOSURE ON JOB APPLICATION.....	95
Article 61. COMPETITIVE WAGES AND BENEFITS.....	95
Article 62. VALIDITY OF CONTRACTS.....	95
Article 63. EQUAL BENEFITS ORDINANCE.....	95
Article 64. LABOR PEACE.....	96
Article 65. AMENDMENT.....	96
Article 66. ALL PRIOR CONTRACTS SUPERSEDED.....	96
Article 67. HEADINGS.....	96
Article 68. LEGAL REPRESENTATION.....	96
Article 69. EXHIBITS.....	96
Article 70. EFFECTIVE DATE.....	97
EXHIBIT 1 MAXIMUM RECYCLING SERVICE RATES.....	108
EXHIBIT 1A MAXIMUM RECYCLING SERVICE RATES – SFD SERVICES....	108
EXHIBIT 1B MAXIMUM RECYCLING SERVICE RATES – MFD SERVICES ...	108
EXHIBIT 1C MAXIMUM RECYCLING SERVICE RATES – NON-EXCLUSINVE COMMERCIAL SERVICES	108
EXHIBIT 2 ANNUAL RATE ADJUSTMENTS	121
EXHIBIT 3 NOT USED	124
EXHIBIT 4 CITY FACILITIES	125
EXHIBIT 5 TRANSITION PLAN.....	127
EXHIBIT 6 COMMUNITY OUTREACH STRATEGY	128
EXHIBIT 7 DIVERSION RECOVERY PLAN.....	129
EXHIBIT 8 CUSTOMER SERVICE PLAN	131
EXHIBIT 9 RECYCLING COLLECTION SERVICES OPERATIONS PLAN	132
EXHIBIT 10 VEHICLE SPECIFICATIONS	134
EXHIBIT 11 CONTAMINATION REDUCTION PROGRAM.....	135
EXHIBIT 12 MEMORANDUM OF UNDERSTANDING.....	146
EXHIBIT 13 LOCAL BUSINESS PRESENCE AND PARTICIPATION REPORTING FORM.	147

EXHIBIT 13A LOCAL BUSINESS PRESENCE AND PARTICIPATION REQUIREMENTS.....	148
EXHIBIT 14 EMPLOYEE AND LABOR RELATIONS PLAN.....	149
EXHIBIT 15 NOT USED	150
EXHIBIT 16 BUSINESS TAX CERTIFICATE	160

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

CITY OF OAKLAND

This Contract made and entered into May 22, 2015 (the Effective Date), by and between the CITY OF OAKLAND, in the state of California, hereinafter referred to as "CITY" and California Waste Solutions, Inc., a California corporation, hereinafter referred to as "CONTRACTOR."

RECITALS

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

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

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

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

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

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

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

Residential Recycling Collection Services Contract

41 WHEREAS, it is the intent of CITY to provide for the Collection and Processing of Recyclable
42 Materials as defined in Article 1 of this Contract;

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

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

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

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

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

61 WHEREAS, CONTRACTOR intends to build a materials recovery facility located on a portion of
62 the former Oakland Army Base in the general vicinity of the intersection of Maritime Street and
63 West Grand Avenue ("North Gateway Facility") for the purpose of Processing Recyclable
64 Materials; WHEREAS, CITY wishes to engage CONTRACTOR to provide the services specified
65 within this Contract in accordance with the terms and conditions of this Contract; and

66 WHEREAS, this Contract has been developed by and is satisfactory to CITY and
67 CONTRACTOR; and

68 WHEREAS, on August 13, 2014, the City Council of CITY adopted Ordinance No. 13254 (the
69 "Ordinance") an "Ordinance Granting a Franchise For Residential Recycling Collection Services
70 to California Waste Solutions, Inc., Contingent On Its Execution Of a Residential Recycling
71 Collection Services and Non-Exclusive Commercial Recycling Collection Services Contract With
72 the City (the "Contract"), and Authorizing the City Administrator To Negotiate and Execute Such
73 Contract."; and WHEREAS, Section 3 of the Ordinance provided that CITY and CONTRACTOR
74 reached general, but not complete agreement on the Contract and authorized the CITY
75 Administrator, subject to the review and approval of the CITY Attorney, to further negotiate and
76 execute the Contract on behalf of the CITY, consistent with this Ordinance and with the general
77 form of the Contract attached to the CITY Administrator Revised Agenda Report dated July 28,
78 2014, to the City Council; and

79 WHEREAS, on December 9, 2014, The City Council of CITY Adopted Ordinance No. 13274, An
80 "Ordinance Amending Ordinance No. 13254 C.M.S., Which Among Other Things, Granted A
81 Franchise For Residential Recycling Collection Services To California Waste Solutions, Inc., For
82 A Term Of Ten (10) Years From July 1, 2015 Through June 30, 2025, With Two Five-Year

83 Extension Options In 2022 And 2027, To Change The Term Of The Contract To Twenty (20)
84 Years: July 1, 2015 Through June 30, 2035; and WHEREAS, Section 4 of the Ordinance
85 provides that the CITY Administrator is authorized to conduct all negotiations and execute all
86 documents including but not limited to amendments, modifications, notices, and related actions
87 which may be necessary and consistent with the basic intent and purpose of the Ordinance and
88 the Contract, except for those rate adjustments that the Oakland Municipal Code requires to be
89 approved by Council.

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

92 Article 1. DEFINITIONS

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

98 1.01 AB 32. The Global Warming Solutions Act, (California Public Safety Code
99 section 38500 et seq.) as amended, including rules and regulations promulgated thereunder as
100 amended, which among other things, sets a greenhouse gas reduction goal by 2020.

101 1.02 AB 341. The California legislation (Stats. 2006, Ch. 476), as it may be amended
102 from time to time, that, among other things, added Chapter 12.8 of Part 3 of Division 30 of the
103 Public Resources Code (commencing with section 42649) imposing mandatory Commercial
104 recycling requirements and requirements that each jurisdiction implement an outreach and
105 education program and monitor compliance with the Mandatory Commercial Recycling
106 requirements.

107 1.03 AB 939. The California Integrated Waste Management Act (Public Resources
108 Code section 40000 et seq.), as amended from time to time.

109 1.04 Ancillary Services. Ancillary Services are the services listed in Sections B
110 through E of RR Collection Forms 1A and 1B of Exhibit 1 to this Contract.

111 1.05 Bin. A watertight metal or plastic Container with a hinged plastic lid and a
112 capacity of between one (1) and seven (7) cubic yards designed or intended to be mechanically
113 dumped into a loader packer type truck, that is approved by CITY and labeled as specified by
114 CITY.

115 1.06 Bulky Goods. Materials such as, but not limited to, stoves, refrigerators, water
116 heaters, washing machines, clothes dryers, small air conditioning units, other large and small
117 household appliances, including appliances containing Freon, furniture, carpets, tires, wood,
118 household items, tires with or without rims, mattresses, clothing, Large Plant Debris, and
119 corrugated cardboard. Bulky Goods do not include items herein defined as Unacceptable
120 Waste or Construction and Demolition Debris.

121 1.07 Cart. A watertight heavy plastic receptacle with a rated capacity of approximately
122 twenty (20), thirty two (32), sixty four (64) or ninety-six (96) gallons, having a hinged tight-fitting

123 lid, and two (2) wheels, that is approved by CITY and is labeled as specified by CITY.

124 1.08 Change in Law. The adoption, promulgation, or modification of any generally
125 applicable and enforceable federal, state, local joint power authority (JPA), or foreign rule, law,
126 regulation, ordinance, order, judgment, decree, permit or administrative agency guidelines
127 (excluding orders, judgments, and decrees specific to a particular facility) duly adopted and
128 promulgated officially in writing for uniform application occurring after January 9, 2013. Change
129 in Law does not include changes initiated by CONTRACTOR. Change in Law shall not include
130 such (i) Laws enacted or adopted prior to January 9, 2013, or (ii) Laws particular to the solid
131 waste and recycling Collection, hauling, Processing and Disposal industry that are enacted or
132 finally adopted or approved prior to the effective date of this Contract but initially become
133 effective after such date.

134 1.09 CITY. The CITY of Oakland, in the state of California, a municipal corporation.

135 1.10 CITY Administrator. The CITY official who is responsible for the day-to-day
136 operations of CITY agencies and departments or his/her designee.

137 1.11 CITY Facilities. CITY Facilities are the CITY Facilities listed on Exhibit 4 to this
138 Contract.

139 1.12 CITY Recycling Collection Service. The Collection of Recyclable Materials from
140 CITY Facilities in the Service Area, the delivery of the Recyclable Materials to a Material
141 Recovery Facility, and the Processing and marketing of the Recyclable Materials.

142 1.13 Collect/Collection. To pick up, transport, and remove Recyclable Materials.

143 1.14 Commercial. A business establishment and/or industrial facility including, but not
144 limited to, governmental, religious and educational facilities.

145 1.15 Commercial Non-Exclusive Recycling Collection Service. The Collection of
146 Recyclable Materials (excluding dry cell household batteries) from Commercial Service
147 Addresses subscribing to such service in the Service Area, the delivery of the Recyclable
148 Materials to a Material Recovery Facility, and the Processing and marketing of the Recyclable
149 Materials. For the sake of clarity, the Collection of Used Oil and Used Oil Filters is not part of
150 this service.

151 1.16 Compactor. Any Roll-Off Box or Bin that has a compaction mechanism, whether
152 stationary or mobile.

153 1.17 Competitive Wages and Benefits. Wages and benefits equivalent to or better
154 than the average of collectively bargained contracts in use in Alameda County. With reference
155 to Local 6, the wages shall be \$20.94 per hour in 2019 and shall provide Local 6 workers
156 affordable family healthcare coverage beginning July 1, 2015.

157 1.18 Construction and Demolition Debris. Materials resulting from construction,
158 remodeling, repair or demolition operations on any house, or residential property, Commercial
159 building, pavement or other structure. Construction and Demolition Debris includes but is not
160 limited to rocks, soils, tree remains and other Plant Debris, which results from land clearing or
161 land development operations in preparation for construction.

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

1.20 Contamination. The inclusion in a Container designated for Source-Separated Recyclable Materials of Unacceptable Waste of any amount; or materials other than Recyclable Materials in a Recyclable Materials Container, which render more than ten (10) percent of the contents of the Container materially unsuitable for Diversion.

1.21 Contamination Surcharge. The charges CONTRACTOR may impose on a Customer for Contamination of a Recyclable Materials Container that were approved by CITY and are contained in Exhibit 1, which is attached to and included in this Contract.

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

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

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

1.25 CONTRACTOR. California Waste Solutions, Inc., a California corporation

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

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

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

1.28.1 A grade greater than fifteen (15) percent;

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

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

1.28.4 An unpaved surface over which Containers must be rolled;

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

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

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

1.30 Disposal Contractor. Waste Management of Alameda County, Inc.

1.31 Disposal Facility or Landfill. The Altamont Landfill located at 10840 Altamont Pass Road, Livermore, California 94551 that is owned and operated by the Disposal Contractor or such other facility that is selected by CONTRACTOR and approved by CITY for the Disposal of Recycling Residue that is designed, operated, and legally permitted for the purpose of receiving and Disposing of Recycling Residue.

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

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

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

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

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

1.37 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms, floods, pestilence, freezing, earthquakes, explosions, sabotage, civil disturbances, acts of a public enemy, wars, terrorism, blockades, riots, or other industrial disturbances, eminent domain, condemnation or other taking, or other events of a similar nature, not caused or maintained by CITY or CONTRACTOR, which event is not reasonably within the control of the party claiming the excuse from its obligations due to such event, to the extent such event has a significant and material adverse effect on the ability of a party to perform its obligations thereunder. Force Majeure shall not include power outages, fuel shortages, strikes, work

stoppage or slowdown, sickout, lockout, picketing or other concerted job action conducted by or directed at CONTRACTOR or CONTRACTOR's employees or subcontractors. Force Majeure shall include a Change in Law if such Change in Law prohibits a party's performance hereunder. Notwithstanding the foregoing, (i) in no event shall the inability to deliver Recyclable Materials to a facility constitute a Force Majeure unless and only to the extent that a Force Majeure event prevents the acceptance of Recyclable Materials at that facility; (ii) no failure of performance by any subcontractor of CONTRACTOR shall be a Force Majeure unless such failure was itself caused by a Force Majeure; (iii) except as provided herein, no event which merely increases CONTRACTOR's cost of performance shall be a Force Majeure; and (iv) no event, the effects of which could have been prevented by reasonable precautions, including compliance with agreements and applicable laws, shall be a Force Majeure.

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

1.39 Generator. A Single Family Dwelling, Multi-Family Dwelling, or a Commercial Service Addressee subscribing to Commercial Non-Exclusive Recycling Collection Services provided under the terms of Section 11.02 herein, that produce Recyclable Materials.

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

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

25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7901 et seq.; and (vii) California Water Code section 13050; all rules and regulations adopted and promulgated pursuant to such statutes, and future amendments to or recodifications of such statutes, and any regulations adopted pursuant to these statutes after the date of this Contract, as well as any subsequently enacted federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances; any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products. The parties intend that this definition not be limited to any particular statutory or regulatory regime and that it be construed as broadly as possible.

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

1.43 Labor Disruption. Strikes, slowdowns, sickout, picketing, other concerted job actions, directed at CONTRACTOR, CONTRACTOR's employees or subcontractors, excluding lockouts or stoppages conducted or initiated by CONTRACTOR.

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

1.45 Material Recovery Facility (or MRF). Any facility selected by CONTRACTOR and approved or specifically designated by CITY, designed, operated, and legally permitted for the purpose of receiving and Processing Recyclable Materials. The MRFs owned by CONTRACTOR located at 1820 10th Street and 3300 Wood Street in CITY are approved facilities. CONTRACTOR intends to build a MRF located on a portion of the former Oakland Army Base in the general vicinity of the intersection of Maritime Street and West Grand Avenue ("North Gateway Facility"). If constructed, the North Gateway Facility may be an approved MRF upon approval of CITY.

1.46 Maximum Recycling Service Rates. Those per Dwelling Unit rates and ancillary charges that were approved by CITY and are contained in Exhibits 1A and 1B, which are attached to and included in this Contract and those Non-Exclusive Commercial Collection Service rates and charges for services provided under the terms of Section 11.02 herein that were approved by CITY and are contained in Exhibit 1C, which is attached to and included in this Contract.

1.47 MFD or Multi-family Dwelling. Any residence with five (5) or more Dwelling Units, including any flat, apartment, condominium, town home, service-enriched housing or other residence, and other Dwelling Units in detached buildings on a single parcel, and excluding a

329 hotel, motel, dormitory, sheltered nursing facility, rooming house, or other such similar facility as
330 determined by CITY.

331 1.48 MFD Recycling Services. MFD Recycling Collection Service and Used Oil
332 Collection Service.

333 1.49 MFD Recycling Collection Service. The Collection of Recyclable Materials from
334 MFD Service Addresses in the Service Area, the delivery of the Recyclable Materials to the
335 MRF and the Processing or marketing of the Recyclable Materials.

336 1.50 Mixed Materials. All materials that are set out by the Service Recipient for
337 Collection by MM&O Collection Contractor, excluding items that are source separated. Mixed
338 Materials do not include items defined herein as Unacceptable Waste.

339 1.51 Mixed Materials and Organics (MM&O) Collection Contractor. Waste
340 Management of Alameda County, Inc.

341 1.52 Non-Collection Notice. A form developed and used by CONTRACTOR, as
342 approved by CITY, to notify Service Recipients of the reason for non-collection of materials set
343 out by the Service Recipient for Collection by CONTRACTOR pursuant to this Contract.

344 1.53 Organic Materials ("Organics"). Plant Debris, Food Scraps, compostable food
345 ware, compostable food containers, compostable paper, horse stable matter and other material
346 agreed upon by both parties that is separated for Collection by the MM&O Collection Contractor.

347 1.54 Overage. An amount of Recyclable Material in excess of the capacity of the
348 Container utilized at the Service Address for the set out of such material.

349 1.55 Performance Security. The performance security required of CONTRACTOR
350 under Article 24, Section 24.02.

351 1.56 Person. An individual, association, partnership, corporation, joint venture,
352 school, the United States, the State of California, any municipality or other political subdivision
353 thereof, or any other entity whatsoever.

354 1.57 Plant Debris. Any vegetative matter resulting from normal yard and landscaping
355 maintenance or unpainted and untreated wood that is not more than four (4) feet in its longest
356 dimension or more than six (6) inches in diameter or weighs less than seventy five (75) pounds
357 per individual piece and can be handled by two (2) persons. Plant Debris includes palm, yucca
358 and cactus; grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other
359 forms of horticultural waste. Plant Debris must be generated at the Service Address from which
360 the Plant Debris is Collected, except for material generated on property owned or maintained by
361 CITY. Plant Debris does not include items defined herein as Unacceptable Waste.

362 1.58 Processing. An operation or series of operations, whether involving equipment,
363 manual labor, or mechanical or biological processes, that sorts, enhances, upgrades,
364 concentrates, decontaminates, packages or otherwise prepares Recyclable Materials, and
365 returns marketable elements thereof to the economic mainstream in the form of raw material for
366 new, reused, or reconstituted products. Processing begins at the time the Recyclable Materials,
367 are delivered to the Processing facility and ends when the Processed materials are sold or

368 reused, and the Recycling Residue is properly Disposed.

369 1.59 Recurring Ancillary Services. Those Ancillary Services that are provided by
370 CONTRACTOR to a SFD or MFD Customer at least one (1) time each month during such time
371 as that Customer is receiving Residential Recycling Collection Services.

372 1.60 Recycle or Recycled. To Process and market Recyclable Materials in a manner
373 that meets the requirements of the California Integrated Waste Management Act, Public
374 Resources Code section 40000 et seq., for inclusion of the materials in the calculation of
375 Diversion from landfill Disposal for the purposes of the solid waste Diversion requirements of the
376 Act. Recycle does not include transformation as described in Public Resources Code section
377 41201, and does not include stockpiling or storage by CONTRACTOR or any other Person.

378 1.61 Recyclable Materials. Those materials designated in this Contract or other
379 materials agreed upon by the parties, for Collection and recycling under this Contract, which are
380 segregated from Mixed Materials and Organics by CITY or Service Recipient at the source of
381 Generation Recyclable Materials include newspaper, mixed paper (including, but not limited to,
382 white and colored paper, magazines, telephone books, chipboard, junk mail, and high grade
383 paper) glass bottles and jars, metal cans (ferrous, non-ferrous, and bi-metal containers,
384 including empty aerosol containers), aluminum foil and trays, milk and juice cartons, soup and
385 juice boxes, all narrow neck rigid plastic containers, non-bottle rigid plastics, corrugated
386 cardboard, and dry cell household batteries (excluding batteries generated at Commercial
387 Service Addresses) when placed in a clear heavy-duty sealed bag and set out for Collection in
388 the manner prescribed herein. CITY and CONTRACTOR may mutually agree to include
389 additional materials or remove materials from this list of Recyclable Materials.

390 1.62 Recycling Residue. Materials remaining after the Processing of Recyclable
391 Materials that are not Diverted.

392 1.63 Recycling Services. Residential Recycling Collection Services, CITY Recycling
393 Collection Service, and Commercial Non-Exclusive Recycling Collection Service provided under
394 the terms of Section 11.02 herein.

395 1.64 Residential Recycling Collection Services. SFD Recycling Services, and MFD
396 Recycling Services.

397 1.65 Roll-Off Box. A metal Container of between six (6) and fifty (50) cubic yards that
398 is normally loaded onto a motor vehicle and transported to an appropriate facility. A Roll-Off
399 Box may be open topped or covered, at the discretion of CITY, with or without a compaction
400 unit.

401 1.66 Service Address. The physical location of the property receiving Recycling
402 Services.

403 1.67 Service Area. That area within the corporate limits of the City of Oakland.

404 1.68 Service Recipient. A Person receiving Recycling Services under the terms of this
405 Contract.

406 1.69 SFD Recycling Services. SFD Recycling Collection Service and Used Oil

407 Collection Service.

408 1.70 SFD Recycling Collection Service. The Collection of Recyclable Materials from
409 SFD Service Addresses in the Service Area, the delivery of the Recyclable Materials to the MRF
410 and the Processing and marketing of the Recyclable Materials.

411 1.71 Single Family Dwelling or SFD. A detached or attached residence containing
412 four (4) or fewer Dwelling Units when each Dwelling Unit is designed or used for occupancy by
413 one (1) or more individuals.

414 1.72 Solid Waste. All putrescible and non-putrescible solid, semisolid, and liquid
415 wastes, including Garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, Construction
416 and Demolition wastes, discarded home and industrial appliances, dewatered, treated, or
417 chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or animal
418 solid and semi-solid wastes, and other discarded solid and semi-solid wastes as defined in
419 California Public Resources Code section 40191, as that section may be amended from time to
420 time, but does not include Source Separated Recyclable Materials abandoned vehicles and
421 parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, Unacceptable
422 Waste or Plant Debris. Solid Waste may include Recyclable Materials, compostable materials,
423 and Construction and Demolition Debris if such materials are not Source Separated from Solid
424 Waste at the site of generation or Collected for recycling, composting, Processing and
425 marketing.

426 1.73 Source Separated Recyclable Materials. All materials that have been
427 segregated from Garbage, Mixed Materials and Organics by or for the Generator at the Service
428 Address at which the materials were generated, for handling in a manner different from that of
429 Garbage, Mixed Materials and Organics.

430 1.74 Ton/Tonnage. A unit of measure for weight equivalent to two thousand (2,000)
431 standard pounds where each pound contains sixteen (16) ounces.

432 1.75 Universal Waste ("U-Waste"). Materials that the California Department of Toxic
433 Substances Control considers Universal Waste (California Code of Regulations Title 22, Div 4.5,
434 Ch 23), including materials such as batteries, thermostats, lamps, cathode ray tubes,
435 computers, telephones, answering machines, radios, stereo equipment, tape players/recorders,
436 phonographs, video cassette players/recorders, compact disc players/recorders, calculators,
437 some appliances, aerosol cans, fluorescent lamps, and certain mercury-containing devices.

438 1.76 Unacceptable Waste. Any and all waste, including but not limited to, Hazardous
439 Waste, and Household Hazardous Waste, the acceptance or handling of which would cause a
440 violation of any permit condition or legal or regulatory requirement, damage or threatened
441 damage to CONTRACTOR's equipment or facilities, or present a substantial endangerment to
442 the health or safety of the public or CONTRACTOR's employees; provided, that de minimis
443 quantities or waste of a type and amount normally found in Garbage or Mixed Materials after
444 implementation of programs for the safe Collection, Processing, treatment, and Disposal of
445 Household Hazardous Waste in compliance with sections 41500 and 41802 of the California
446 Public Resources Code shall not constitute Unacceptable Waste. Unacceptable Waste does
447 not include Used Oil, Used Oil Filters or dry cell household batteries when placed for Collection
448 as set forth in this Contract.

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

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

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

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

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

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

Article 2. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

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

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

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

2.03 Contract Duly Executed. The Persons signing this Contract on behalf of CONTRACTOR have been authorized by CONTRACTOR to do so, and this Contract has been

duly executed and delivered by CONTRACTOR in accordance with the authorization of its Board of Directors or shareholders, if necessary, and constitutes a legal, valid, and binding obligation of CONTRACTOR enforceable against CONTRACTOR in accordance with its terms.

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

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

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

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

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

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

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

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

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

Article 3. TERM OF CONTRACT

3.01 Term. The term of this Contract shall be for a twenty (20) year period beginning July 1, 2015, and terminating on June 30, 2035.

3.01.1 No Right to Extension. Nothing in the foregoing paragraph or otherwise set forth in this Contract is intended to create a right in favor of CONTRACTOR to obtain an extension.

3.01.2 Nothing in Section 3.01 affects CONTRACTOR's obligations to perform prior to July 1, 2015, as required in this Contract.

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

4.01 General. CONTRACTOR covenants that it shall obtain and deliver to CITY an exemplar of the document set forth in Section 4.02 below together with a commercially reasonable assurance that such Performance Security will be in full force and effect commencing July 1, 2015. If such documents are not delivered to CITY in satisfactory form by June 15, 2015, CITY may terminate this Contract with absolutely no continuing financial obligations to CONTRACTOR and may resort to the rights and remedies provided for in Article 26 hereof.

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

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

Article 5. SERVICES PROVIDED BY CONTRACTOR

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

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

569 5.03 Collection by Other Persons. Notwithstanding CONTRACTOR's rights under this
570 Contract as described above, and in Section 6.15.1, the following materials may be Collected by
571 Persons other than CONTRACTOR:

572 5.03.1 Recyclable Materials that are removed from Commercial establishments;

573 5.03.2 Construction and Demolition Debris;

574 5.03.2.1 Recyclable Materials that have been source separated by
575 material type from Construction and Demolition Debris.

576 5.03.3 Recyclable Materials that are removed from any SFD Service Address or
577 MFD Service Address and transported to a transfer station, recycling center, or Materials
578 Recovery Facility by the occupant;

579 5.03.4 Recyclable Materials that are Collected and transported by CITY crews to
580 a transfer facility, a Materials Recovery Facility, or such other appropriate Processing facility;

581 5.03.5 Recyclable Materials that are Source Separated at any SFD or MFD
582 Service Address by the Generator and donated to a Person or sold. Recyclable Materials are
583 considered "donated or sold" so long as the Person Collecting the Recyclable Materials does
584 not receive a net payment from the Generator (including but not limited to any payment for
585 consulting and/or management fees related to the Collection of any waste materials, including
586 Recyclable Materials);

587 5.03.6 Beverage containers, other than those set out for Collection by
588 Contractor, that are delivered for Recyclable Materials under the California Beverage Container
589 Recyclable Materials Litter Reduction Act, section 14500, *et seq.*;

590 5.03.7 Recyclable Materials that are removed from a Service Address in a Fixed
591 Body Vehicle by a property management, maintenance or cleanup service company as an
592 incidental part of the total on-property cleanup or maintenance service offered by the company
593 rather than as a hauling service;

594 5.03.8 Recyclable Materials that are removed from a Service Address by the
595 MM&O Contractor as part of the provision of Bulky Goods Collection Service;

596 5.03.9 Recyclable Materials that are removed from a Service Address by a
597 company through the performance of a service that CONTRACTOR has elected not to provide;

598 5.03.10 Source Separated Recyclable Materials generated by Commercial
599 Service Addresses including but not limited to those Collected by a Person under contract to
600 CITY and those Collected through private arrangements between the Generator and the
601 collection company, which are recycled at a recycling facility that holds all applicable permits;
602 provided, however, that loads that contain more than ten (10) percent by weight or volume of
603 non-recyclable material shall not be considered Source Separated Recyclable Materials.

604 5.03.11 Materials that CONTRACTOR is not required to Collect and Process
605 under this Contract, as of the effective date of this Contract, which subsequently, in CITY's
606 reasonable judgment, become economically feasible to recycle. In such event, CONTRACTOR
607 shall have the exclusive right to Collect and process such new Recyclable Materials if

608 CONTRACTOR agrees to do so without any change in Maximum Recycling Service Rates. If
609 CONTRACTOR is unwilling to Collect such new Recyclable Materials at existing Maximum
610 Recycling Service Rates, CITY may provide for Collection and Processing of such new
611 Recyclable Materials in any manner it deems appropriate;

612 5.03.12 Recyclable Materials removed from a Service Address for a nominal
613 charge by a retailer as an incidental part of a sale of merchandise; and

614 5.03.13 Recyclable Materials removed from a Service Address for a nominal
615 charge by a reuse facility or reuse business.

616 5.04 Prohibition. Nothing in Section 5.03 shall allow the Collection, through the use of
617 a Roll-Off Box, of SFD, or MFD Recyclable Materials for a fee charged by a company whose
618 primary service is hauling or Processing of Recyclable Materials.

619 5.05 Use of Other Persons. CONTRACTOR acknowledges and agrees that CITY
620 may permit other Persons besides CONTRACTOR to Collect any and all types of materials
621 excluded from the scope of this Contract, as set forth above, without seeking or obtaining
622 approval of CONTRACTOR.

623 5.06 Applicable Law. The scope of this Contract shall be interpreted to be consistent
624 with applicable law, now and during the term of the Contract subject to provisions of Article 30.
625 If future judicial interpretations of current law or new laws, regulations, or judicial interpretations
626 limit the ability of CITY to lawfully provide for the scope of services as specifically set forth
627 herein, CONTRACTOR agrees that the scope of the Contract will be limited to those services
628 and materials which may be lawfully provided. In such an event, it shall be the responsibility of
629 CONTRACTOR to minimize the financial impact of such future judicial interpretations or new
630 laws, subject to the other provisions of the Contract.

631 **Article 6. SERVICE STANDARDS**

632 6.01 Service Standards. CONTRACTOR shall perform all Recycling Services under
633 this Contract in a thorough and professional manner. Subject to Section 29.07, Recycling
634 Services described in this Contract shall be performed regardless of weather conditions or
635 difficulty of Collection.

636 6.02 Hours and Days of Collection. SFD and MFD Recycling Services shall be
637 provided, commencing no earlier than 6:00 a.m. and terminating no later than 6:30 p.m.,
638 Monday through Friday with no service on Saturday (except for holiday service as set forth in
639 Section 6.10 of this Contract in which case normal Collection hours may be utilized) or Sunday.
640 The hours, days, or both of Collection may be extended due to extraordinary circumstances or
641 conditions with the prior written consent of the Contract Manager.

642 6.02.1 Commercial Non-Exclusive Recycling Collection Service and CITY
643 Recycling Collection Service shall be provided Monday through Friday with limited CITY and
644 Commercial Non-Exclusive Recycling Collection Service on Saturday. CONTRACTOR shall
645 endeavor to route Collection vehicles in a manner that minimizes noise and traffic impacts
646 during critical periods of the day, including: near residential properties from 6:00 p.m. to 6:00
647 a.m., near schools during pick-up and drop-off hours, in merchant districts during normal
648 business hours, and in high traffic areas during peak commute hours. CONTRACTOR shall
649 resolve complaints of noise and traffic impacts caused by CONTRACTOR's activities to the

650 satisfaction of CITY.

651 6.03 Transfer of Loads on Public Streets and Roads. CONTRACTOR is prohibited
652 from transferring loads from one vehicle to another on any public right-of-way unless there is a
653 necessity to do so because of road conditions, mechanical failure, truck fire or accidental
654 damage to a vehicle, without written permission from the Contract Manager. Notwithstanding
655 the foregoing, CONTRACTOR may transfer Recyclable Materials from small vehicles used to
656 provide Recycling Service in Difficult to Serve areas to Collection vehicles in a safe, clean
657 manner that does not interfere with traffic, does not cause damage to streets or sidewalks and
658 does not result in litter.

659 6.04 Manner of Collection. CONTRACTOR shall provide Recycling Services with as
660 little disturbance as reasonably possible and shall leave any Cart or Bin in an upright position,
661 with the lid closed, at the same point it was Collected without obstructing alleys, roadways,
662 driveways, sidewalks or mail boxes. CONTRACTOR will not be responsible for Carts or Bins
663 being moved or open due to weather conditions or other factors beyond its control, such as
664 scavengers. CONTRACTOR shall also lock any Bin and close or lock as appropriate any
665 Container enclosure that it opened or unlocked as part of Recycling Services.

666 6.05 Record of Non-Collection. When any Recyclable Material that is set out for
667 regular or special Collection is not Collected by CONTRACTOR for sufficient reason,
668 CONTRACTOR shall leave a Non-Collection Notice. A copy of any Non-Collection Notice,
669 along with the name and address of the party noticed, shall be delivered to the Contract
670 Manager within twenty-four (24) hours of CITY's request.

671 6.06 Containers.

672 6.06.1 Carts.

673 6.06.1.1 Carts are to be hot-stamped, embossed laminated, or
674 labeled, with a unique identification number and the "Oakland Recycles" logo along with the
675 type of materials to be Collected (i.e., Recyclable Materials), name and phone number of
676 CONTRACTOR, and instructions for proper usage or as otherwise approved by the Contract
677 Manager. In-molding or labels on the Carts shall be on the lids. Labeling and graphics of the
678 Carts shall be approved by the Contract Manager. Carts shall not contain any type of
679 advertising without the written approval of the Contract Manager.

680 6.06.1.2 CONTRACTOR may use existing Carts that were provided
681 under the previous contracts, including Carts in service and any remaining stock of new Carts
682 that CONTRACTOR has in inventory as of April 1, 2015. These Carts shall be re-labeled on
683 their lids only, with the type of materials to be Collected (i.e., Recyclable Materials) name and
684 phone number of CONTRACTOR, and instructions for proper usage. Labeling and graphics of
685 the Carts shall be approved by the Contract Manager.

686 6.06.2 Bins. Bins, including those defined herein as Compactors, are to be
687 marked with a unique identification number, labeled with the type of materials to be Collected
688 (i.e., Recyclable Materials), the size in cubic yards, CONTRACTOR's name and phone number
689 and instructions for proper usage, and be in good working order. Labeling and graphics of the
690 Bins shall be approved by the Contract Manager. Used Bins may be utilized providing they are
691 newly painted, properly marked, in good working order and free of rust and holes. The initial
692 painting, labeling and identification numbering for used Bins shall be accomplished by

693 December 31, 2015. CITY retains the right to inspect any such used Bins and direct
694 CONTRACTOR to replace such used Bin if it is deemed to be not acceptable. Bins shall not
695 contain any type of advertising without the written permission and approval of the Contract
696 Manager.

697 6.06.3 Roll-Off Boxes. Roll-Off Boxes, including those defined herein as
698 Compactors, are to be marked with a unique identification number, labeled with the size in cubic
699 yards, CONTRACTOR's name and phone number and instructions for proper usage, be in good
700 working order and at the discretion of CITY have lids. Labeling and graphics of the Roll-Off
701 Boxes shall be approved by CITY. Used Roll-Off Boxes may be utilized, provided they are
702 newly painted, properly marked, in good working order and free of rust and holes. CITY retains
703 the right to inspect any such used Roll-Off Boxes and direct CONTRACTOR to replace such
704 used Roll-Off Box if it is deemed to be not acceptable.

705 6.06.4 Purchase, Distribution and Collection of Carts and Bins. CONTRACTOR
706 shall be responsible for the purchase and distribution of fully assembled and functional Carts
707 and Bins to Service Addresses in the Service Area based on the type and level of service
708 received by each Service Addresses. CONTRACTOR shall also distribute Carts and Bins, as
709 needed, to new Service Addresses during the term of this Contract. The distribution shall be
710 completed no later than the next regularly scheduled Collection day after receipt of notification
711 from CITY, the Customer, or the Service Recipient; provided, however, CONTRACTOR must
712 receive the notification at least six (6) Work Days prior to distribution.

713 6.06.4.1 CONTRACTOR shall be responsible for the collection of
714 abandoned, used, discarded, or unwanted Recycling Containers in the Service Area within six
715 (6) Work Days of notification by CITY, a Service Recipient, or a Customer. Recycling
716 Containers shall be repaired or, if repair is not practical, Recycled. This service shall be
717 provided at no additional cost to CITY, Customer or Service Recipient.

718 6.06.5 Repair or Replacement of Carts and Bins. CONTRACTOR shall be
719 responsible for repair or replacement of Carts and Bins and their component parts, including but
720 not limited to, hinged lids, wheels, axles and labels as provided below. CONTRACTOR shall
721 also be responsible for securing replacement of all items covered by manufacturer warranty.

722 6.06.6 Replacement of Carts and Bins Provided Under Previous Contract.

723 6.06.6.1 Carts: Initial Contract Year. If CONTRACTOR has, or
724 obtains Carts provided under previous contracts, then CONTRACTOR shall replace at least
725 twenty (20) percent of such Carts with new Carts at no cost or inconvenience to the Service
726 Recipient or Customer in the initial Contract Year. CONTRACTOR shall submit a plan for
727 replacement of Carts to the Contract Manager upon the commencement of operations
728 hereunder.

729 6.06.6.2 Carts: Remaining Term of Contract. CONTRACTOR shall
730 be responsible for ongoing replacement of Carts during the remaining term at a frequency and
731 in amounts to ensure maintenance of adequate serviceability. Any Carts not replaced with new
732 Carts during the first ten (10) years of the Contract shall be replaced with new Carts no later
733 than June 30, 2030.

734 6.06.6.3 Bins. CONTRACTOR shall be responsible for ongoing
735 replacement of Bins at a frequency and in amounts to ensure maintenance of adequate

serviceability. This continual replacement is estimated to be at a rate of up to three percent (3%) per Contract Year, but in any event shall be sufficient to maintain serviceability and a well-maintained appearance.

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

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

6.06.9 Replacement of Carts and Bins Required Through No Fault of CONTRACTOR. Upon notification to CONTRACTOR by CITY or a Service Recipient that the Service Recipient's Recyclable Materials Cart(s), or Bin(s) have been stolen or damaged beyond repair through no fault of CONTRACTOR, CONTRACTOR shall deliver a replacement Cart(s), or Bin(s) to the Service Address no later than the next regularly scheduled Collection day, or within six (6) Work Days (whichever is later) at no cost, subject to the limitations set forth below, or inconvenience to the Service Recipient or Customer. Notwithstanding the foregoing, in cases where CONTRACTOR can demonstrate that the replacement is due to factors other than CONTRACTOR mishandling or damage, ordinary wear and tear, or third-party theft, CONTRACTOR may invoice the Customer or Service Recipient requesting such a replacement in accordance with the "Cart Replacement" Maximum Recycling Service Rate set forth in Exhibit 1 to this Contract or as may be adjusted under the terms of this Contract from time to time by including the allowed charge on its invoice for non-Recurring Ancillary Services to the MM&O Contractor. CONTRACTOR shall maintain records documenting all Cart and Bin replacements occurring on a monthly basis.

6.06.10 Reporting Requirements for Replacements. No later than July 15, 2016, and annually thereafter during the term of this Contract, CONTRACTOR shall provide CITY with an electronic report of Cart and Bin Replacements provided during the preceding Contract Year in a form and format approved by CITY and using software approved by CITY. At a minimum the report shall include the size, type, and number of Bins and Carts replaced and the reason for such replacement based upon one of the following five (5) categories: Missing; Stolen; Damaged; Destroyed; or Normal Wear and Tear. The report shall also include a calculation of the base number for Cart and Bin replacements under Section 6.06.6 for the prior Contract Year and the current Contract Year.

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

6.06.11.1 Each SFD Service Address shall be entitled to receive two

(2) free Recyclable Materials Cart exchanges (meaning an increased or decreased Cart size) during the initial Contract Year, and once every year thereafter during the term of this Contract.

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

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

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

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

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

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

6.10 Holiday Service. January 1, Thanksgiving Day and December 25 shall be legal holidays. CONTRACTOR shall not be required to provide Recycling Services on the designated holidays. In any week in which one of these holidays falls on a Work Day, and CONTRACTOR elects to not provide Recycling Services, SFD Recycling Services for the holiday and each Work Day thereafter may be delayed one (1) Work Day for the remainder of the week with normally scheduled Friday SFD Recycling Services being performed on Saturday. MFD Recycling Services and Commercial Non-Exclusive Recycling Collection Services provided under the

terms of Section 11.02 herein shall be adjusted as agreed between CONTRACTOR and the Customer but must meet the minimum Collection frequency requirement of one (1) time per week. CONTRACTOR shall notify Service Addresses and CITY at least thirty (30) days in advance of changes to the Collection day because of a holiday schedule.

6.11 Processing and Disposal.

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

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

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

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

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

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

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

6.12 Recycling - Improper Procedure. CONTRACTOR shall not be required to Collect Recyclable Materials if the Recyclable Materials are not Source Separated. If the Source

867 Separated Recyclable Materials are contaminated through commingling with Mixed Materials or
868 Organics CONTRACTOR shall follow the progression of corrective actions described in the
869 Contamination Reduction Program attached to this Contract as Exhibit 11.

870 6.13 Inspections. CITY shall have the right to inspect CONTRACTOR's facilities or
871 Collection vehicles and their contents at any time while operating inside or outside CITY.

872 6.14 Commingling of Materials.

873 6.14.1 Other Materials. Except as provided in Section 28.03, CONTRACTOR
874 shall not at any time commingle Recyclable Materials Collected pursuant to this Contract, with
875 any other material Collected by CONTRACTOR inside or outside CITY prior to delivery to the
876 MRF without the express prior written authorization of the Contract Manager and such
877 authorization shall not be unreasonably withheld.

878 6.14.2 Recyclable Materials. CONTRACTOR may not commingle Recyclable
879 Materials Collected pursuant to this Contract, with other recyclable material Collected by
880 CONTRACTOR outside CITY prior to delivery to the MRF without the express prior written
881 authorization of the Contract Manager and such authorization shall not be unreasonably
882 withheld. However, if permission is given, CONTRACTOR shall allocate Tons using a
883 methodology approved by the Contract Manager.

884 6.14.3 Spillage and Litter. CONTRACTOR shall not litter premises in the
885 process of providing Recycling Services or while its vehicles are on the road. CONTRACTOR
886 shall transport all materials Collected under the terms of this Contract in such a manner as to
887 prevent the spilling or blowing of such materials from CONTRACTOR's vehicle.
888 CONTRACTOR shall exercise all reasonable care and diligence in providing Recycling Services
889 so as to prevent spilling or dropping of Recycling Materials and shall immediately, at the time of
890 occurrence, clean up such spilled or dropped materials in accordance with the "Spill Response
891 Plan" approved by CITY in Exhibit 9, which is attached to and included in this Contract.
892 CONTRACTOR shall commence clean up any spillage or litter by end of the Work Day upon
893 notice from the Contract Manager.

894 6.14.4 Litter Cleanup. CONTRACTOR is required to clean up reasonable
895 amounts and types of litter around the area of the Recycling Container, whether or not
896 CONTRACTOR has caused the litter. In the event of more than one (1) instance in any six (6)
897 month period, not caused by CONTRACTOR, requiring CONTRACTOR to clean up litter around
898 the Recycling Container(s) of a specific Service Address, CONTRACTOR shall make
899 reasonable efforts to contact the Service Recipient and work with the Service Recipient to
900 resolve the litter problem. In the event the litter problem cannot be resolved CONTRACTOR
901 may bill such Customer as set forth in Exhibit 1. Nothing herein prevents CONTRACTOR from
902 making alternative invoice arrangements for such bills with the MM&O Contractor.

903 6.14.5 Damage to Public Streets. In the event where damage to public streets
904 within CITY is caused by a hydraulic oil spill from CONTRACTOR's vehicle, or a vehicle load
905 fire that is dumped onto the street for containment purposes, CONTRACTOR shall be
906 responsible for all repairs to return the street to the same condition it was in prior to the spill or
907 fire. CONTRACTOR shall also be responsible for all clean-up activities related to the spill or
908 fire. Repairs and clean-up shall be performed in a manner satisfactory to the Contract Manager
909 and at no cost to CITY.

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

6.15 Ownership of Materials.

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

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

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

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

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

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

6.18 Transition. CONTRACTOR understands and agrees that the time between the formal Contract signing and July 1, 2015, is intended to provide CONTRACTOR with ample and sufficient time to, among other things, order equipment, prepare necessary routing schedules and route maps, obtain any permits and licenses, establish/build facilities, and begin the public awareness campaign as part of CONTRACTOR's transition program as specified in Exhibit 5 which is attached to and included in this Contract. CONTRACTOR shall be responsible for the provision of all Recycling Services beginning July 1, 2015.

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

6.20 Safety. In no event shall CONTRACTOR be obligated to Collect any Cart, Bin or other Container that presents a risk of injury to CONTRACTOR's employees or damage to CONTRACTOR's equipment and CONTRACTOR's staff is unable to mitigate these risks by using commercially reasonable alternative Collection methods or safe-handling procedures.

Article 7. CHARGES AND RATES

7.01 General. CONTRACTOR shall perform all services required by this Contract in consideration of the right to bill and collect, to the extent set forth herein, from CITY's MM&O Contractor, the Maximum Recycling Service Rates and Contamination Surcharge as set forth in Exhibit 1, and as may be adjusted under the terms of this Contract. CITY does not guarantee collection of such Maximum Recycling Service Rates and Contamination Surcharge. CONTRACTOR shall not look to CITY for payment of any sums under this Contract and CITY has no obligation to pay CONTRACTOR any public funds under this Contract, except as set forth in Article 18. Nothing in this paragraph is intended to alter the parties' obligations under Articles 26 and 28.

7.01.1 Rates are Comprehensive Compensation. The Maximum Recycling Service Rates and Contamination Surcharge, as set forth in Exhibit 1 and as may be adjusted under the terms of this Contract, shall be the full, entire and complete compensation due to CONTRACTOR for furnishing all labor, materials, equipment, supplies and other things necessary to perform all the services required by this Contract in the manner and at the times prescribed. The Maximum Recycling Service Rates include, without limitation, all costs for the items mentioned in the preceding sentence and also for all taxes, franchise fees, insurance, bonds, overhead, profit and all other costs necessary to perform all the services required by this Contract in the manner and at the times prescribed. The Maximum Recycling Service Rates and Contamination Surcharge include all costs associated with complying with all current federal and State statutes, and CITY and County ordinances concerning public health, safety and environmental issues and all laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the services provided by CONTRACTOR under the terms of this Contract, including any current provisions that become effective on or which require compliance by a date after the effective date of this Contract. CONTRACTOR shall not be entitled to other or further compensation for or in connection with its performance of services under this Contract except as may be specifically allowed under the terms of this Contract.

7.01.2 Annual Rate Adjustment. On July 1, 2016, and each July 1 thereafter during the term of the Contract (each an "Adjustment Date"), the Maximum Recycling Service Rates shall be adjusted by an "Annual Rate Adjustment." The Annual Rate Adjustment will include the Refuse Rate Index adjustment (Section 7.07.3 and Exhibit 2), adjustments due to changes in Franchise Fees (Section 7.01.3) and Changes in Government Fees (Section 7.01.4) and the special adjustment set forth in Section 7.08.1. In addition the maximum SFD per Dwelling Unit and MFD per Dwelling Unit service rates shall also be adjusted due to special adjustments as set forth in Sections 7.08.2 and 7.08.3 and may be adjusted for the special adjustment set forth in Section 7.08.4 if such special adjustment is approved as set forth in Section 7.08.4.

998 7.01.3 Changes in Franchise Fees. The Maximum Recycling Service Rates
999 shall be adjusted as of July 1, 2016, and annually thereafter (the "Adjustment Date"), to fully
1000 capture CONTRACTOR's increased costs based on new or increased Franchise Fees
1001 implemented or to be implemented since the previous Adjustment Date (or July 1, 2015
1002 regarding the July 1, 2016 adjustment).

1003 7.01.3.1 This Franchise Fee adjustment will be calculated prior to
1004 the upcoming July 1 Adjustment Date as follows:

1005 7.01.3.1.1. Determine item weight of Franchise Fees:

1006 Total Franchise Fees for the previous calendar year ended
1007 December 31 / (Total Allowable Expenses for all Cost Categories under RR Contract for
1008 previous calendar year ending December 31).

1009 7.01.3.1.2. Multiply the result of 7.01.3.1.1 by the percentage
1010 change in the annual average of the Franchise Fee cost indicator (Series ID: cuura422sa0
1011 Consumer Price Index, All Urban Consumers, All Items, San Francisco-San Jose-Oakland, CA)
1012 as set forth in Section 2 of Exhibit 2 to this Contract to determine the Franchise Fee percentage
1013 adjustment.

1014 7.01.3.1.3. Add 7.01.3.1.2 to the RR RRI adjustment (along
1015 with Government Fee adjustments, if any) to arrive at the Annual Rate Adjustment. For
1016 purposes of clarity, the Franchise Fee adjustment and the Government Fee adjustments are not
1017 included in the RR RRI adjustment, but are added to the RR RRI adjustment to arrive at the
1018 Annual Rate Adjustment. As such, these adjustments are not subject to the floor and ceiling
1019 restrictions as provided in Section 7.07.6 of this Contract.

1020 7.01.4 Changes in Government Fees. Prior to July 1, 2015, Maximum Recycling
1021 Service Rates will be adjusted to capture new and increased Government Fees, as set forth in
1022 Table 2 of Exhibit 2, which have been implemented or adopted since July 1, 2014 and will
1023 become effective no later than July 1, 2015.

1024 7.01.4.1 The Maximum Recycling Service Rates shall be adjusted
1025 on each Adjustment Date to fully capture CONTRACTOR's increased costs based on new or
1026 increased Government Fees implemented or to be implemented since the previous Adjustment
1027 Date (or July 1, 2015 regarding the July 1, 2016 adjustment). For purposes of this Section,
1028 "Government Fees" are surcharges, fees, assessments, taxes (non-income), licenses and other
1029 amounts payable to federal, state or local authorities in relation to CONTRACTOR's
1030 performance hereunder. Specifically, Government Fees include, but are not limited to, those
1031 fees listed in Table 2 of Exhibit 2 to this Contract.

1032 7.01.4.2 The Government Fees adjustment will be calculated prior
1033 to the upcoming July 1 Adjustment Date as follows:

1034 7.01.4.2.1. Determine item weight of each Government Fees
1035 Cost Category:

1036 (Total Government Fees for previous calendar year ending December 31) / (Total
1037 Allowable Expenses for all Cost Categories, including Government Fees under RR
1038 Contract for previous calendar year ending December 31))

1039 7.01.4.2.2. Determine percent change of each Government
1040 Fees Cost Category for upcoming July 1 – June 30 period:

1041 ((Total Government Fees (on per Ton basis) for upcoming July 1 – June 30) - (Total
1042 Government Fees (on a per Ton basis) for the just completed July 1 – June 30)) / (Total
1043 Government Fees (on a per Ton basis) for the just completed July 1 – June 30).

1044 7.01.4.2.3. Multiply the result of 7.01.4.2.1 by the result of
1045 7.01.4.2.2 to determine the weighted percentage change of each Government Fees Cost
1046 Category.

1047 7.01.4.2.4. Add the result of 7.01.4.2.3 to the RR RRI
1048 adjustment (along with Franchise Fee adjustments, if any) to arrive at the Annual Rate
1049 Adjustment.

1050 7.01.5 Retroactive Adjustment. In the event of a new Government Fee, or a
1051 change in an existing Government Fee, which becomes effective at some time other than July 1
1052 of any year, CONTRACTOR shall be compensated for such change through the inclusion of a
1053 "Retroactive Adjustment" in the next Annual Rate Adjustment. However, in the event that the
1054 Government Fee is imposed by CITY, a rate adjustment shall occur at the time such fee
1055 becomes effective. CITY and CONTRACTOR agree that the "Retroactive Adjustment" shall be
1056 an amount needed to compensate CONTRACTOR for increases in Government Fees paid
1057 during the period from the inception of the fee increase through the subsequent June 30 and
1058 shall not include interest, overhead or any other costs of any type. The "Retroactive
1059 Adjustment" shall only be included in the rate structure for twelve (12) months or that period
1060 necessary to allow CONTRACTOR to recover all retroactive amounts, if less than twelve (12)
1061 months, and shall be removed prior to calculating the rates to be set as of the subsequent
1062 July 1. However, no governmental fees or charges to which CONTRACTOR agrees
1063 contractually or negotiates shall be passed through to Customers unless agreed to in writing by
1064 CITY. For purposes of clarity, the Retroactive Adjustment shall not be subject to the adjustment
1065 caps set forth in Section 7.07.6.

1066 7.01.6 Payment of Governmental Fees. CONTRACTOR shall pay, when and as
1067 due, any and all governmental fees to the appropriate federal, State, regional, or local
1068 governmental entities that levied the fees, and shall provide CITY with proof of such payments
1069 promptly upon request.

1070 7.02 CONTRACTOR Billing. The MM&O Contractor shall act as the billing agent for
1071 services provided by CONTRACTOR, as further set forth below and in accordance with the
1072 terms and conditions of the Memorandum of Understanding between CONTRACTOR, CITY and
1073 the MM&O Contractor as set forth in Exhibit 12. CONTRACTOR shall exchange Customer
1074 information with the MM&O Contractor in advance of each quarterly billing cycle for SFD
1075 Customers and in advance of each monthly billing cycle for MFD Customers. The timing for
1076 exchange of this Customer information will be further set forth in Exhibit 12. Nothing herein
1077 prevents CONTRACTOR and the MM&O Contractor from making alternative invoice and
1078 payment arrangements for SFD and MFD Residential Recycling Collection Services in Exhibit
1079 12.

1080 7.02.1 SFD Recurring Ancillary Services. No less than fifteen (15) calendar
1081 days before the first day of each quarterly billing period beginning on July 1, 2015,
1082 CONTRACTOR may submit to the MM&O Contractor information regarding SFD Recurring

Ancillary Services charges that CONTRACTOR will incur in the upcoming quarter in accordance with Exhibit 12. Such information shall be in the form and format required by Exhibit 12 and include, at a minimum, the Customer name, Service Address and billing address along with a specific description of each Recurring Ancillary Services charge. To the extent such information is received in a timely manner and contains the necessary information, the MM&O Contractor shall include those Recurring Ancillary Services charges in the SFD invoices prepared for the upcoming billing cycle. In the event such information is not submitted in the required format or received in a timely manner, CONTRACTOR shall be notified of such discrepancies by the MM&O Contractor, and the MM&O Contractor will not be required to include such Recurring Ancillary Services charges in the invoices prepared for that billing cycle. However, if CONTRACTOR provides the required information in the correct format for invoicing at least fifteen (15) days before the first day of the immediately subsequent billing cycle (relative to the billing cycle for which the charges were incurred), then the MM&O Contractor shall be required to include such Recurring Ancillary Services charges in the invoices prepared for that immediately subsequent billing cycle.

7.02.2 MFD Recurring Ancillary Services. No less than fifteen (15) calendar days before the first day of each monthly billing period beginning on July 1, 2015, CONTRACTOR may submit to the MM&O Contractor information regarding MFD Recurring Ancillary Services charges that CONTRACTOR will incur in the upcoming month in accordance with Exhibit 12. Such information shall be in the form and format required by Exhibit 12 and include, at a minimum, the Customer name, Service Address and billing address along with a specific description of each Recurring Ancillary Services charge. To the extent such information is received in a timely manner and contains the necessary information, the MM&O Contractor shall include those Recurring Ancillary Services charges in the MFD invoices prepared for the upcoming billing cycle. In the event such information is not submitted in the required format or received in a timely manner, CONTRACTOR shall be notified of such discrepancies by the MM&O Contractor, and the MM&O Contractor will not be required to include such Recurring Ancillary Services charges in the invoices prepared for that upcoming billing cycle. However, if CONTRACTOR provides the required information in the correct format for invoicing at least fifteen (15) days before the first day of the immediately subsequent billing cycle (relative to the billing cycle for which the charges were incurred), then the MM&O Contractor shall be required to include such Recurring Ancillary Services charges in the invoices prepared for that immediately subsequent billing cycle.

7.02.3 SFD and MFD Contamination Surcharges and Non-Recurring Ancillary Services Charge Invoices. CONTRACTOR shall prepare and provide information to the MM&O Contractor regarding SFD and MFD Contamination Surcharges and non-recurring Ancillary Service charges incurred during the prior billing period, not less than fifteen (15) calendar days before the first day of each quarter for SFD Customers, or the first day of each month for MFD Customers. Such Contamination Surcharges shall have been assessed in accordance with the Contamination Reduction Program as set forth in Exhibit 11, and based on the Contamination Surcharges as set forth in Exhibit 1. CONTRACTOR shall provide this information in accordance with the terms and conditions set forth in Exhibit 12. In the event CONTRACTOR does not provide the information in a timely manner or in the required form and format, CONTRACTOR shall not be entitled to have those Contamination Surcharges or non-recurring Ancillary Service charges included in the invoices prepared for that upcoming billing cycle by the MM&O Contractor. CONTRACTOR understands and agrees that 1) SFD and MFD Customers will be billed for Contamination Surcharges and non-recurring Ancillary Service charges in arrears on a separate invoice during the regular billing cycle, 2) the separate invoice will indicate

that the charge(s) are assessed by CONTRACTOR and will provide CONTRACTOR's telephone number, 3) the MM&O Contractor will maintain a separate Customer account from that used for regular Residential Recycling Collection Service for the purpose of receiving payment from Customers, and 4) CONTRACTOR shall be paid for Contamination Surcharges and non-recurring Ancillary Service charges after the MM&O Contractor receives payment of those charges from Customers.

7.02.4 Accounts Receivable. No later than the fifteenth (15th) day of September 2015 and monthly thereafter, CONTRACTOR shall be entitled to receive from the MM&O Contractor a statement of the accounts receivable balance for Contamination Surcharges and non-recurring Ancillary Service charges and payments received from Customers for those charges in the preceding calendar month. CONTRACTOR understands and agrees that 1) the MM&O Contractor shall not be responsible for any collection activities with regard to Contamination Surcharges and charges for non-recurring Ancillary Service charges other than to promptly notify CONTRACTOR of nonpayment of those charges, and 2) the MM&O Contractor's communication with SFD and MFD Customers regarding these billings shall be limited to informing the Customer of the contact information for CONTRACTOR.

7.02.5 Reimbursement of Billing Costs. CONTRACTOR shall reimburse MM&O Contractor for performing all billing and payment processing services on behalf of CONTRACTOR for Contamination Surcharges and/or non-recurring Ancillary Service charges. Reimbursement shall be for all reasonable billing, accounting, and administrative costs incurred by the MM&O Contractor that are associated with preparing and mailing SFD and MFD Customer Contamination Surcharge and non-recurring Ancillary Service invoices and receiving payment from such Customers for such invoices, on behalf of CONTRACTOR. Such costs may include, but not be limited to, recordkeeping, invoicing, credit card fees, printing, and postage. CONTRACTOR and the MM&O Contractor shall agree to a process for reimbursement in Exhibit 12. If CONTRACTOR fails to timely reimburse the MM&O Contractor, then the MM&O Contractor will reconcile such reimbursable costs pursuant to the true-up process set forth in Section 7.04. CONTRACTOR may, at any time, provide written notice to the MM&O Contractor and CITY directing the MM&O Contractor to cease performance of Customer billing and payment processing services for Contamination Surcharges and/or non-recurring Ancillary Service charges. Such notice shall specify a date upon which the MM&O Contractor's obligation shall terminate.

7.02.6 Authorization of Payment by CITY. In accordance with the terms and conditions of the Memorandum of Understanding between CONTRACTOR, CITY and the MM&O Contractor as set forth in Exhibit 12 to this Contract, CITY may provide payment authorization to the MM&O Contractor prior to the payment of each Recycling invoice to CONTRACTOR.

7.03 Timing of Recycling Invoice Payment. On or before the tenth (10th) day of each calendar month, CONTRACTOR shall be entitled to receive payment from the MM&O Contractor for Residential Recycling Collection Services, by CONTRACTOR in the preceding calendar month based upon the number of SFD and MFD Dwelling Units for which the MM&O Contractor has invoiced SFD and MFD Customers for that month, as adjusted pursuant to Section 7.04. At that time CONTRACTOR shall also be entitled to receive payment from the MM&O Contractor for Recurring Ancillary Services based upon the information regarding those Recurring Ancillary Services that shall have been timely provided to the MM&O Contractor by CONTRACTOR as adjusted pursuant to Section 7.04. Such services and payment shall be based on the Customer information exchanged and agreed to herein, in the form and format set forth in Exhibit 12, with such payments commencing on August 10, 2015. Nothing herein

1179 prevents CONTRACTOR and the MM&O Contractor from making alternative payment
1180 arrangements for SFD and MFD Residential Recycling Collection Services in Exhibit 12.

1181 7.04 True-Up. Exhibit 12 shall provide for regular true-ups of Customer information
1182 provided by CONTRACTOR and the payments by the MM&O Contractor to CONTRACTOR
1183 within a reasonable period of time following the end of each monthly billing period for MFD
1184 Customers and the end of each quarterly billing period for SFD Customers to reflect new starts,
1185 cancellations, refunds, credits, adjustments and pro-rated billings not fully captured in the
1186 current or any previous billing cycle.

1187 7.04.1 Timing of Payment of Non-Recurring Ancillary Service Charges and
1188 Contamination Surcharges. CONTRACTOR shall receive payment for non-recurring Ancillary
1189 Service invoices and Contamination Surcharge invoices in accordance with the terms and
1190 conditions of the Memorandum of Understanding between CONTRACTOR, CITY and the
1191 MM&O Contractor as set forth in Exhibit 12 to this Contract.

1192 7.04.2 Non-Payment of CONTRACTOR Residential Recycling Invoices. In the
1193 event CONTRACTOR does not receive payment from the MM&O Contractor of Residential
1194 Recycling invoices in the time and manner set forth in Exhibit 12, CONTRACTOR shall notify
1195 CITY in writing of such lack of payment and CITY shall proceed as set forth in Section 7.20.

1196 7.04.3 Non-Payment of Non-Recurring Ancillary Service Charges and
1197 Contamination Surcharges. In the event CONTRACTOR does not receive payment from the
1198 MM&O Contractor of non-recurring Ancillary Service charges or Contamination Surcharges that
1199 have been collected by the MM&O Contractor in the time and manner set forth in Exhibit 12,
1200 CONTRACTOR shall notify CITY in writing of such lack of payment. Within ten (10) Work Days
1201 of receiving written notification of such non-payment from CONTRACTOR, CITY shall meet with
1202 the MM&O Contractor to attempt resolve the issues. In the event the issues cannot be resolved
1203 CITY may proceed as set forth in Section 7.20.

1204 7.05 Production of Commercial Customer Invoices. CONTRACTOR shall invoice
1205 Commercial Customers for Commercial Non-Exclusive Recycling Service, in arrears but no less
1206 than twelve (12) times per year. Invoices shall be remitted no earlier than the first day of the
1207 month following the month for which the service is being billed. The invoice shall be produced
1208 in a form and format that is approved by CITY. The Commercial Recycling invoice shall be
1209 based on Container size and frequency of Collection and not exceed the Maximum Recycling
1210 Service Rates for the provision of Commercial Non-Exclusive Recycling Services and any
1211 Contamination Surcharges, if applicable as set forth in Exhibit 1 to this Contract.

1212 7.06 Maximum Recycling Service Rates. Maximum Recycling Service Rates shall
1213 consist of the per Dwelling Unit rate and Ancillary Service rates, which include all costs of
1214 providing Residential Recycling Collection Services including but not limited to Collection,
1215 Processing, Disposal, and franchise fee costs, and such other charges as may be added by
1216 CITY during the term of this Contract. CONTRACTOR shall not be entitled to any
1217 compensation that is not listed in Exhibit 1. On or after July 1, 2015, and each subsequent
1218 July 1, CONTRACTOR's Maximum Recycling Service Rates shall be adjusted as follows:

1219 7.07 Adjustments to Maximum Recycling Service Rates.

1220 7.07.1 Annual Adjustment to Maximum Recycling Service Rates Prior to Start of
1221 Recycling Services. The Maximum Recycling Service Rates as set forth in Exhibit 1 to this

Contract shall be adjusted on July 1, 2015 to account for the change in the Government Fees, if any as set forth in Section 7.01.4

7.07.2 Annual Adjustment to Maximum Recycling Service Rates after Start of Recycling Services. Beginning on July 1, 2016, and annually thereafter during the term of this Contract, and subject to compliance with all provisions of this Article, CONTRACTOR shall receive an annual adjustment to the Maximum Recycling Service Rates that are set forth in Exhibit 1 to this Contract, in accordance with the provisions of Section 7.07 and Exhibit 2 to this Contract, and to the extent applicable, the special adjustments provided for in Section 7.08.

7.07.3 Annual Rate Adjustment. On the Adjustment Date during the term of this Contract, the Maximum Recycling Service Rates set forth in Exhibit 1 shall be adjusted by a RRI adjustment pursuant to this Section 7.07 and Exhibit 2 to this Contract.

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

7.07.5 Annual Rate Adjustment Calculation. The RRI adjustment (a component of the Annual Rate Adjustment) shall be the lower of: (i) six (6) percent, or (ii) the sum of the weighted percentage change (based on the total of all Cost Categories) in the Cost Indicators of Cost Categories 1 - 7 (each described in Exhibit 2) from the previous review date to the current review date. For Cost Category Items 2 (Diesel Fuel), 3 (CNG Fuel), 4 (Vehicle Replacement), 5 (Vehicle Maintenance), 6 (Processing), and 7 (All Other), the current review year is the most recent calendar year ended December 31. For Cost Category Item 1 (RR Union Labor), and the Union Labor Cost Category of Item 6 (Processing), the current review date is July 1 of the current year. For purposes of clarification the parties agree and understand that Categories 8 (Government Fees - Processing), and 9 (Franchise Fees) will be used for purposes of weighting the RRI Cost Categories, but they will not be included in the RRI calculation. Instead, they will be added to the RRI calculation.

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

7.07.7 Differential Adjustment. Should CONTRACTOR agree to labor increases

with Local 70 that exceed the labor increase allowable under the 2007 CBA ("differential"), those differential amounts shall not be included in the RRI adjustment (i.e., as a CONTRACTOR cost for purposes of calculating a percent change of the RR Union Labor Cost Category). However, such differential amounts shall be recovered by CONTRACTOR in Annual Rate Adjustments by applying them to the Maximum Recycling Service Rates in equal installments ("Differential Adjustments") over a three (3) year period, including the year in which the differential is first incurred. For example, if the weighted differential between the 2007 CBA and a subsequent CBA is three tenths (0.3) percent, then the current Annual Rate Adjustment would be increased by one tenth (0.1) percent and the two (2) subsequent Annual Rate Adjustments by one tenth (0.1) percent. For purposes of clarity, recovery of the differential amounts shall not be subject to any cap under this Section.

7.07.8 Diversion Adjustment. Beginning with the July 1, 2017 rate adjustment, the Diversion adjustment shall be applied to the RRI adjustment as set forth below and shown in Table 4 of Exhibit 2 to this Contract. Except for those instances as set forth in Section 7.07.8.5 when the reciprocal of the Diversion adjustment is required to be used, the Diversion adjustment shall be the lesser of one hundred (100) percent or the percentage calculated by dividing the Diversion rate achieved by CONTRACTOR, in accordance with Section 8.01, in the calendar year immediately preceding the effective date of the rate adjustment, by the minimum annual Diversion requirement for that calendar year, pursuant to Section 8.01 of this Contract.

7.07.8.1 In the event the Diversion adjustment is applied in accordance with Section 8.02, the adjustment shall only be effective for one (1) year and shall be removed prior to calculating the subsequent year's rate adjustment as set forth in Section 7.07.5.

7.07.8.2 In the event the Diversion adjustment is applied in accordance with Section 8.03, the adjustment shall be effective for the remaining term of the Contract and shall not removed prior to calculating the subsequent year's rate adjustment as set forth in Section 7.07.5.

7.07.8.3 In any year that the RRI adjustment results in a positive number, the RRI adjustment shall be adjusted by multiplying the RRI adjustment by the Diversion adjustment.

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

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

1312 = \$99.95).

1313 7.08 Special Adjustments.

1314 7.08.1 Special Prior Year CPI Adjustment. For the second and third years of the
1315 Contract the Annual Rate Adjustment shall include an additional percentage increase per year,
1316 over and above the Annual Rate Adjustment percentage amounts calculated above. This
1317 adjustment will be added to the Annual Rate Adjustment, for the July 1, 2016, and July 1, 2017
1318 rate adjustments in the manner set forth in Section 3.8 of Exhibit 2 to this Contract. These
1319 special prior year CPI adjustment shall not be restricted by the six (6) percent or eight (8)
1320 percent upper limitations set forth in Section 7.07.6. The increases shall not be a part of the
1321 base Maximum Recycling Service Rates for succeeding RRI calculations and instead shall be
1322 removed from the base Maximum Recycling Service Rates prior to calculating the Year 4
1323 Maximum Recycling Service Rates in the manner set forth in Tables 5A and 5B of Section 3.8 of
1324 Exhibit 2 to this Contract. For purposes of this calculation, the adjustment will be based on the
1325 percentage change in the annual average of the CPI for the calendar years 2013 and 2014. For
1326 purposes of clarity, the special prior year CPI adjustment shall be applied to the rates in Exhibit
1327 1 as specified on RR Collection Forms 1A through 1B.

1328 7.08.2 Special \$0.97 Adjustment. For the second through the fourth years of the
1329 Contract the SFD and MFD maximum per Dwelling Unit Recycling rates will be adjusted by
1330 \$0.97 each year. This adjustment will be added to the SFD and MFD maximum per Dwelling
1331 Unit Recycling rates after the application of the Annual Rate Adjustment, as calculated above,
1332 for the July 1, 2016, July 1, 2017, and July 1, 2018 rate adjustments. This special \$0.97
1333 adjustment shall not be restricted by the six (6) percent or eight (8) percent upper limitations set
1334 forth in Section 7.07.6. The increases shall be a part of the base SFD and MFD maximum per
1335 Dwelling Unit Recycling rates for succeeding RRI calculations. For purposes of clarity, the
1336 special \$0.97 adjustment shall be applied to the rates in Exhibit 1 as specified on RR Collection
1337 Forms 1A through 1C.

1338 7.08.3 Special Local 6 Adjustment. For the second through the fifth years of
1339 the Contract the SFD maximum per Dwelling Unit Recycling rate will be adjusted by \$.32 and
1340 the MFD maximum per Dwelling Unit Recycling rate will be adjusted by \$.35 each year. These
1341 adjustments will be added to the SFD and MFD maximum per Dwelling Unit Recycling rates
1342 respectively after the application of the Annual Rate Adjustment, as calculated above, for the
1343 July 1, 2016, July 1, 2017, July 1, 2018 and July 1, 2019 rate adjustments. This special Local 6
1344 adjustment shall not be restricted by the six (6) percent or eight (8) percent upper limitations set
1345 forth in Section 7.07.6. The increases shall be a part of the base SFD and MFD maximum per
1346 Dwelling Unit Recycling rates for succeeding RRI calculations. For purposes of clarity, the
1347 special Local 6 adjustment shall be applied to the rates in Exhibit 1 as specified on RR
1348 Collection Forms 1A through 1B.

1349 7.08.4 Special Unit Count Review and Adjustment. The provisions of this
1350 Section 7.08.4 shall be implemented subject to approval by City Council through an amendment
1351 to Ordinance No. 13274 C.M.S., no later than December 31, 2015.

1352 7.08.4.1 Reviews and Adjustments. On or after April 1, 2016, and
1353 annually thereafter until such time as the number of SFD and MFD Dwelling Units billed as part
1354 of the April 1 billing cycle of the then current Contract Year equals or exceeds ninety-nine and
1355 one half (99.5) percent of 165,239, CITY will convene a review process (the "Review") to
1356 establish the number of SFD and MFD Dwelling Units billed for Residential Recycling Collection
1357 Services during the then current April 1 billing cycle. For purposes of clarity, the first Review will

take place during April 2016 and will utilize Dwelling Unit data from the April 1, 2016 billing cycle. The second Review will take place during April 2017 and will utilize Dwelling Unit data from the April 2017 billing cycle. The purpose of each Review is to assess whether CONTRACTOR is experiencing a shortfall of billed gross revenue under this Contract due to the number of SFD and MFD Dwelling Units billed. The Review shall evaluate billed gross revenues generated from this Contract and any impact due to the difference of SFD and MFD Dwelling Units billed and the SFD and MFD Dwelling Unit count of 165,239 (102,274 SFD Dwelling Units and 62,965 MFD Dwelling Units) used by CONTRACTOR in preparing its proposal submitted on June 12, 2014.

One-Time Adjustments. Based on the results of each Review, CITY will determine whether a special one-time adjustment to the SFD and MFD maximum per Dwelling Unit Recycling Rates as set forth in Section A of Exhibits 1A and 1B respectively (the "One-Time Adjustment") may be warranted. The One-Time Adjustments will take into account the cumulative differences in gross billed revenue generated by all the rate components. If such One-Time Adjustment is warranted, each One-Time Adjustment will be effective as of the upcoming July 1 but will not be part of the rate base thereafter. However, if the SFD and MFD Dwelling Unit count at the time of any review is found to be equal to or greater than ninety-nine and one half (99.5) percent of the SFD and MFD Dwelling Unit count of 165,239 then CITY shall not be required to evaluate this further and no further One-Time Adjustments shall be made.

7.08.4.1.1. Review and Adjustment. In the event a Review indicates that a One-Time Adjustment is warranted it will be calculated to account for any shortfall or overage in billed gross revenues for the period July 1, 2015 through June 30 of the current Contract Year and any shortfall in billed gross revenues projected for the next Contract Year as such billed gross revenues are calculated in accordance with the example set forth in Section 7 of Exhibit 2 to this Contract. For purposes of clarity, in the event the April 2016 Review indicates that a One-Time Adjustment is warranted it will be calculated to account for any shortfall or overage in billed gross revenues for the period July 1, 2015 through June 30, 2016 and any shortfall in billed gross revenues projected for the period July 1, 2016 through June 30, 2017. In the event the April 2017 Review indicates that a One-Time Adjustment is warranted it will be calculated to account for any shortfall or overage in billed gross revenues for the period July 1, 2015 through June 30, 2017 and any shortfall in billed gross revenues projected for the period July 1, 2017 through June 30, 2018.

7.09 Contamination Surcharges. The Annual Rate Adjustment and Special Adjustments shall not be applied to the Contamination Surcharges. Contamination Surcharges may only be adjusted as set forth in Section 7.09.1 below.

7.09.1 CITY and CONTRACTOR shall meet and confer regarding the Contamination Surcharges within sixty (60) days of July 1, 2018. At that time the parties may discuss the need for a change in the Contamination Surcharge rates, the results of the use of the Contamination Surcharges or other matters related to the Contamination Surcharges in general.

7.10 Financial Information. On or before March 1, 2016, or such later time as may be agreed to between CITY and CONTRACTOR and annually thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY financial information for the specific services performed under this Contract for the preceding calendar year. Such financial information shall be in the format as set forth in Exhibit 2, or as may be further revised by CITY from time to time. If CONTRACTOR fails to submit the financial information in the required format by March 1, or such later time as may be agreed to between CITY and CONTRACTOR it is agreed that

CONTRACTOR shall be deemed to have waived the RRI adjustment for the next billing period and if the delayed submission exceeds three (3) months then the increase will be delayed for a second billing period.

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

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

7.13 Unusual Circumstances. If CONTRACTOR's failure to submit the financial information and data required under Section 7.10 is the result of extraordinary or unusual circumstances as demonstrated by CONTRACTOR to the reasonable satisfaction of the Contract Manager, CITY, at its reasonable discretion, may consider the request for the annual Maximum Service Rate adjustment.

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

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

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

7.16.1 Franchise Fee. The franchise fee for the fiscal year July 1, 2015 through June 30, 2016, shall be the initial franchise fee of Three Million Dollars (\$3,000,000). The franchise fee for the next fiscal year and each subsequent fiscal year shall be adjusted annually by the percentage change in the annual average of the Franchise Fee cost indicator (Series ID: cuura422sa0 Consumer Price Index, All urban Consumers, All Items, San Francisco-San Jose-Oakland, CA) as set forth in Section 2 of Exhibit 2 to this Contract except that in no year shall the franchise fee adjustment be less than zero (0) percent. Notwithstanding the foregoing, no adjustment shall be implemented for a particular fiscal year if CONTRACTOR's Gross Receipts for the prior calendar year were less than the calendar year previous to that, but not including any calendar years prior to July 1, 2015. Such determination of whether or not CONTRACTOR's Gross Receipts for the prior calendar year were less than the calendar year previous to that shall be based on the results of a Gross Receipts review to be performed by a qualified firm under contract to CITY. CITY shall have the final responsibility and discretion for the selection of the firm but shall seek and consider comments and recommendations from CONTRACTOR. CONTRACTOR shall be responsible for, and shall upon request by CITY promptly pay, the cost of the review up to a maximum of Twenty Five Thousand Dollars (\$25,000), adjusted annually

by the annual CPI cost indicator (Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items, San Francisco-San Jose-Oakland, CA) as set forth in Exhibit 2, per review. The franchise fee for each fiscal year shall be divided into twelve (12) equal payments, and paid monthly no later than the twentieth (20th) day of each month for the preceding month except that the first franchise fee payment will be due no later than August 15, 2015.

7.16.2 Proposal Development and Cost Reimbursement Fee. CONTRACTOR shall submit a proposal development and cost reimbursement fee to CITY in the amount of Five Hundred Thousand Dollars (\$500,000) no later than the effective date of the first Special Unit Count Adjustment described in Section 7.08.4, or, if City Council does not approve a Special Unit Count Adjustment, December 31, 2105.

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

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

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

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

7.19 Recycling Service Census Data. On or before July 15, 2016, and annually thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY, Recycling

Service census data for all Service Addresses as of the preceding July 1. This information shall be delivered electronically in a format approved by CITY, using software approved by CITY.

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

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

7.20 Security for Payment From MM&O Contractor. In order to insure timely payment to CONTRACTOR of amounts not reasonably disputed by the MM&O Contractor, CITY and MM&O Contractor will, together with a bank as provided below, enter into an escrow agreement that requires MM&O Contractor to deposit into escrow an amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "RR Payment Escrow Agreement").

7.20.1 The bank that is party to the RR Payment Escrow Agreement will be a FDIC insured banking institution chartered to do business in the State of California as selected by MM&O Contractor (the "Escrow Bank"). The RR Payment Escrow Agreement will be structured so that, in the event funds are drawn by CITY, the MM&O Contractor shall restore the balance of One Million Five Hundred Thousand Dollars (\$1,500,000) within two (2) Work Days. Not later than July 1, 2015, CITY shall provide CONTRACTOR written notice that the MM&O Contractor has deposited into escrow under the RR Payment Escrow Agreement the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00).

7.20.2 Not later than seven (7) Work Days before CITY may submit a withdrawal request to the Escrow Bank, CITY will deliver written notice to MM&O Contractor stating the amount CITY intends to withdraw. CITY may not request any withdrawal unless the claimed amount exceeds ten (10) percent of the average monthly payments by the MM&O Contractor to CONTRACTOR. CITY may proceed to submit a withdrawal request if the MM&O Contractor does not timely deliver a written notice to CITY disputing the withdrawal request as provided in the immediately following sentence. The MM&O Contractor may dispute the withdrawal request by delivering to CITY, within five (5) Work Days following the MM&O Contractor's receipt of the notice from CITY, a written notice stating the amount that the MM&O Contractor disputes and promptly paying any undisputed portion to CONTRACTOR. Such written notice of dispute from the MM&O Contractor shall commence dispute resolution between the MM&O Contractor and CONTRACTOR in accordance with Article 54, subject to modification as provided below in Section 7.20.3.

7.20.3 CONTRACTOR and the MM&O Contractor shall have an informal meet and confer period of seven (7) Work Days. If the dispute is not informally resolved, then the parties shall agree to binding arbitration procedures as generally set forth in Section 54.01.3; provided, however, that Section 54.01.3.3 shall have no applicability to disputes related to the RR Payment Escrow Agreement or otherwise under this Section. Notwithstanding Section 54.01.3.1, the parties may agree to other expedited procedures for completing binding

arbitration within ninety (90) days. Failure to agree upon such procedures will cause the parties to proceed pursuant to the then-current JAMS Streamlined Arbitration Rules. During the pendency of dispute resolution, CITY may not submit a withdrawal request to the Escrow Bank. If the MM&O Contractor has not made payment to CONTRACTOR of amounts determined to be owed as a result of written agreement between the parties following informal meet-and-confer or as an award of the arbitrator pursuant to Section 54.01.3 within five (5) Work Days of such agreement or award, CITY may submit to the Escrow Bank a withdrawal request for such amounts.

7.20.4 In the event the MM&O Contractor withholds payment of CONTRACTOR's entire monthly bill or a substantial portion thereof ("substantial" shall mean no less than Four Hundred Thousand Dollars (\$400,000.00)) and CITY reasonably determines, after reviewing all information provided to CITY by CONTRACTOR and the MM&O Contractor, such withholding by the MM&O Contractor is not justified, then CITY may submit a withdrawal request to the Escrow Bank of the amount withheld and submit such payment to CONTRACTOR, after first providing five (5) Work Days' notice to both CONTRACTOR and the MM&O Contractor of CITY's determination. If, after withdrawal by CITY, final resolution of the dispute under Section 7.20.3 affirms MM&O Contractor's withholding of payment, or a portion thereof, to CONTRACTOR, then the MM&O Contractor shall be entitled to recapture the final agreed-upon or arbitrated amount of the payment withdrawn from the Escrow Bank as well as any legal interest thereon. CONTRACTOR may either reimburse the MM&O Contractor such amounts or the MM&O Contractor may deduct such amounts from its subsequent monthly payment(s) to CONTRACTOR.

Article 8. MATERIAL DIVERSION STANDARD

8.01 Material Diversion Standard. Beginning with calendar year 2016 and annually thereafter, CONTRACTOR shall meet a minimum material Diversion standard of ninety (90) percent by weight of the following: all Recyclable Materials Collected under the terms of this Contract plus materials that are not Recyclable Materials but which CONTRACTOR can and does Divert such as metal pots, scrap metal, and other items. Compliance with this standard shall be determined using the results of waste characterization studies as provided in Section 8.01.1 and Processing Diversion studies as provided in Section 8.01.2, and the calculations as provided in Section 8.01.3.

8.01.1 Waste Characterization Studies. Waste characterization studies shall determine by weight the percentage of Collected materials that are: Recyclable Materials plus other materials which CONTRACTOR can and does Divert, prior to Processing. Waste characterization studies shall be conducted one (1) time in 2015, and two (2) times in each subsequent year of this Contract. The average of the results of the two (2) waste characterization studies conducted in a calendar year shall be used to calculate compliance with the standard in that year. Waste characterization studies shall be performed by a qualified third party contractor subject to CITY's approval, which shall not be unreasonably withheld. The studies shall be conducted at the MRF and shall be of sufficient scope to meet industry practices and standards. The study methodology shall be subject to CITY's approval, which shall not be unreasonably withheld. CONTRACTOR shall provide full access to the conduct of the waste characterization studies, and all data and products of the studies, to CITY and its representatives. Annual expenditures for the cost of the studies shall be capped at thirty thousand dollars (\$30,000) in 2015, and sixty thousand dollars (\$60,000) in 2016. Beginning in 2017 the capped amount from the prior year shall be adjusted by the Annual Rate adjustment

1585 as set forth in Section 7.07 herein and Table 4 of Exhibit 2 to this Contract. CONTRACTOR
1586 shall pay the first half of the capped amount each year, and CITY shall pay the remaining
1587 amount each year up to the capped amount.

1588 8.01.2 Processing Diversion Studies. Processing Diversion studies shall
1589 determine by weight the percentage of Collected materials that are Diverted through
1590 Processing. Processing Diversion studies shall be conducted one (1) time in 2015, and two (2)
1591 times in each subsequent year of this Contract. The average of the results of the two (2)
1592 Processing Diversion studies conducted in a calendar year shall be used to calculate
1593 compliance with the standard in that year. Processing Diversion studies shall be performed by
1594 a qualified third party contractor subject to CITY's approval, which shall not be unreasonably
1595 withheld. The studies shall be conducted at the MRF and shall be of sufficient scope to meet
1596 industry practices and standards. The studies shall use samples of material that consist
1597 exclusively of Collected Tonnage; use samples that are representative of all Collected Tonnage;
1598 replicate CONTRACTOR's normal operating conditions, including but not limited to the number
1599 of sorters and other staff, processing equipment, processing equipment speed, material depth
1600 on the processing line, material moisture content, and re-processing of residue, as verified by
1601 the third party contractor. The study methodology shall be subject to CITY's approval, which
1602 shall not be unreasonably withheld. CONTRACTOR shall provide full access to the conduct of
1603 the Processing Diversion studies, and all data and products of the studies, to CITY or its
1604 representatives. CITY shall pay for up to fifteen thousand dollars (\$15,000) toward the cost of
1605 the Processing Diversion study in 2015, and CONTRACTOR shall pay any cost above fifteen
1606 thousand dollars (\$15,000) in 2015. CONTRACTOR shall pay all expenses associated with the
1607 conduct of the Processing Diversion studies in each year after.

1608 8.01.3 Calculation of Compliance with Material Diversion Standard. Compliance
1609 with the material Diversion standard shall be calculated as follows:

1610 "A" is the weight of all material Collected under the terms of this Contract
1611 as reported by CONTRACTOR as set forth in Article 19;

1612 "B" is the average percentage of Collected materials that are: Recyclable
1613 Materials plus other materials which CONTRACTOR can and does Divert
1614 as determined by the Waste Characterization studies set forth in Section
1615 8.01.1, multiplied by "A";

1616 "C" is the average percentage of Collected materials that are Diverted
1617 through Processing, as determined by the Processing Diversion studies
1618 set forth in Section 8.01.2 multiplied by "A";

1619 The calculated annual Diversion percentage is "C" divided by "B" (C/B)

1620 To determine compliance with Section 8.01, the calculated annual
1621 Diversion percentage is compared to the material Diversion standard of
1622 ninety (90) percent.

1623 An example of this calculation is provided as Attachment A to Exhibit 7.

1624 8.02 Failure to Meet Material Diversion Standard. In the event CONTRACTOR fails to
1625 meet the minimum Diversion standard set forth in Section 8.01 for any single calendar year or
1626 up to two (2) consecutive calendar years, CITY, at its sole discretion, may impose a one (1)
1627 year Diversion adjustment as set forth in Section 7.07.8.1.

8.02.1 Compliance with Material Diversion Standard. On or before February 15, 2016, and annually thereafter during the term of this Contract, CITY and CONTRACTOR shall meet and confirm the prior year annual Diversion.

8.03 Failure to Meet Material Diversion Standard in Consecutive Years. In the event CONTRACTOR fails to meet the minimum Diversion standard set forth in Section 8.01 for three (3) consecutive calendar years, CITY, at its sole discretion, may impose a permanent Diversion adjustment as set forth in Section 7.07.8.2.

Article 9. SFD RECYCLING SERVICES

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

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

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

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

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

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

1671 SFD Customer.

1672 9.01.6 Frail Senior Exemption Program. CONTRACTOR shall provide exempt
1673 backyard SFD Recycling Services to SFD Service Addresses whose occupants demonstrate
1674 that they meet the requirements set forth in this Section 9.01.6 through the submission of a
1675 complete application requesting this exemption along with all required documentation and
1676 certifications. Services shall begin on the next regularly scheduled Collection day of the Service
1677 Address after CONTRACTOR's receipt of the completed application. No additional monies shall
1678 be due to CONTRACTOR for the provision of exempt backyard SFD Recycling Services.

1679 9.01.6.1 Applicant must be sixty (60) years of age or older.

1680 9.01.6.2 Applicant must be the owner of record or primary renter.

1681 9.01.6.3 The Dwelling Unit must be solely occupied by the
1682 applicant, unless all other occupants meet the requirements of frail senior exemption program
1683 as set forth in this Section 9.01.6, the disability exemption program as set forth in Section 9.01.7
1684 or are under the age of twelve (12) years old.

1685 9.01.6.4 Applicant must provide a signed statement from a
1686 registered Doctor of Medicine (M.D.) stating that bringing the wheeled Containers to curbside
1687 creates an undue physical hardship on the applicant.

1688 9.01.7 Disability Exemption Program. CONTRACTOR shall provide exempt
1689 backyard SFD Recycling Services to SFD Service Addresses whose occupants demonstrate
1690 that they meet the requirements set forth in this Section 9.01.7 through the submission of a
1691 complete application requesting this exemption along with all required documentation and
1692 certifications. Services shall begin on the next regularly scheduled Collection day of the Service
1693 Address after CONTRACTOR's receipt of the completed application. No additional monies shall
1694 be due to CONTRACTOR for the provision of exempt backyard SFD Recycling Services.

1695 9.01.7.1 Applicant must be the owner of record or primary renter.

1696 9.01.7.2 The Dwelling Unit must be solely occupied by the
1697 applicant, unless all other occupants meet the requirements of frail senior exemption program
1698 as set forth in Section 9.01.6, the disability exemption program as set forth in this Section 9.01.7
1699 or are under the age of twelve (12) years old.

1700 9.01.7.3 Applicant must provide proof that is acceptable to
1701 CONTRACTOR of long term or permanent physical disability which may include; 1) a signed
1702 statement from a registered Doctor of Medicine (M.D.); 2) proof or registration as a disabled
1703 driver as determined by the Department of Motor Vehicles; or 3) documentation of grant of
1704 permanent disability status by the State of California.

1705 9.01.7.4 Curbside Placement Exemption. CONTRACTOR may
1706 petition CITY for the provision of exempt backyard SFD Recycling Services from SFD Service
1707 Addresses other than as required by Sections 9.01.6 and 9.01.7.

1708 9.01.8 Collection Day. SFD Recycling Services shall be provided to each
1709 Service Address on the same day as SFD Mixed Material Collection Services. CONTRACTOR
1710 shall provide exempt backyard SFD Recycling Services on the same Work Day that curbside

1711 SFD Recycling Services Collection would otherwise be provided to the Service Address.

1712 9.02 SFD Recycling Services. These services will be governed by the following
1713 additional terms and conditions:

1714 9.02.1 Containerized Recyclable Materials. CONTRACTOR shall provide SFD
1715 Recycling Services to all SFD Service Addresses in the Service Area whose Recyclable
1716 Materials are properly containerized in Recycling Containers, except as set forth in Section
1717 9.02.2 below, regardless of whether the lid is fully closed, where the Containers have been
1718 placed within three (3) feet of the curb, paved surface of the public roadway, closest accessible
1719 roadway, or other such location agreed to by CONTRACTOR and Service Recipient, which will
1720 provide safe and efficient accessibility to CONTRACTOR's Collection crew and vehicle.

1721 9.02.2 Collection of Recyclable Materials Overages. CONTRACTOR shall also
1722 be required to Collect all Recyclable Materials Overages that are set out for Collection beside
1723 the Recycling Container in an additional Container, bag, box or bundle, or in the case of
1724 corrugated cardboard bundled or tied, in pieces not exceeding three (3) feet by three (3) feet,
1725 placed beside the Recycling Container. CONTRACTOR may Collect corrugated cardboard
1726 exceeding three (3) feet by three (3) feet or may leave the oversized material uncollected along
1727 with a Non-Collection Notice that contains instructions on the proper procedures for setting out
1728 corrugated cardboard.

1729 9.02.2.1 Additional Recyclable Materials Capacity. Upon
1730 notification to CONTRACTOR by CITY, a Customer or a Service Recipient that additional
1731 Recyclable Materials capacity is requested in the form of a larger Container or an additional
1732 Container, CONTRACTOR shall deliver such Recyclable Materials Containers as are needed to
1733 meet the capacity requirements of the Service Address no later than the next regularly
1734 scheduled Collection day or within six (6) Work Days (whichever is later). CONTRACTOR shall
1735 not receive additional compensation for the Collection of larger Recyclable Materials
1736 Containers. However, CONTRACTOR shall receive additional compensation for the Collection
1737 of additional Recyclable Materials Containers in accordance with the approved Maximum
1738 Recycling Service Rates as provided in Exhibit 1 or as may be adjusted under the terms of this
1739 Contract.

1740 9.02.3 Materials Recovery Facility. All Recyclable Materials Collected as a
1741 result of performing SFD Recycling Services shall be transported and delivered to the Materials
1742 Recovery Facility.

1743 **Article 10. MFD RECYCLING SERVICES**

1744 10.01 MFD Recycling Services. These services shall be governed by the following
1745 terms and conditions:

1746 10.01.1 Manner of Collection. CONTRACTOR shall provide MFD Recycling
1747 Services with as little disturbance as possible and shall leave any Container in an upright
1748 position, with the lid closed, at the same point it was Collected without obstructing alleys,
1749 roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close or lock, as
1750 appropriate, Containers and Container enclosures that were opened by CONTRACTOR as part
1751 of the Collection process.

1752 10.01.2 Accessibility. CONTRACTOR shall Collect all Recyclable Materials

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

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

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

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

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

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

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

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

10.02.5 Collection of Recyclable Materials Overages. CONTRACTOR shall

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

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

10.02.7 Additional Recyclable Materials Capacity.

10.02.7.1 Increase in Container Size. Upon notification to CONTRACTOR by CITY or a Customer that additional Recyclable Materials capacity is requested in the form of a larger Container or an additional Container, CONTRACTOR shall deliver such Recyclable Materials Containers as are needed to meet the capacity requirements of the Service Address no later than the next regularly scheduled Collection day or within six (6) Work Days (whichever is later). CONTRACTOR shall not receive additional compensation for the provision or Collection of larger or additional Recyclable Materials Containers.

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

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

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

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

1840 Collection crew and vehicle.

1841 10.03.2 Non-Collection. CONTRACTOR shall not be required to Collect
1842 material placed in Used Oil Containers or Used Oil Filter Containers unless the material is Used
1843 Oil or Used Oil Filters. In the event of non-collection, CONTRACTOR shall affix to the Used Oil
1844 Container or Used Oil Filter Container a Non-Collection Notice explaining why Collection was
1845 not made. If non-collection is because the material placed in the Used Oil Container or the
1846 Used Oil Filter Container was identified by CONTRACTOR as a Hazardous Waste, prior to
1847 leaving the Service Unit CONTRACTOR shall notify the CITY of Oakland Fire Department of the
1848 non-collection. CONTRACTOR shall immediately notify CITY of any Hazardous Waste that has
1849 been identified, and submit an incident report to Contract Manager. If non-collection is because
1850 the Used Oil or Used Oil Filter was placed in an improper container, CONTRACTOR shall also
1851 leave Used Oil Containers or Used Oil Filter Containers in a number sufficient to contain the
1852 uncollected Used Oil (but not exceeding five (5) quarts per Dwelling Unit) or Used Oil Filters (but
1853 not exceeding one (1) Used Oil Filter per Dwelling Unit) along with the Non-Collection Notice.

1854 10.03.3 Spillage. CONTRACTOR shall carry oil absorbent material on all Used
1855 Oil Collection vehicles and shall cleanup any Used Oil that spills during Collection, which has
1856 leaked from the Used Oil or Used Oil Filter Container, or which spills or leaks during the time the
1857 Used Oil or Used Oil Filter is in the Collection vehicle.

1858 10.03.4 Used Oil Containers and Used Oil Filter Containers. No later than the
1859 next regularly scheduled Collection day after receipt of a verbal request from CITY or a MFD
1860 Customer, CONTRACTOR shall, at CONTRACTOR's sole cost and expense, provide the MFD
1861 Customer or management of the MFD Service Address with a sufficient number of Collection
1862 boxes for the storage of Used Oil and Used Oil Filters. Each Collection box shall contain six (6)
1863 Used Oil Containers, three (3) Used Oil Filter Containers and one (1) oil funnel.

1864 10.03.4.1 At the time CONTRACTOR Collects Used Oil from an MFD
1865 Service Address, CONTRACTOR shall, at CONTRACTOR's sole cost and expense, leave at
1866 the Service Address one (1) Used Oil Container for each Used Oil Container Collected and one
1867 (1) Used Oil Filter Container for each Used Oil Filter Container Collected. CONTRACTOR shall
1868 keep the outside of all Used Oil Containers and Used Oil Filter Containers clean and may re-use
1869 the containers until the condition of the container makes it inappropriate for re-use.

1870 **Article 11. COMMERCIAL NON-EXCLUSIVE RECYCLING**
1871 **COLLECTION SERVICE**

1872 11.01 Commercial Non-Exclusive Recycling Collection Service. CONTRACTOR may
1873 provide Commercial Non-Exclusive Recycling Collection Service as a competitor in the
1874 Commercial recycling open market pursuant to separate agreements with Customers. These
1875 services are provided in the open market are not within the scope of this Contract. All expenses
1876 related to Recyclable Materials Processing and marketing to potential Commercial Non-
1877 Exclusive Recycling Collection Service Customers will be the sole responsibility of
1878 CONTRACTOR.

1879 11.02 Required Commercial Recycling Collection Services. CONTRACTOR shall
1880 make Commercial Non-Exclusive Recycling Collection Service available for Commercial entities
1881 that are unable to obtain recycling services in the Commercial recycling open market.
1882 Commercial Non-Exclusive Recycling Collection Services provided to Commercial entities that

1883 are unable to obtain recycling services in the Commercial recycling open market will be
1884 governed by the following terms and conditions as set forth in this Section 11.02 .

1885 11.02.1 Containerized Recyclable Materials. CONTRACTOR shall provide
1886 Commercial Non-Exclusive Recycling Collection Service to all Commercial entities in the
1887 Service Area that are unable to obtain recycling services in the Commercial recycling open
1888 market and have requested such service, where the Recyclable Materials are properly placed in
1889 Recyclable Materials Carts, Bins or Roll-Off Boxes regardless of whether the lid is fully closed,
1890 where the Carts, Bins or Roll-Off Boxes are accessible as set forth in Section 11.01.3.
1891 CONTRACTOR shall be compensated for the provision of Commercial Non-Exclusive Recycling
1892 Collection Service in accordance with the Maximum Recycling Service Rates set forth in Exhibit
1893 1 to this Contract.

1894 11.02.2 Manner of Collection. CONTRACTOR shall provide Commercial Non-
1895 Exclusive Recycling Collection Service with as little disturbance as possible and shall leave any
1896 Container in an upright position, with the lid closed, at the same point it was Collected without
1897 obstructing alleys, roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close
1898 or lock, as appropriate, Containers and Container enclosures that were opened by
1899 CONTRACTOR as part of the Collection process.

1900 11.02.3 Accessibility. CONTRACTOR shall Collect those Commercial Non-
1901 Exclusive Recycling Collection Service Containers that are readily accessible to
1902 CONTRACTOR's crew and vehicles and not blocked. However, CONTRACTOR shall provide
1903 "push services" and "lock services" as necessary during the provision of Commercial Non-
1904 Exclusive Recycling Collection Service. Push services shall include, but not be limited to,
1905 dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for
1906 Collection and returning the Bins or Carts to their storage location. Push services may include
1907 unlocking and relocking the Bin or enclosure. Key services shall include the provision of a
1908 master lock and key by CONTRACTOR to the Service Address for the convenience of
1909 CONTRACTOR. CONTRACTOR shall be compensated for providing "push services" and/or
1910 "key services" in accordance with the approved Maximum Recycling Service Rates as provided
1911 in Exhibit 1 or as may be adjusted in accordance with the terms of this Contract.

1912 11.02.4 Difficult to Serve. If CONTRACTOR determines that the set-out location
1913 for Carts, Bins or Roll-Off Boxes is Difficult to Serve, CONTRACTOR shall contact the
1914 Commercial Customer to discuss a change in the set out location. In the event a new set out
1915 location is not agreed to between the CONTRACTOR and Commercial Customer, then
1916 CONTRACTOR shall be compensated for providing Difficult to Serve Commercial Non-
1917 Exclusive Recycling Collection Services in accordance with the approved Maximum Recycling
1918 Service Rates as provided in Exhibit 1 or as may be adjusted in accordance with the terms of
1919 this Contract.

1920 11.02.5 Service Frequency. CONTRACTOR shall provide Commercial Non-
1921 Exclusive Recycling Collection Service at least weekly. However, in those instances where the
1922 scheduled Collection day falls on a holiday as set forth in Section 6.10 herein, the Collection day
1923 may be adjusted in a manner agreed to between the Commercial Service Recipient and
1924 CONTRACTOR as long as service is received a minimum of one (1) time per week.

1925 11.02.5.1 CONTRACTOR shall respond to requests for service
1926 utilizing Roll-Off Boxes within two (2) Work Days of the request from the Commercial Customer.

1927 11.02.6 Container Sizes. CONTRACTOR shall offer Recyclable Materials
1928 Containers in 20, 32, 64 and 96 gallon nominal Cart sizes and in 1, 1.5 2, 3, 4, 6 and 7 cubic
1929 yard Bins. CONTRACTOR shall offer Roll-Off Boxes in 10, 20, 30 and 40 cubic yard sizes with
1930 lids.

1931 11.02.7 Minimum Capacity. CONTRACTOR shall provide Recyclable Materials
1932 Container sizes as requested by the Commercial Customer such that the total weekly capacity
1933 of Recycling Collection Service is sufficient ensure that no Recyclable Materials, except as set
1934 forth in Section 11.01.8 need be placed outside the Recyclable Materials Container on a regular
1935 basis.

1936 11.02.8 Collection of Recyclable Materials Overages. Collection of Recyclable
1937 Materials Overages. CONTRACTOR shall be required to Collect all corrugated cardboard, in
1938 pieces not exceeding three (3) feet by three (3) feet, that are tied or bundled and placed beside
1939 the Recycling Container, from Customers that subscribe to Cart service. CONTRACTOR may
1940 Collect corrugated cardboard that is not tied or bundled or exceeds three (3) feet by three (3)
1941 feet from Customers that subscribe to Cart service, or corrugated cardboard of any size that is
1942 not inside the Container from Customers that subscribe to Bin service, or may leave the material
1943 uncollected along with a Non-Collection Notice that contains instructions on the proper
1944 procedures for setting out corrugated cardboard.

1945 11.02.9 Multiple Overages. In the case of repeated Overages of Recyclable
1946 Materials, except corrugated cardboard, CONTRACTOR may send written notification to the
1947 Commercial Customer that includes dates of observed Overages, any previous notifications,
1948 photographic documentation of said Overages and an offer to arrange for an appropriate
1949 change in Bin or Cart size, and/or Collection frequency. Should Overages persist after three (3)
1950 notifications and CONTRACTOR is unable to reach an agreement with the Commercial
1951 Customer regarding an appropriate change in Bin or Cart size and/or frequency of Collection,
1952 CONTRACTOR may impose such service level increase as is needed to avoid the Overages
1953 and notify the Commercial Customer and Contract Manager in writing. The Commercial
1954 Customer may petition CITY regarding any change in Bin or Cart size and/or Collection
1955 frequency. Should three (3) months elapse with no Overage recurrence taking place following
1956 the change in service the Overage problem shall be considered resolved.

1957 11.02.10 Materials Recovery Facility. All Recyclable Materials Collected as a
1958 result of performing Commercial Non-Exclusive Recycling Collection Service shall be delivered
1959 to a fully permitted Materials Recovery Facility (MRF) as designated by CONTRACTOR and
1960 approved by CITY. In the event the MRF is closed on a Work Day, CONTRACTOR shall
1961 transport and deliver the Recyclable Materials to such other legally permitted MRF as is
1962 approved by CITY. Failure to comply with this provision shall result in the levy of liquidated
1963 damages as specified in Article 22 of this Contract and may result in CONTRACTOR being in
1964 default under this Contract.

1965 **Article 12. CITY RECYCLING COLLECTION SERVICE**

1966 12.01 CITY Recycling Collection Service. CONTRACTOR has offered to donate the
1967 following service as corporate good will:

1968 12.01.1 Conditions of Service. CONTRACTOR shall provide CITY Recycling
1969 Collection Services to all CITY Facilities existing in the Service Area as of the effective date of

1970 the Contract where Recyclable Materials are properly containerized in Bins, Carts, or Roll-Off
1971 Boxes regardless of whether the lid is closed, and where the Bins, Carts, or Roll-Off Boxes are
1972 accessible as set forth in Section 12.01.4. All such Recyclable Materials must be generated on
1973 CITY Facilities or on property maintained by CITY. To the extent the number of CITY Facilities
1974 being serviced by CONTRACTOR increases disproportionately to the reasonably expected
1975 growth in CITY Recycling Collection Services provided during the term of the Contract, the
1976 parties agree to meet and confer in good faith to discuss appropriate service levels as well as
1977 compensation for additional services. If the parties are unable to agree upon the appropriate
1978 amount of compensation, the parties shall resolve their disagreement through the dispute
1979 resolution process as set forth in Section 54.01.

1980 12.01.2 Containerized Recyclable Materials. CONTRACTOR shall provide
1981 CITY Recycling Collection Service to all CITY Facilities in the Service Area where the
1982 Recyclable Materials are properly containerized in Recyclable Materials Carts, Bins or Roll-Off
1983 Boxes regardless of whether the lid is fully closed, where the Carts, Bins or Roll-Off Boxes are
1984 accessible as set forth in Section 12.01.4. CONTRACTOR shall not be compensated for the
1985 provision of CITY Recycling Collection Service in as set forth in Section 12.01.

1986 12.01.3 Manner of Collection. CONTRACTOR shall provide CITY Recycling
1987 Collection Service with as little disturbance as possible and shall leave any Container in an
1988 upright position, with the lid closed, at the same point it was Collected without obstructing alleys,
1989 roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close or lock, as
1990 appropriate, Containers and Container enclosures that were opened by CONTRACTOR as part
1991 of the Collection process.

1992 12.01.4 Accessibility. CONTRACTOR shall Collect those CITY Recyclable
1993 Materials Containers that are readily accessible to CONTRACTOR's crew and vehicles and not
1994 blocked. However, CONTRACTOR shall provide "push services" and "lock services" as
1995 necessary during the provision of CITY Recycling Collection Service. Push services shall
1996 include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts
1997 from their storage location for Collection and returning the Bins or Carts to their storage location.
1998 Push services may include unlocking and relocking the Bin or enclosure. Key services shall
1999 include the provision of a master lock and key by CONTRACTOR to the Service Address for the
2000 convenience of CONTRACTOR. CONTRACTOR shall not be compensated for providing "push
2001 services" and or "key services."

2002 12.01.5 Difficult to Serve. If CONTRACTOR determines that the set-out location
2003 for Carts, Bins or Roll-Off Boxes is Difficult to Serve, CONTRACTOR shall contact the CITY
2004 Customer to discuss a change in the set out location.

2005 12.01.6 Service Frequency. CONTRACTOR shall provide CITY Recycling
2006 Collection Service at least weekly. However, in those instances where the scheduled Collection
2007 day falls on a holiday as set forth in Section 6.10 herein, the Collection day may be adjusted in a
2008 manner agreed to between the Commercial Service Recipient and CONTRACTOR as long as
2009 service is received a minimum of one (1) time per week.

2010 12.01.6.1 12.01.6.1 CONTRACTOR shall respond to requests
2011 for service utilizing Roll-Off Boxes within two (2) Work Days of the request from the MFD
2012 Customer.

2013 12.01.7 Container Sizes. CONTRACTOR shall offer Recyclable Materials

2014 Containers in 20, 32, 64 and 96 gallon nominal Cart sizes and in 1, 1.5 2, 3, 4, 6 and 7 cubic
2015 yard Bins. CONTRACTOR shall offer Roll-Off Boxes in 10, 20, 30 and 40 cubic yard sizes with
2016 lids.

2017 12.01.8 Minimum Capacity. CONTRACTOR shall provide Recyclable Materials
2018 Container sizes as requested by the Commercial Customer such that the total weekly capacity
2019 of Recycling Service is sufficient ensure that no Recyclable Materials, except as set forth in
2020 Section 12.01.9 need be placed outside the Recyclable Materials Container on a regular basis.

2021 12.01.9 Collection of Recyclable Materials Overages. CONTRACTOR shall
2022 also be required to Collect all corrugated cardboard, in pieces not exceeding three (3) feet by
2023 three (3) feet, tied or bundled, placed beside the Recycling Container. CONTRACTOR may
2024 Collect corrugated cardboard exceeding three (3) feet by three (3) feet or may leave the
2025 oversized material uncollected along with a Non-Collection Notice that contains instructions on
2026 the proper procedures for setting out corrugated cardboard.

2027 12.01.10 Multiple Overages. In the case of repeated Overages of Recyclable
2028 Materials, except corrugated cardboard, CONTRACTOR may send written notification to the
2029 CITY Customer that includes dates of observed Overages, any previous notifications,
2030 photographic documentation of said Overages and an offer to arrange for an appropriate
2031 change in Bin or Cart size, and/or Collection frequency. Should Overages persist after three (3)
2032 notifications and CONTRACTOR is unable to reach an agreement with the CITY Customer
2033 regarding an appropriate change in Bin or Cart size, and/or frequency of Collection,
2034 CONTRACTOR may impose such service level increase as is needed to avoid the Overages
2035 and notify the CITY Customer and Contract Manager in writing.

2036 12.01.11 Materials Recovery Facility. All Recyclable Materials Collected as a
2037 result of performing CITY Recycling Collection Service shall be delivered to the Materials
2038 Recovery Facility.

2039 **Article 13. COLLECTION ROUTES**

2040 13.01 Collection Routes. Within five (5) Work Days of receipt of a request from CITY,
2041 CONTRACTOR shall provide CITY with maps precisely defining Collection routes, and the
2042 travel routes to the Collection routes, together with the days and the times at which Collection
2043 shall regularly commence.

2044 13.02 Subsequent Collection Route Changes. In the event a Collection route change
2045 will change the Collection day for a Service Address, CONTRACTOR shall meet with the
2046 MM&O Contractor to coordinate the route changes so that SFD Recycling Services are provided
2047 to each Service Address on the same day as SFD Mixed Material Collection Services. Once
2048 the route changes have been coordinated between CONTRACTOR and the MM&O Contractor,
2049 CONTRACTOR shall notify those Service Addresses and the Contract Manager in writing of the
2050 Collection route changes, but not less than thirty (30) days before the proposed date of
2051 implementation. CONTRACTOR shall not change Collection days if that change would result in
2052 a Service Address receiving SFD Recycling Services on a different day as SFD Mixed Material
2053 Collection Services.

2054 13.03 Route Map Update. CONTRACTOR shall revise the Customer route maps to
2055 show the addition of Customers added due to construction/occupancy and shall provide such

2056 revised maps to the Contract Manager upon request.

2057 13.04 CONTRACTOR Audit of Routes. In addition to any other auditing requirements
2058 under this Contract, CONTRACTOR shall perform a comprehensive audit of SFD, and MFD
2059 Customer Routes every full or partial three (3) calendar years, and submit to CITY a written
2060 report on the results of that audit, no later than thirty (30) calendar days after completion of the
2061 audit. The report should include the testing protocols, and the details of the route audit findings
2062 along with recommendations, if any, on how CONTRACTOR will modify the current system to
2063 correct any errors noted during the audit. If CITY requests, CONTRACTOR shall cooperate
2064 fully with CITY to allow CITY to verify the accuracy of CONTRACTOR's route audit report.

2065 13.05 Coordination with Street Sweeping. CITY AND CONTRACTOR acknowledge
2066 that CONTRACTOR may have to modify Collection days to accommodate CITY's street
2067 sweeping schedule. CITY and CONTRACTOR shall cooperate with respect to any such
2068 modifications.

2069 **Article 14. COLLECTION EQUIPMENT**

2070 14.01 General Provisions. All equipment used by CONTRACTOR in the performance
2071 of Recycling Service under this Contract shall be of a high quality. At the start of this Contract,
2072 all route Collection vehicles that CONTRACTOR employs in the performance of its SFD and
2073 MFD Collection Services pursuant to this Contract shall be new 2014/2015 manufactured
2074 vehicles as specified in Exhibit 10 which is attached to and included in this Contract, provided
2075 that diesel powered vehicles from CONTRACTOR's existing fleet may be used as reserve
2076 vehicles, pursuant to Section 14.12. CONTRACTOR shall provide a complete inventory of
2077 Collection vehicles pursuant to Section 19.03.4. The vehicles shall be designed and operated
2078 so as to prevent Collected materials from escaping from the vehicles. Hoppers shall be closed
2079 on top and on all sides with screening material to prevent Collected materials from leaking,
2080 blowing or falling from the vehicles. All trucks and Containers shall be watertight and shall be
2081 operated so that liquids do not spill during Collection or in transit.

2082 14.02 Vehicle Registration, Licensing and Inspection. On or before July 1, 2015, and
2083 upon request by CITY thereafter during the term of this Contract, CONTRACTOR shall submit
2084 documentation to the Contract Manager to verify that each of CONTRACTOR's Collection
2085 vehicles is in compliance with all registration, licensing and inspection requirements of the
2086 California Highway Patrol, the California Department of Motor Vehicles, and any other
2087 applicable laws or regulations. CONTRACTOR shall not use any vehicle that is not in
2088 compliance with applicable registration, licensing and inspection requirements to perform
2089 Recycling Services. Each vehicle shall comply, at all times, with all applicable statutes, laws or
2090 ordinances of any public agency.

2091 14.03 Clean Air Vehicles. During the term of this Contract, to the extent required by
2092 law, CONTRACTOR shall provide its Collection vehicles to be in full compliance with local,
2093 State and federal clean air requirements that were enacted or scheduled to be enacted,
2094 including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards
2095 as currently proposed to be contained in CCR Title 13, section 2020 et seq.; the Federal EPA's
2096 Highway Diesel Fuel Sulfur regulations and any other applicable air pollution control.

2097 14.04 Global Positioning Systems (GPS). CONTRACTOR shall provide all route
2098 Collection vehicles equipped with fully functioning on-board GPS with direct and real-time

2099 linkages to CONTRACTOR's Customer service system.

2100 14.05 Vehicle Noise Level. All Collection operations shall be conducted as quietly as
2101 possible and must comply with U.S. EPA noise emission regulations currently codified at 40
2102 CFR Part 205, California Vehicle Code section 27207, and other applicable State, County, and
2103 CITY noise control regulations.

2104 14.06 Safety Equipment. All Collection equipment used by CONTRACTOR shall have
2105 appropriate safety markings including, but not limited to, highway lighting, flashing and warning
2106 lights, clearance lights, and warning flags. All such safety markings shall be in accordance with
2107 the requirements of the California Vehicle Code, as may be amended from time to time. All
2108 Collection vehicles shall be equipped with audible back-up warning devices.

2109 14.07 Vehicle Signage and Painting. Collection vehicles shall have signage in letters of
2110 contrasting color, at a size approved by CITY, on each side and the rear of each vehicle that
2111 clearly states that the Collection vehicle is servicing the CITY of Oakland, provides
2112 CONTRACTOR's name, CONTRACTOR's Customer service telephone number, CITY's
2113 Oakland Recycles logo and the number of the vehicle. CONTRACTOR shall repaint all vehicles
2114 (including vehicles striping) during the term of this Contract on a frequency as necessary to
2115 maintain a positive public image as reasonably determined by the Contract Manager.

2116 14.08 Collection Vehicle Education Requirements. All new Collection vehicles shall
2117 include space for outdoor poster advertising to be utilized by CITY. No advertising shall be
2118 permitted other than the name and corporate logo of CONTRACTOR except promotional
2119 advertisement of the Recyclable Materials and Organic Materials programs.

2120 14.09 Bin, Compactor and Roll-Off Box Signage, Painting, and Cleaning. All metal
2121 Bins, Compactors or Roll-Off Boxes furnished by CONTRACTOR shall be either painted or
2122 galvanized. All Bins, Compactors or Roll-Off Boxes shall display CONTRACTOR's name,
2123 CONTRACTOR's toll free customer service telephone number, and shall be kept in a clean and
2124 sanitary condition. Each Bin, Compactor or Roll-Off Box shall include a description of the type
2125 of material to be placed in the Container and shall be painted in a color and manner, acceptable
2126 to CITY, which is unique to that type of material. Such Bins, Compactors or Roll-Off Boxes as
2127 are provided by CONTRACTOR shall be steam cleaned and repainted by CONTRACTOR as
2128 frequently as necessary, but no more often than one (1) time per quarter, so as to maintain
2129 them in a sanitary condition. However, no more often than one (1) time per quarter, upon
2130 receipt of notification (from CITY or Customer) by CONTRACTOR of graffiti on a Bin,
2131 Compactor or Roll-Off Box, CONTRACTOR shall clean or replace such Bin, Compactor or Roll-
2132 Off Box within five (5) Work Days. Instances of CONTRACTOR cleaning, repainting or
2133 replacement exceeding the quarterly limits set forth above are subject to CONTRACTOR fees,
2134 as provided in Exhibit 1.

2135 14.10 Vehicle Maintenance. CONTRACTOR shall maintain Collection vehicles in a
2136 clean condition and in good repair at all times and ensure that no Collected materials, oil,
2137 grease or other substances will blow, fall out, escape or leak out of the vehicle, with the
2138 exceptions of vehicle emission. All parts and systems of the Collection vehicles shall operate
2139 properly and be maintained in a condition satisfactory to CITY. CONTRACTOR shall wash all
2140 Collection vehicles at least once a week. All washings shall be conducted in a manner that
2141 conforms to the BMP Guidelines for Non-Point Source Pollutants in the publication entitled
2142 Storm Water Best Management Practices Handbook for Industrial Commercial published by the
2143 California Storm Water Quality Association (CASQA).

2144 14.10.1 Maintenance Log. CONTRACTOR shall maintain a maintenance log for
 2145 all Collection vehicles. The log shall at all times be accessible to CITY for physical inspection
 2146 upon request of Contract Manager, and shall show, at a minimum, each vehicles'
 2147 CONTRACTOR assigned identification number, date purchased or initial lease, dates of
 2148 performance of routine maintenance, dates of performance of any additional maintenance, and
 2149 description of additional maintenance performed.

2150 14.11 Equipment Inventory. On or before July 1, 2015, and annually thereafter,
 2151 CONTRACTOR shall provide to CITY an inventory of Collection vehicles and major equipment
 2152 used by CONTRACTOR for Collection or transportation and performance of services under this
 2153 Contract. The inventory shall indicate each Collection vehicle by CONTRACTOR assigned
 2154 identification number, DMV license number, the age of the chassis and body, type of fuel used,
 2155 the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition,
 2156 the decibel rating and the maintenance status. CONTRACTOR shall submit to the Contract
 2157 Manager, either by web, cloud e-mail, an updated inventory annually to CITY or more often at
 2158 the request of the Contract Manager. Each vehicle inventory shall be accompanied by a
 2159 certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this
 2160 Contract.

2161 14.12 Reserve Equipment. CONTRACTOR shall have available to it, at all times,
 2162 reserve Collection equipment that can be put into service and operation within one (1) hour of
 2163 any breakdown. Such reserve equipment shall correspond in size and capacity to the
 2164 equipment used by CONTRACTOR to perform the contractual duties. CONTRACTOR shall be
 2165 allowed to maintain up to nine (9) diesel Collection vehicles as reserve equipment provided that
 2166 such diesel Collection vehicles are used in a reserve capacity only, are not part of the regular
 2167 daily fleet, and comply with all applicable local, state, and federal air quality laws. However,
 2168 CONTRACTOR shall eliminate all reserve diesel Collection vehicles by June 30, 2024, in
 2169 accordance with the schedule set forth below. Within sixty (60) days after execution of this
 2170 Contract, CONTRACTOR shall provide CITY with the vehicle identification numbers and license
 2171 plate numbers for all reserve diesel Collection vehicles. After June 30, 2024, CITY will be able
 2172 to require reasonable verification that all such reserve diesel Collection vehicles are timely
 2173 eliminated from service and all vehicles operated under this Contract are CNG or other low
 2174 emission vehicles approved by CITY.

Schedule of Retirement of Reserve Clean-Diesel Trucks	
Contract Year Ended	Number of Vehicles to be Retired
June 30, 2022	3
June 30, 2023	3
June 30, 2024	3
Total	9

2175 14.13

2176 14.14 Covering of Loads. All loads not in covered body trucks shall be tarped or

2177 restrained to prevent spilling.

2178 14.15 Weight Restrictions. CONTRACTOR shall not load vehicles in excess of the
2179 manufacturer's recommendations or limitations imposed by federal, State or local weight
2180 restrictions on vehicles. CONTRACTOR acknowledges that CITY may document compliance
2181 with this provision of the Contract through review of scale tickets and records of the Disposal
2182 and Processing Facilities.

2183 **Article 15. LOCAL OFFICE**

2184 15.01 Oakland Office. During the term of this Contract CONTRACTOR shall maintain
2185 an office in the Service Area. CONTRACTOR's office shall provide toll-free telephone access to
2186 CITY residents, and shall be located where Customers can make service requests or inquires in
2187 person. The office shall be open and staffed from 8:00 am to 6:00 pm on Work Days. The
2188 office shall have a responsible person in charge who is familiar with the specific Recycling
2189 Services provided by CONTRACTOR to CITY. CONTRACTOR shall equip the office with a
2190 direct terminal connection to the customer service system operated at CONTRACTOR's call
2191 center.

2192 **Article 16. CUSTOMER SERVICE**

2193 16.01 Customer Service Program. CONTRACTOR shall develop, implement and
2194 maintain a Customer Service Program approved by CITY to ensure that all services provided
2195 under this Contract are high quality. CONTRACTOR's Customer Service Plan is attached as
2196 Exhibit 8 of this Contract.

2197 16.02 CONTRACTOR's Customer Center and Telephone and Email Access.
2198 CONTRACTOR shall maintain a Customer service center located in Alameda County that
2199 provides toll-free telephone and email access to residents and businesses of CITY, and is
2200 staffed by trained and experienced Customer Service Representatives (CSRs). Such Customer
2201 center shall have responsible persons in charge during Collection hours, and shall be open 8:00
2202 a.m. to 6:00 p.m. on regularly scheduled Work Days (Monday through Friday) and when SFD or
2203 MFD Recycling Services are scheduled to be provided on Saturday; and be staffed with a
2204 sufficient number of CSRs and equipped with sufficient telephone and email capacity to address
2205 the call volume received. CONTRACTOR shall provide means, satisfactory to CITY, for
2206 addressing after hour calls and messages. CONTRACTOR shall ensure that:

2207 16.02.1 Up to ten (10) incoming calls can be received at one time;

2208 16.02.2 Customer or Service Recipient calls received during normal business
2209 hours are answered by system within five (5) rings;

2210 16.02.3 Average Speed to Answer for Residential Customer calls shall be three
2211 (3) minutes or less based on a weekly average. Speed to Answer is the time commencing
2212 when a caller is placed in a queue (immediately after a caller hears CONTRACTOR recorded
2213 messages and makes a choice from the phone tree) and ending when a live agent picks up the
2214 call;

2215 16.02.4 During any on-hold waiting time and when the call center is closed,
2216 Customers or Service Recipients are offered the option to leave a voice message;

2217 16.02.5 Any call "on-hold" in excess of one and one half (1.5) minutes shall
2218 have the option to remain "on-hold" or to be switched to a message center where the Customer
2219 can leave a message.

2220 16.02.6 Customer or Service Recipient voice messages are returned in the
2221 order received and left by 6:00 p.m. Pacific time at latest by the close of the Work Day following
2222 the day the voice message is received; and

2223 16.02.7 Customer or Service Recipient emails are responded to in the order
2224 received and left by 6:00 p.m. Pacific time at latest by the close of the Work Day following the
2225 day the email is received.

2226 16.03 Telephone Access From the MM&O Contractor. CONTRACTOR shall provide a
2227 local telephone number that allows callers to be automatically transferred from the MM&O
2228 Contractor, as appropriate. It shall be CONTRACTOR's responsibility to ensure that transferred
2229 callers experience no changes in volume or clarity from that associated with direct calls to the
2230 MM&O CONTRACTOR.

2231 16.04 Multilingual/TDD Service. CONTRACTOR's call center shall at all times during
2232 the normal business hours set forth in Section 16.02 maintain the capability of responding to
2233 telephone calls in English, Chinese (Cantonese), Vietnamese, Spanish, and such other
2234 languages as reasonably may be directed by CITY in accordance with its Equal Access
2235 Program requirements. CONTRACTOR shall at all times maintain the capability of responding
2236 to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

2237 16.05 Website. CONTRACTOR shall develop and maintain a state-of-the-art website
2238 dedicated to services provided in CITY, which is accessible by the public. The website shall
2239 include answers to frequently asked questions, rates for Residential Recycling Collection
2240 Services, listing and description of Residential Recycling Collection Services schedules and
2241 maps, and other related topics. The site shall have a link to CITY's website and a link to the
2242 MM&O Collection Contractor's website. CONTRACTOR shall arrange for CITY's website to
2243 include an e-mail link to CONTRACTOR and a link to CONTRACTOR's website.
2244 CONTRACTOR's website shall provide the public the ability to e-mail comments inquiries and
2245 request services or service changes to CONTRACTOR.

2246 **Article 17. PUBLIC OUTREACH SERVICES**

2247 17.01 Community Outreach Services. CONTRACTOR shall be required to implement,
2248 at its own expense, CONTRACTOR's Community Outreach Strategy, which is attached as
2249 Exhibit 6 to this Contract. The Community Outreach Strategy will provide an overview of
2250 CONTRACTOR's plans to engage the community in full use of the Recycling Services and the
2251 Diversion goals of the Contract.

2252 17.01.1 Transitional Outreach Plan. CONTRACTOR shall prepare and
2253 implement, at its own expense, a transitional outreach plan consisting of a community outreach
2254 campaign that makes aware and fully informs SFD and MFD Customers of the Residential
2255 Recycling Collection Services, highlighting changes to the current services, relevant to the
2256 Customer experience, which will occur through execution of the Contract. The transitional
2257 outreach plan will be consistent with and informed by the CONTRACTOR's Community
2258 Outreach Strategy as set forth in Exhibit 6. The transitional outreach plan will be implemented
2259 beginning January 2015, or with execution of the Contract, whichever is later. The Transitional

2260 Plan will cover all CONTRACTOR's community outreach services in calendar year 2015. The
2261 budget for the Transitional Plan shall be not more than five-hundred thousand dollars
2262 (\$500,000).

2263 17.02 Annual Outreach Plan. CONTRACTOR, at its own expense, shall prepare,
2264 submit and implement an annual outreach plan that is consistent with and informed by
2265 CONTRACTOR's Community Outreach Strategy as set forth in Exhibit 6. CONTRACTOR shall
2266 submit the initial annual outreach plan for CITY approval no later than September 1, 2015, and
2267 subsequent annual outreach plans no later than September 1 each calendar year thereafter.
2268 CITY shall review and respond to the proposal within forty five (45) days. Implementation of the
2269 annual outreach plan would begin on January 1 of each year. The annual outreach plan must
2270 include specific steps designed to increase Diversion and Customer participation in the
2271 Residential Recycling Collection Services, and measure the effectiveness of these efforts. The
2272 annual outreach plan should target specific materials, or demographic or service sectors where
2273 improvements can be maximized. Outreach targets should be based on measured trends and
2274 patterns in recycling and disposal activities, participation, and Tonnages by service sector,
2275 within the Service Area and within identified Service Area localities, as indicated by information
2276 obtained by both the Contract Manager and CONTRACTOR's staff. The budget for the
2277 Transitional Plan shall include the cost of Contamination audits .

2278 17.03 Community Outreach Budget. CONTRACTOR shall be required to allocate or
2279 spend not more than Five Hundred Thousand Dollars (\$500,000) in the period ending
2280 December 31, 2015, to implement the transitional outreach plan, and not more than Two
2281 Hundred Fifty Thousand Dollars (\$250,000) per calendar year thereafter to implement the
2282 annual outreach plan. All such expenditures require prior approval from CITY unless included in
2283 outreach plan. CITY and CONTRACTOR may mutually agree to perform joint Community
2284 Outreach activities using all or some of the annual Community Outreach budget. Public
2285 relations activity costs cannot be applied to the Public Outreach budget. At the end of the
2286 calendar year, the difference between the amount spent by CONTRACTOR and the maximum
2287 required allocation shall be carried over to the following calendar year and be added to that
2288 year's maximum amount. However, in the event CONTRACTOR has unspent funds at the end
2289 of three (3) consecutive calendar years, the unspent funds shall be retained by CONTRACTOR
2290 and deposited in a separate interest bearing Rate Stability Funds account, whose interest
2291 accrues to the account. These rate stability funds may only be used at the direction of CITY.
2292 Rate stability fund account balances, including balances of zero (0) shall be reported to the
2293 Contract Manager no later than the tenth (10th) day of February beginning in February of 2016
2294 and annually thereafter during the term of this Contract. The Community Outreach Budget shall
2295 include the cost of Contamination audits.

2296 17.04 Community Outreach Professional Services. CONTRACTOR will engage the
2297 services of a professional firm or firms that specialize in community outreach, marketing, public
2298 relations and graphic design, that preferably are based in Oakland or the Bay Area. Such firms
2299 shall possess a minimum five (5) years' experience in marketing, communications and/or
2300 community outreach, including two (2) years' experience conducting outreach in a city
2301 comparable to Oakland in size and complexity; and knowledge of outreach best practices, such
2302 as community-based social marketing.

2303 17.05 CITY Approval Required. All marketing, messaging or other mass
2304 communications, including but not limited to print, outdoor media, broadcast, web-based, e-mail,
2305 and telephone voice messages, directed to Customers or Service Recipients, must be approved
2306 by the Contract Manager prior to execution or delivery to the Customer or Service Recipient,

2307 regardless of whether these communications relate to the Collection Services. All public
2308 relations, press and community outreach activities that involve the Collection Services, or that
2309 are targeted to the Service Recipients or Customers, must have prior written approval from the
2310 Contract Manager, whether or not they are being paid for from the Community Outreach budget.
2311 CONTRACTOR shall not perform any work on Community Outreach materials or activities
2312 without prior written approval from the Contract Manager. All materials shall be submitted in
2313 writing for review and approval. Written authorization by the Contract Manager is required prior
2314 to final production of any Community Outreach materials.

2315 17.06 Outreach Production Requirements. CONTRACTOR shall utilize designers,
2316 printers and mail houses located within the Service Area for the design, development, printing
2317 and mailing of all community outreach materials related to this Contract, unless otherwise
2318 approved by Contract Manager. In addition, unless Contract Manager has granted an exception
2319 in writing, the Community Outreach materials shall:

2320 17.06.1 be printed on one hundred (100) percent recycled paper with at least
2321 fifty (50) post-consumer recycled content using soy based (or other non-toxic) inks;

2322 17.06.2 include CITY's Oakland Recycles logo and CITY's recycling hotline
2323 phone number;

2324 17.06.3 include four (4) languages whenever possible and/or needed; and

2325 17.06.4 be made accessible to those with disabilities, in accordance with all
2326 applicable federal, state and local laws and regulations.

2327 17.07 Copyrights. At CONTRACTOR's sole expense. CONTRACTOR shall execute
2328 appropriate documents to assign to CITY either a copyright to works created pursuant to this
2329 Article 17, or a license limited for the term of the Contract for use of such works, if so requested
2330 by CITY. CONTRACTOR shall provide space in CONTRACTOR's printed public outreach
2331 materials, for CITY to include announcements, community information, articles and
2332 photographs.

2333 17.08 News Media Relations. CITY shall oversee all press activities including press
2334 releases, press conferences, press kits, press packets and general press inquiries regarding the
2335 Program. CONTRACTOR shall notify the Contract Manager by e-mail or phone of all requests
2336 for news media interviews related to the Recycling Services program within twenty-four (24)
2337 hours of CONTRACTOR's receipt of the request. Before responding to any news media
2338 inquiries involving controversial issues or any issues likely to affect participation or Customer
2339 perception of services, CONTRACTOR will discuss CONTRACTOR's proposed response with
2340 the Contract Manager. However, notwithstanding anything to the contrary in this Section 17.08,
2341 there may be instances of unannounced media visits where CONTRACTOR responses would
2342 be beneficial, in CONTRACTOR's reasonable judgment. In such cases, CONTRACTOR will not
2343 be obligated to obtain CITY consent to media communication, but will summarize such
2344 communication to CITY as soon as practicable. Copies of draft news releases or proposed
2345 trade journal articles shall be submitted to CITY for prior review and approval at least five (5)
2346 Work Days in advance of release. Copies of articles resulting from media interviews or news
2347 releases shall be provided to CITY within five (5) Work Days after publication.

Article 18. EMERGENCY SERVICE PROVISIONS

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

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

Article 19. RECORD KEEPING & REPORTING REQUIREMENTS

19.01 Record Keeping.

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

19.01.2 CONTRACTOR Payments to CITY. CONTRACTOR shall maintain records of all payments made to CITY for all items listed in Section 7.16.

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

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

19.01.4.1 CONTRACTOR shall maintain a relational database that

2389 includes data from all required reports for the term of this Contract, and provide CITY with
2390 access to the database. Database shall be flexible to accommodate changing needs and
2391 conditions over the term of this Contract.

2392 19.02 Reporting Requirements. Monthly Reports shall be delivered to CITY no later
2393 than fifteen (15) calendar days after the end of the prior month. Quarterly reports shall be
2394 delivered to CITY no later than twenty (20) calendar days after the end of the reporting quarter.
2395 Annual reports shall be delivered to CITY no later than thirty (30) days after the end of each
2396 preceding calendar year. Monthly, quarterly and annual reports shall be provided electronically
2397 in forms and formats acceptable to CITY.

2398 19.02.1 Monthly Reports. CONTRACTOR shall provide reports that include the
2399 following each month and year to date:

2400 19.02.1.1 Collection Service Account Data. Number of SFD and
2401 MFD buildings and units served; number of Commercial and CITY facilities served. Number of
2402 Containers in service by SFD, MFD Commercial and CITY facilities, by Container size, and by
2403 Container service location (e.g., Curbside or Premium Backyard service and Ancillary service).
2404 Number of Non-Collection Notices issued by SFD, MFD Commercial and CITY facilities and by
2405 reason for non-collection.

2406 19.02.1.2 Collected Tonnage Data. Tonnage for all materials
2407 Collected by SFD, MFD, Commercial and CITY facilities. Used Oil Containers and Used Oil
2408 Filters Containers Collected shall be reported by item count.

2409 19.02.1.3 Processed Materials Data. Tonnage of each material
2410 produced through the Processing of Collected materials at CONTRACTOR's Processing
2411 Facility, e.g., old corrugated cardboard, old newspaper, mixed paper, glass and various plastic
2412 and metal commodity grades. CONTRACTOR shall use a statistically significant method
2413 approved by CITY to calculate the Tonnage of finished Processed material, net of Recycling
2414 Residue, attributable to material Collected under this Contract.

2415 19.02.1.4 Recycling Residue Tonnage Data. Tonnage for all
2416 Recycling Residue from Processing of Collected materials. CONTRACTOR shall use a
2417 statistically significant method approved by CITY to calculate the Tonnage of Recycling Residue
2418 attributable to material Collected under this Contract.

2419 19.02.1.5 Customer Service Data. List of Customer contacts, e.g.,
2420 phone calls or electronic communications, including Customer name, Service Address, and by
2421 date and topic.

2422 19.02.1.6 Local Hire Requirement Update. CONTRACTOR shall
2423 provide monthly updates on its compliance with Local Hire Requirements in Article 54 of this
2424 Contract.

2425 19.02.2 Quarterly Reports. CONTRACTOR shall provide the following
2426 information each quarter:

2427 19.02.2.1 Processing Facility Recycling Residue Rate.
2428 CONTRACTOR shall use a statistically significant method approved by CITY to calculate the
2429 Recycling Residue rate for all material received by, Processed at and shipped from the MRF.

2430 19.02.2.2 Public Outreach and Information Activities. Report on all
2431 public outreach and information activities undertaken during the period, including distribution of
2432 outreach materials and other promotional activities.

2433 19.02.2.3 Processing and Marketing Activities. Report on Recyclable
2434 Materials Processing and marketing issues or conditions, if any, occurring during the previous
2435 quarter.

2436 19.02.2.4 Customer Service Activities. Report on customer service
2437 and Call Center issues or conditions, if any, occurring during the previous quarter. Customer
2438 service data shall include Contamination notifications per Exhibit 11 Contamination Reduction
2439 Program.

2440 19.02.2.5 Operational Issues and Activities. Report on significant
2441 changes in Collection Service or Processing operations, instances of property damage or
2442 accidents, scavenging, or other operational issues.

2443 19.03 Annual Reports. CONTRACTOR shall provide the following data and
2444 information each year:

2445 19.03.1 Customer Data. List of all Customers serviced under this Contract
2446 including and sortable by SFD, MFD Commercial and CITY facilities, Customer name, Service
2447 Address (street number, street name, Zip Code), type of service (e.g., Curbside or Premium
2448 Backyard service, and Ancillary service), number of Containers and Container size.

2449 19.03.2 Local Hire Requirement Annual Report. CONTRACTOR shall provide
2450 an annual report on its compliance with Local Hire Requirements in Article (54) of this Contract

2451 19.03.3 Gross Receipts. CONTRACTOR shall provide a summary of the prior
2452 year's Gross Receipts received.

2453 19.03.4 Equipment Inventory. Updated complete inventory of Collection
2454 vehicles used pursuant to this Contract, by vehicle chassis identification number, vehicle body
2455 identification number, license number and model year.

2456 19.03.5 Business Tax Certificate. Copy of current business tax certificate.

2457 19.03.6 Annual Cart and Bin Replacement Reports pursuant to Section 6.06.10
2458 of this Contract.

2459 19.04 Additional Reporting and Access to Information.

2460 19.04.1 CONTRACTOR shall provide CITY with any additional data and
2461 information requested by CITY that is maintained by, or readily available to, CONTRACTOR
2462 and that is related to the Collection Services. Such reports shall be provided within a
2463 reasonable time following the request.

2464 19.04.2 CONTRACTOR shall provide CITY with CONTRACTOR's Call Center
2465 records as requested by CITY, and which are required pursuant to other provisions of this
2466 Contract.

2467 19.04.3 CONTRACTOR shall provide a large wall map of the Service Area that
2468 shows Collection day of service for SFD and MFD routes. CONTRACTOR shall provide an
2469 updated map whenever route changes include a change to day of service.

2470 19.04.4 CONTRACTOR shall provide CITY with Collection Route information as
2471 requested by CITY, as may reasonably be provided. Such information to be provided within a
2472 reasonable time following the request.

2473 19.05 GPS Reports. CONTRACTOR shall provide CITY with CONTRACTOR's
2474 Collection vehicle global positioning system (GPS) reports as requested by CITY, as may
2475 reasonably be provided.

2476 19.06 Except as provided in Article 30, nothing in this Contract, shall be construed to
2477 require CONTRACTOR to provide cost (other than the weight of costs for purposes of
2478 calculating RRI) or profit information.

2479 **Article 20. NONDISCRIMINATION**

2480 20.01 Nondiscrimination. In the performance of all work and services under this
2481 Contract, CONTRACTOR shall not discriminate against any person on the basis of such
2482 person's race, color, religion/religious creed, sex/gender, pregnancy, marital status, age,
2483 national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation,
2484 gender identity, military or veteran status, or status in any other group protected by federal,
2485 State or local law. CONTRACTOR shall comply with all applicable local, State and federal laws
2486 and regulations regarding nondiscrimination, including those prohibiting discrimination in
2487 employment.

2488 **Article 21. SERVICE INQUIRIES AND COMPLAINTS**

2489 21.01 CONTRACTOR's Customer Service. All Customer and Service Recipient
2490 inquiries and complaints about the Services shall be directed to CONTRACTOR. A
2491 representative of CONTRACTOR shall be available to receive the inquiries and complaints
2492 during normal business hours. All service inquiries and requests will be handled by
2493 CONTRACTOR in a prompt, courteous and efficient manner. In the case of a dispute between
2494 CONTRACTOR and a Customer, the matter may be reviewed and a decision made by the
2495 Contract Manager.

2496 21.02 Customer Service System. CONTRACTOR will utilize an automated Customer
2497 service system to maintain a record of all inquiries and complaints in a manner prescribed by
2498 CITY. In addition thereto, CONTRACTOR shall maintain, at CONTRACTOR's place of
2499 business, an automated Customer service system, listing all Customer service requests,
2500 complaints and CONTRACTOR notices. Said system shall contain the names and addresses of
2501 parties involved, date of such service request, complaint or noticing, nature of same, and the
2502 date and manner of disposition of each case. Such system shall be kept so that it may
2503 conveniently be inspected by representatives of CITY upon request.

2504 21.03 Response Requirements. For those complaints related to missed Collections
2505 that are received by 12:00 noon on a Work Day, CONTRACTOR will return to the Customer
2506 address and Collect the missed Carts or Bins by 12:00 noon on the following Work Day. For
2507 those complaints related to missed Collections that are received after 12:00 noon on a Work

2508 Day, CONTRACTOR shall have until the end of the following Work Day to resolve the
2509 complaint. For those complaints or service requests related to Carts or Bins for new
2510 Customers, or repair, replacement or exchange of Carts or Bins, the appropriate Articles of this
2511 Contract shall apply.

2512 21.04 Missed Collections. CONTRACTOR agrees that it is in the best interest of CITY
2513 that all Recyclable Materials be Collected on the scheduled Collection day. Accordingly, missed
2514 Collections will normally be Collected as set forth herein regardless of the reason that the
2515 Collection was missed. However, in the event a Service Address reports missed Residential
2516 Recycling Collection Services more than two (2) times in any consecutive two (2) month period
2517 the Contract Manager will work with CONTRACTOR to determine an appropriate resolution to
2518 that situation. In the event CONTRACTOR believes any complaint to be without merit,
2519 CONTRACTOR shall notify the Contract Manager, by e-mail. The Contract Manager will
2520 investigate all disputed complaints and render a decision.

2521 **Article 22. QUALITY OF PERFORMANCE OF CONTRACTOR**

2522 22.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY's primary
2523 goals in entering into this Contract is to ensure that Recycling Services are of the highest
2524 caliber, that Service Recipient and Customer satisfaction remains at the highest level, that
2525 maximum Diversion levels are achieved, and that materials Collected are put to the highest and
2526 best use to the extent feasible.

2527 22.02 Contract Compliance Coordinator. CONTRACTOR will provide for a full-time
2528 Contract Compliance Coordinator dedicated to CITY. The Contract Compliance Coordinator
2529 shall be responsible for monitoring CONTRACTOR's programs and services and assisting CITY
2530 in maintaining full contractual compliance at all times during the term of the Contract. These
2531 duties shall include but not be limited to issues related to new and existing Customer needs,
2532 public education, routing and Customer service. The Contract compliance Coordinator shall
2533 meet monthly with CITY staff to provide updates on all areas of service as needed.

2534 22.03 Services Manager. CONTRACTOR shall designate a manager to be in charge of
2535 the Recycling Services within the Service Area. The manager shall have the authority and
2536 knowledge to direct CONTRACTOR resources as need to resolve matters of concern to CITY.
2537 The Services Manager, or designee shall be available to the Contract Manager through the use
2538 of a mobile telephone at all times that CONTRACTOR is providing Recycling Services.

2539 22.04 Liquidated Damages. The parties further acknowledge that consistent and
2540 reliable Collection Service is of utmost importance to CITY and that CITY has considered and
2541 relied on CONTRACTOR's representations as to its quality of service commitment in awarding
2542 the Contract to it. The parties further recognize that some quantified standards of performance
2543 are necessary and appropriate to ensure consistent and reliable service and performance. The
2544 parties further recognize that if CONTRACTOR fails to achieve the performance standards, or
2545 fails to submit required documents in a timely manner, CITY, and CITY'S residents and
2546 businesses will suffer damages and that it is and will be impractical and extremely difficult to
2547 ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY's
2548 right to treat such non-performance as an event of default under Article 27, the parties agree
2549 that the liquidated damages amount defined in this Article represent reasonable estimates of the
2550 amount of such damages considering all of the circumstances existing on the effective date of
2551 this Contract, including the relationship of the sums to the range of harm to CITY, Service
2552 Recipients and the community as a whole that reasonably could be anticipated and the

2553 anticipation that proof of actual damages would be costly or impractical. In placing their initials
 2554 at the places provided, each party specifically confirms the accuracy of the statements made
 2555 above and the fact that each party has had ample opportunity to consult with legal counsel and
 2556 obtain an explanation of the liquidated damage provisions at the time that the Contract was
 2557 made.

2558 CITY Initial Here CONTRACTOR Initial Here

2559 22.04.1 CONTRACTOR agrees to pay (as liquidated damages and not as
 2560 penalty) the following amounts:

1	Failure to timely submit or make available to CITY documents and reports required under the provisions of this Contract (Various Sections).	\$100 per incident per day
2	Failure to provide accurate billing services as required in Article 7.	\$100 per incident per day
3	Failure to remit the Franchise Fee and other payments to CITY as set forth in Section 7.16 herein.	\$500.00 per incident per day
4	Failure to provide timely transition documents or meet transition requirements (Section 6.18).	\$300 per item per day
5	Failure to notify CITY daily of all situations that prevent or hinder Collection from any CITY Facility, unless otherwise directed by CITY (Article 12).	\$100.00 per day
6	Failure to Collect or otherwise recover within the time set forth in Section 21.03 materials that are set out for Collection, including materials that have been rejected but where a Non-Collection Notice was not provided which exceeds one (1) such failure per 1,000 services per service sector (SFD, MFD, Commercial) per month.(Articles 9, 10, 11 and 12).	\$150 per incident per day
7	Missed or incomplete Collection at the same Service Address for: Two consecutive scheduled Collections Three of six scheduled Collections Eight Collections in six months Twelve Collections in twelve months (Articles 9, 10, 11 and 12).	\$50 per incident \$250 per incident \$500 per incident \$1,000 per incident
8	Failure to repair or replace, deliver, remove or exchange damaged, missing or abandoned Carts or Bins within the time required by this Contract (Sections 6.06.4 through 6.06.9) which exceeds 10 such failures per week.	\$150 per incident per day
9	Failure to commence clean-up of spills, leaks or litter caused by CONTRACTOR by end of Work Day, upon notification from CITY (Section 6.14).	\$300 per incident

10	Failure to properly return empty Carts or Bins to the point of Collection, upright with lids closed and locks secured, as required by Section 6.04, which exceeds 50 such failures per month.	\$150.00 per incident per day
11	Failure to answer a Customer call within five (5) rings (Section 16.02.2). "Answer" includes any method of picking up Customer calls, including recorded greetings.	\$50.00 per incident
12	Customer on-hold wait time, based on a weekly average that is: <ul style="list-style-type: none"> • Greater than three minutes and up to four minutes • Greater than four minutes and up to five minutes • Over five minutes (Section 16.02.3)	\$1,000 per week \$2,000 per week \$3,000 per week
13	Failure to return a Customer voice message or respond to a Customer e-mail by the close of the Work Day following the day the voice message or e-mail is received, provided it is received by 6:00 pm. (Section 16.02.6 and 16.02.7).	\$150.00 per incident per day
14	Failure to begin Collection service within seven (7) Work Days for a new Customer account, or receipt of an application for premium backyard Collection, exempt backyard Collection programs or the curbside placement exemption program within the time required herein, which exceeds 20 such failures per calendar quarter.	\$150.00 per incident per day
15	Failure to maintain Collection vehicles pursuant to Article 14.	\$150 per incident per day
16	Failure to mark and label Carts, Bins and Roll-off Boxes; to inspect, clean and maintain metal Bins, Compactors or Roll-Off Boxes in a clean and sanitary manner, which exceeds 100 such failures annually (Sections 6.06.1, 6.06.2, 6.06.3, 14.09).	\$150 per incident per day
17	Failure to meet vehicle noise requirements (Section 14.05).	\$100 per incident per day
18	Commingling Recyclable Materials with other material types, or CITY materials with materials collected in another city prior to delivery to the designated processing facility, except as permitted in the Contract (Section 6.14).	\$500 per incident
19	Failure to ensure that a vehicle operator is properly licensed (Section 33.01.4).	\$500 per incident per day
20	Failure to maintain office and call center hours as required by this Contract (Section 15.01).	\$100 per incident per day
21	Failure to maintain Collection hours and days as required by this Contract (Section 6.02).	\$250 per incident per day

22	Failure to have CONTRACTOR personnel in proper uniform (Section 33.01.3).	\$250 per incident per day
23	Failure to repair damage or compensate CITY for damage to CITY property, including all City structures, public roadways and sidewalks caused by CONTRACTOR or its personnel (Section 26.13).	\$500 per incident
24	Changing the Collection day of ten (10) percent or more of the residential Service Addresses without proper authorization by the Contract Manager and proper notification to the Service Addresses, (Section 13.02), or to a day different than Mixed Material Collection.	\$5,000 per route per incident
25	Failure to provide adequate primary and alternate capacity to accept and process Recyclable Materials (Sections 6.11.2).	\$500 per day
26	Failure to respond timely to CITY requests for services or information (Various Sections).	\$150 per incident
27	Disposal of Recyclable Materials in any Disposal Facility without first obtaining the required permission of CITY (Sections 6.11.4 and 6.11.5).	\$1,000 per load
28	Failure to deliver any Collected materials to CITY approved Materials Recovery Facility, except as otherwise expressly provided in this Contract (Sections 6.11.2).	\$5,000 per load
29	Failure or neglect to complete at least ninety percent (90%) of each route on the regular scheduled Collection day (Sections 9.01.2, 10.01.1, 11.01.2 and 12.01.3).	\$1,000 for each route not completed
30	Transferring loads on CITY streets except as otherwise expressly provided in Section 6.03.	\$150.00 per incident
31	Failure to conduct route audits and report results to CITY in a timely manner (Section 13.04).	\$150.00 per audit per day
32	Failure to maintain the capability of responding to telephone calls in English, Chinese (Cantonese), Vietnamese, Spanish, and such other languages as reasonably may be directed by CITY and TDD Services at all times (Section 16.04).	\$150.00 per day
33	Failure to comply with the public outreach standards in the manner set out in this Contract (Article 17).	\$150.00 per incident per day
34	Exclusive of and not in addition to or duplicative of other specific Liquidated Damages listed herein, the failure to cure non-compliance with the provisions of this Contract in the manner and time set forth in the Contract (Various Sections).	\$150.00 per incident per day
35	Failure to comply with 50% local hire preference for Oakland residents provision for new employees (Article 55).	\$5,000 per position annually

36	Failure to comply with worker retention requirements (Article 52).	\$5,000 per position
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2561 22.05 Liquidated damages shall apply to service disruptions caused by a
2562 CONTRACTOR-initiated lockout or similar CONTRACTOR-initiated work stoppage.

2563 22.06 Procedure for Review of Liquidated Damages. Before assessing liquidated
2564 damages pursuant to Items 1, 4, 17, 23, 25, 26, 30, 31, 33, 34, 35 and 36 of this Article 22,
2565 CITY and CONTRACTOR shall meet and confer regarding these specific areas of substandard
2566 performance. If, despite such meeting, incidents of the type(s) addressed at the meeting
2567 continue to occur, CITY may proceed to assess liquidated damages as provided above. The
2568 Contract Manager may assess liquidated damages pursuant to this Article 22 on a monthly
2569 basis. However, liquidated damages may only be assessed if CONTRACTOR is notified of the
2570 event within sixty (60) days of CITY's knowledge of its occurrence. Prior to assessing liquidated
2571 damages, CITY shall give the CONTRACTOR written notice of its intention to do so ("Notice of
2572 Assessment"). The notice shall include a description of the event of non-performance. The
2573 CONTRACTOR may review and make copies (at its own expense) of all non-confidential
2574 information in CITY's possession relating to the event of non-performance. During the first
2575 ninety (90) days of the Contract, CITY agrees not to assess liquidated damages due to
2576 challenges which may occur during implementation of the new Contract. If in the future there
2577 shall be an implementation period required to commence a new level or type of service, CITY
2578 and CONTRACTOR agree to discuss a similar suspension of liquidated damages for a specified
2579 period of time.

2580 22.06.1 The assessment of any Liquidated Damages shall become final unless,
2581 within thirty (30) calendar days of the date of the notice of assessment, CONTRACTOR
2582 provides a written request for a meeting with the Contract Manager to present evidence that the
2583 assessment should not be made.

2584 22.06.2 The Contract Manager shall schedule a meeting between
2585 CONTRACTOR and the CITY Administrator or the CITY Administrator's designee as soon as
2586 reasonably possible after timely receipt of CONTRACTOR's request.

2587 22.06.3 The CITY Administrator or the CITY Administrator's designee shall
2588 review CONTRACTOR's evidence and render a decision sustaining or reversing the liquidated
2589 damages as soon as reasonably possible after the meeting. Written notice of the decision shall
2590 be provided to CONTRACTOR.

2591 22.06.4 In the event CONTRACTOR does not submit a written request for a
2592 meeting within thirty (30) calendar days of the date of the Notice of Assessment, the Contract
2593 Manager's determination shall be final and CONTRACTOR shall submit payment to CITY no
2594 later than fifteen (15) calendar days following final determination.

2595 22.06.5 CITY's assessment or Collection of liquidated damages shall not
2596 prevent CITY from exercising any other right or remedy, including the right to terminate this
2597 Contract, for CONTRACTOR's failure to perform the work and services in the manner set forth
2598 in this Contract.

Article 23. FRANCHISE FEE AUDIT AND PERFORMANCE REVIEWS

23.01 Franchise Fee Audit and Performance Review.

23.01.1 Selection and Cost. CITY may conduct up to four (4) franchise fee audit and performance reviews ("review") of CONTRACTOR's performance during the term of this Contract. The review will be performed by a qualified firm under contract to CITY. CITY shall have the final responsibility for the selection of the firm but shall seek and accept comments and recommendations from CONTRACTOR. CONTRACTOR shall be responsible for the cost of the reviews up to a maximum of Seventy Five Thousand Dollars (\$75,000) per review.

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

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

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

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

23.01.2.4 Verify the Diversion recovery percentages reported by CONTRACTOR.

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

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

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

Article 24. PERFORMANCE SECURITY

24.01 Performance Bond. A performance bond as required under Section 4.01 shall be furnished by CONTRACTOR. The performance bond shall be in a form and with language that is acceptable to CITY, for the faithful performance of this Contract and all obligations arising hereunder in an amount of Three Million Dollars (\$3,000,000), except as provided below in Section 24.02.

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

24.02 Additional Performance Security. To guarantee the timely and full performance of CONTRACTOR's obligations, including CONTRACTOR's indemnification obligations, CONTRACTOR shall provide additional Performance Security.

24.02.1 From July 1, 2015 through June 30, 2016, CONTRACTOR shall cause the performance bond required under Section 24.01 to be in the amount of Six Million Dollars (\$6,000,000), which is Three Million Dollars (\$3,000,000) greater than the performance bond required under Section 24.01. Through June 30, 2016, CITY shall cover any additional costs associated with CONTRACTOR's obtaining and holding the performance bond in the amount of Six Million Dollars (\$6,000,000) compared to CONTRACTOR's costs for obtaining and holding a performance bond in the amount of Three Million Dollars (\$3,000,000).

24.02.2 Beginning on July 1, 2016 and for the remaining Term of this Contract, CONTRACTOR shall be responsible for maintaining an additional Performance Security. CONTRACTOR shall either (1) maintain the amount of the performance bond as set forth in Section 24.02.1 at Six Million Dollars (\$6,000,000), at CONTRACTOR's sole cost and expense, which shall be renewed annually as provided in Section 24.01.1; or (2) provide CITY with an alternate form of financial security that is equal to or greater than an amount of Three Million Dollars (\$3,000,000), such as a corporate guaranty, which requires CITY's review and approval. CONTRACTOR may propose an alternate form of financial security at any time. CITY shall review and consider CONTRACTOR's proposal and CITY's approval shall not be unreasonably withheld. If CITY accepts CONTRACTOR's proposal for an alternate form of financial security and CONTRACTOR provides the agreed-upon substituted security, then CONTRACTOR's obligation to furnish a performance bond shall be governed by Section 24.01 and not by Section 24.02, 24.02.1, or 24.02.2.

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

Article 25. INSURANCE

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

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

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

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

25.02.3 Hazardous Waste and Environmental Impairment Liability Insurance.

25.02.4 Crime Insurance for Employee Theft.

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

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

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

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

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

25.03.4 Hazardous Waste and Environmental Impairment Liability. Three Million Dollars (\$3,000,000) each occurrence covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Hazardous Waste and Environmental Impairment Liability will include coverage for all operations of CONTRACTOR, and include all owned landfills or waste disposal sites and transfer stations. If coverage is on a Claims Made basis, the retroactive date must be shown, and must be before the date of the Contract or the beginning of Contract work. Insurance must be maintained and evidence of insurance must be

2721 provided for at least five (5) years after completion of the Contract of work. If coverage is
2722 cancelled or non-renewed, and not replaced with another claims-made policy form with a
2723 retroactive date prior to the Contract effective date, CONTRACTOR must purchase "extended
2724 reporting" coverage for a minimum of five (5) years after completion of work. CITY, its
2725 Councilmembers, directors, officers, agents, employees and volunteers are to be covered as
2726 additional insureds with respect to liability arising from the release of waste materials and/or
2727 irritants, contaminants or pollutants. Such coverage shall, if commercially available without
2728 involvement of CITY, automatically broaden in its form of coverage to include legislated
2729 changes in the definition of waste material and/or irritants, contaminants or pollutants.

2730 25.03.5 Crime Insurance for Employee Theft. Five Hundred Thousand Dollars
2731 (\$500,000) per loss coverage.

2732 25.04 Deductibles and Self-Insured Retention. Any deductibles or self-insured
2733 retention shall be for the account of CONTRACTOR and shall be paid entirely by
2734 CONTRACTOR without any contribution from CITY.

2735 25.05 Endorsements. The liability policies are to contain, or be endorsed to contain,
2736 the following provisions:

2737 25.05.1 CITY, its Councilmembers, directors, officers, employees, agents and
2738 volunteers are to be covered as additional insureds with respect to liability arising out of
2739 automobiles owned, leased, hired or borrowed by or on behalf of CONTRACTOR; products and
2740 completed operations of CONTRACTOR; liability arising out of work or operations performed by
2741 or on behalf of CONTRACTOR, including material parts or equipment furnished in connection
2742 with such work or operations; and with respect to Hazardous Waste, Pollution and/or
2743 Environmental Impairment Liability.

2744 25.05.2 CONTRACTOR's insurance coverage shall be primary insurance as
2745 respects CITY, its officers, officials, employees, agents and volunteers, but only as respects the
2746 services provided by CONTRACTOR under this Contract. Any insurance or self-insurance
2747 maintained by CITY, its officers, officials, employees, agents or volunteers shall be excess of
2748 CONTRACTOR's insurance and shall not contribute with it.

2749 25.05.3 CONTRACTOR's insurance shall apply separately to each insured
2750 against whom claim is made or suit is brought, except with respect to the limits of the insurer's
2751 liability.

2752 25.05.4 The limits of insurance are the minimum required limits and if
2753 CONTRACTOR maintains higher limits, CITY shall be entitled to coverage for the higher limits
2754 maintained by CONTRACTOR.

2755 25.05.5 The Automobile Liability policy shall be endorsed to delete the Pollution
2756 and/or the Asbestos exclusion, or documentation that CONTRACTOR carries environmental
2757 pollution liability coverage for solid waste transported by CONTRACTOR. The Automobile
2758 Liability policy shall also be endorsed to add the Motor Carrier act endorsement (MCS-90) TL
2759 1005, TL 1007 and /or other endorsements required by federal or state authorities.

2760 25.06 Waiver of Subrogation. CONTRACTOR hereby agrees to waive subrogation
2761 which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment
2762 of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect

2763 this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver
2764 of subrogation in favor of CITY for all work performed by CONTRACTOR, its employees, agents
2765 and subcontractors.

2766 25.07 Cancellation. Each insurance policy required by this clause shall be occurrence-
2767 based or an alternate form as approved by CITY and endorsed to state that coverage shall not
2768 cancelled by either party, except after sixty (60) days' prior written notice has been given to
2769 CITY. CONTRACTOR shall provide at least sixty (60) days' written notice to CITY, by certified
2770 mail, return receipt requested, of any insurance policy required hereunder being suspended,
2771 voided, or reduced in coverage or limits. Any failure to comply with reporting provisions of the
2772 policies shall not affect CONTRACTOR's obligations to CITY, its officers, officials, employees,
2773 agents or volunteers.

2774 25.08 Any failure to comply with reporting provisions of the policies shall not affect
2775 CONTRACTOR's obligations to CITY, its officers, officials, employees, agents or volunteers.

2776 25.09 Claims Made Coverage. If General Liability or Hazardous Waste and
2777 Environmental Impairment Liability coverage is written on a claims-made from:

2778 25.09.1 The "Retro Date" must be shown, and must be before the date of the
2779 Contract or the beginning of Contract work.

2780 25.09.2 Insurance must be maintained and evidence of insurance must be
2781 provided for at least five (5) years after completion of the Contract of work.

2782 25.09.3 If coverage is canceled or non-renewed, and not replaced with another
2783 claims-made policy form with a "Retro Date" prior to the Contract effective date, CONTRACTOR
2784 must purchase "extended reporting" coverage for a minimum of five (5) years after completion of
2785 Contract work.

2786 25.09.4 A copy of the claims reporting requirements must be submitted to CITY
2787 for review.

2788 25.10 Acceptability of Insurers. Insurance is to be placed with insurers admitted to
2789 transact business in California with a current A.M. Best's rating of no less than A:VII. If pollution
2790 and/or Environmental Impairment and/or errors and omission coverage are not available from
2791 an admitted insurer, the coverage may be written with CITY's permission, by a non-admitted
2792 insurance company. A non-admitted company should have an A.M. Best's rating of A:X or
2793 higher.

2794 25.11 Verification of Coverage. CONTRACTOR shall furnish CITY with original
2795 certificates and amendatory endorsements effecting coverage required by this clause. All
2796 certificates and endorsements are to be received and approved by CITY before work
2797 commences. However, failure to obtain the required documents prior to the work beginning
2798 shall not waive CONTRACTOR's obligation to provide them. CITY reserves the right to require
2799 complete copies of all required insurance policies, including endorsements required by these
2800 specifications, at any time. Such documents shall remain confidential.

2801 25.12 Subcontractors. CONTRACTOR shall include all subcontractors as insureds
2802 under its policies or require and verify that all subcontractors maintain insurance meeting all the
2803 requirements of this contract. Proof of insurance shall be mailed to the following address or any

2804 subsequent address as may be directed in writing by CITY.

2805 Contract Manager
2806 Environmental Services Division, PWA
2807 CITY OF OAKLAND
2808 250 Frank Ogawa Plaza, Suite 5301
2809 Oakland, CA 94612

2810 25.13 Modification of Insurance Requirements. The insurance requirements provided
2811 in this Contract may be modified or waived by CITY, in writing, upon the request of
2812 CONTRACTOR if CITY determines such modification or waiver is in the best interest of CITY
2813 considering all relevant factors, including exposure to CITY.

2814 **Article 26. INDEMNIFICATION**

2815 26.01 Indemnification of CITY. CONTRACTOR shall defend, with counsel acceptable
2816 to CITY, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers,
2817 officials, employees, volunteers agents and assignees (indemnitees)), from and against any and
2818 all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, in law or
2819 in equity, of every kind and description, (including, but not limited to, injury to and death of any
2820 person and damage to property, or for contribution or indemnity claimed by third parties) arising
2821 or resulting from or in any way connected with: (i) the operation of CONTRACTOR, its agents,
2822 employees, contractors, and/or subcontractors, in exercising the privileges granted to it by this
2823 Contract; (ii) the failure of CONTRACTOR, its agents, employees, contractors, and/or
2824 subcontractors to comply in all respects with the provisions and requirements of this Contract,
2825 applicable laws, ordinances and regulations, and/or applicable permits and licenses; and (iii) the
2826 acts of CONTRACTOR, its agents, employees, contractors, and/or subcontractors in performing
2827 services under this Contract for which strict liability is imposed by law. The foregoing indemnity
2828 shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, action, suit injury,
2829 death or damage is also caused in part by any of the indemnitees' negligence. Notwithstanding
2830 anything to the contrary in this Contract, the indemnity obligations of CONTRACTOR shall not in
2831 any way extend to indemnifying and/or defending CITY or any other indemnitees for any claim,
2832 liability, damages, liens, penalties, or any costs or obligations whatsoever arising from, or
2833 related to, CITY's setting of rates or fees under this Contract or in connection with Proposition
2834 218, Article XIIC and Article XIID of the California Constitution.

2835 26.02 CONTRACTOR Indemnity Regarding CITY Approvals. To the maximum extent
2836 permitted by law, CONTRACTOR shall defend (with counsel reasonably acceptable to CITY),
2837 indemnify, and hold harmless CITY, the Oakland City Council, and their respective agents,
2838 officers, employees and volunteers (hereafter collectively called "CITY Parties") from any
2839 liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or
2840 proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City
2841 Attorney or staff time, expenses or costs) (collectively called "Action") against CITY to set aside,
2842 void or annul this Agreement or any City Approvals approved concurrently herewith or any
2843 Subsequent Approval or the implementation of the same based upon an allegation that CITY
2844 shall have failed to comply with the California Environmental Quality Act. CITY may elect, in its
2845 sole discretion, to participate in the defense of said Action, and CONTRACTOR shall reimburse
2846 CITY for its reasonable legal costs and attorneys' fees.

2847 26.02.1 Within ten (10) calendar days of the filing of any Action as specified in
2848 the preceding paragraph, CONTRACTOR shall execute a Joint Defense Letter Agreement with

2849 CITY, acceptable to the Office of the CITY Attorney, which memorializes the above obligations.
2850 These obligations and the Joint Defense Letter of Agreement shall survive termination,
2851 extinguishment or invalidation of CITY Approval or any Subsequent Approval requested by
2852 CONTRACTOR. Failure to timely execute the Letter Agreement does not relieve
2853 CONTRACTOR of any of the obligations contained in this Section or other requirements or
2854 Conditions of Approval that may be imposed by CITY.

2855 26.03 CONTRACTOR Cooperation. In the event there is a legal challenge by a third
2856 party to CITY's award of this Contract, CONTRACTOR agrees to cooperate with CITY in the
2857 defense of such a challenge to the extent CITY's and CONTRACTOR's respective legal
2858 positions are not in conflict. As a condition of the acceptance of the award of this Contract,
2859 CONTRACTOR agrees to waive any claims it may have against CITY pertaining to any issues
2860 arising from and/or related to the Zero Waste Services procurement process regarding the
2861 Contract award.

2862 26.04 CONTRACTOR's Obligation Not Excused. CONTRACTOR's obligation to
2863 defend, hold harmless, and indemnify shall not be excused because of CONTRACTOR's
2864 inability to evaluate liability or because CONTRACTOR evaluates liability and determines that
2865 CONTRACTOR is not liable to the claimant. CONTRACTOR must respond within thirty (30)
2866 days to the tender of a claim for defense and indemnity by CITY, unless this time has been
2867 extended by CITY. If CONTRACTOR fails to accept or reject a tender of defense and indemnity
2868 within thirty (30) days, in addition to any other remedy authorized by law, so much of any money
2869 due CONTRACTOR by virtue of this Contract as shall reasonably be considered necessary by
2870 CITY, may be retained by CITY as an offset against its costs and damages until final disposition
2871 has been made or the claim or suit for damages, or until CONTRACTOR accepts or rejects the
2872 tender of defense, whichever occurs first.

2873 26.04.1 With respect to third party claims against CONTRACTOR,
2874 CONTRACTOR waives any and all rights of any type to express or implied indemnity against
2875 the Indemnities.

2876 26.05 Hazardous Substances Indemnification. CONTRACTOR shall indemnify, defend
2877 with counsel acceptable to CITY, protect and hold harmless CITY, its officers, officials,
2878 employees, agents, assigns and any successor or successors to CITY's interest from and
2879 against all claims, damages (including but not limited to special, consequential, natural
2880 resources and punitive damages) injuries, hazardous materials response mediation and
2881 removal costs, losses, demands, liens, liabilities, causes of action, suits, legal or administrative
2882 proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and
2883 expenses (including but not limited to attorney's and expert witness fees and costs incurred in
2884 connection with defending against any of the foregoing or enforcing this indemnity) of any kind
2885 whatsoever paid, incurred or suffered by, or asserted against CITY or its officers, officials,
2886 employees, agents, assigns, or contractors arising from or attributable to acts or omissions of
2887 CONTRACTOR, or its agents, including but not limited to any repair, cleanup or detoxification,
2888 or preparation and implementation of any removal, remedial, response, closure and post-
2889 closure or other plan (regardless of whether undertaken due to governmental action) concerning
2890 any hazardous substance or hazardous wastes at any place where CONTRACTOR transports,
2891 stores, or Disposes of Mixed Materials pursuant to this Contract. The foregoing indemnity is
2892 intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. section
2893 9607(c) and California Health and Safety Code section 25364, to defend insure, protect, hold
2894 harmless and indemnify CITY from liability.

2895 26.05.1 This provision is in addition to all other provisions in this Contract and is
2896 intended to survive the end of the term of this Contract. CONTRACTOR's Performance Security
2897 shall extend to the indemnification obligation hereunder.

2898 26.06 Maximum Recycling Service Rates.

2899 26.06.1 Consistent with the limitations provided by Public Resources Code
2900 section 40059.2 and the obligations of CONTRACTOR set forth above, the following provisions
2901 are intended to address issues of defense and acceptance of the tender of defense and
2902 indemnity by CITY in the event that CITY and/or CONTRACTOR are named in any lawsuit (a)
2903 challenging CITY's setting of Maximum Recycling Service Rates for Recycling Services under
2904 this Contract, (b) impacting the ability of CONTRACTOR to collect or retain up to the Maximum
2905 Recycling Service Rates for Recycling Services, and/or (c) in connection with the application of
2906 the California Constitution to the imposition, payment, or collection of Maximum Recycling
2907 Service Rates and charges for services provided by CONTRACTOR under this Contract
2908 ("Maximum Recycling Service Rates Lawsuit").

2909 26.06.2 In the event of a Maximum Recycling Service Rates Lawsuit, CITY shall
2910 actively defend such lawsuit, and CONTRACTOR agrees to cooperate with CITY to the extent
2911 practical and/or necessary. CONTRACTOR and CITY further agree to toll, during the pendency
2912 of any Maximum Recycling Service Rates Lawsuit, all cross claims against each other which are
2913 inconsistent with the Contract, including, but not limited to the tolling of any claim filed under the
2914 California Government Code. CONTRACTOR shall have no obligation to defend any lawsuit
2915 based on the Maximum Recycling Service Rates or that otherwise addresses any portion of the
2916 rates proposed by CONTRACTOR or the award of the Contract by CITY. In the event said
2917 lawsuit results in the reduction or elimination of any portion of the proposed rates by
2918 CONTRACTOR, the remedies set forth in the provisions below shall apply.

2919 26.06.3 Nothing in this Section is intended to imply that any action of CITY or
2920 CONTRACTOR with regard to adoption, imposition or collection of Maximum Recycling Service
2921 Rates is violative of any laws, regulations or Constitutional provisions. These provisions are
2922 merely intended as a statement of an agreed upon process for defense and allocation of risks
2923 between CITY and CONTRACTOR in the event of a Maximum Recycling Service Rates
2924 Lawsuit, regardless of the merit or lack of merit of any of the claims set forth therein.

2925 26.07 Environmental Indemnification. CONTRACTOR shall indemnify, defend with
2926 counsel acceptable to CITY, and hold harmless, at CONTRACTOR's sole cost and expense,
2927 CITY, its CITY Council, officers, officials, employees, volunteers and agents, and the Collection
2928 Contractor (collectively, "Indemnitees") from and against any and all claims, damages, injuries,
2929 costs (including and without limit any and all response, remediation and removal costs), losses,
2930 demands, debts, liens, liabilities, causes of action suits, legal or administrative proceedings,
2931 interest, fines, charges, penalties, and expenses (including reasonable attorneys' and expert
2932 witness fees, expenditures for investigation and remediation) and costs of any kind whatsoever,
2933 paid, imposed upon, incurred, or suffered by or asserted against any of the Indemnitees by any
2934 lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry,
2935 proceeding, or order relating to, or arising from, directly or indirectly, CONTRACTOR's alleged
2936 failure or actual failure to comply with the environmental laws and regulations. This
2937 indemnification will not extend to environmental claims to the extent they are caused by the sole
2938 or joint or contributory negligence or intentional misconduct or omission of CITY, its officers,
2939 employees or agents, or the Collection Contractor(s).

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

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

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

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

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

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

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

Article 27. DEFENSE OF CONTRACTOR'S RIGHTS

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

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

Article 28. OBLIGATION TO PROVIDE SERVICE

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

28.02 Specifically, with reference to any Maximum Recycling Service Rates Lawsuit as defined in Section 26.06, such legal actions shall not be considered a Change in Law or Force Majeure event excusing CONTRACTOR's performance, except as otherwise excused as set forth below.

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

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

28.02.1.2 Except in the event of a Force Majeure, CONTRACTOR shall provide a level of Recycling Services necessary to ensure compliance with AB 939 as agreed to by and between CITY and CONTRACTOR. In the event CITY and CONTRACTOR are unable to agree within a period not to exceed two (2) weeks from that date on which a court of competent jurisdiction or other regulatory agency with authority reduces Maximum Recycling

Service Rates, CONTRACTOR shall have the authority to make adjustments in services to mitigate against any revenue impacts resulting from a Maximum Recycling Service Rates lawsuit. CITY shall continue to provide nuisance abatement and may also take other urgency actions as necessary to facilitate CONTRACTOR's continuation of Recycling Services and ability to obtain compensation from Customers therefor. The intent of this provision is to ensure that CONTRACTOR continues to receive compensation, including its rate of return, consistent with that specified in the Contract for the level of services provided. If certain services are reduced and/or eliminated as a result of a Maximum Recycling Service Rates Lawsuit, CITY agrees that during the term of the elimination of said services it shall not contract with any other company or party to provide these services and will contract only with CONTRACTOR to restore said services either during or after the conclusion of the Maximum Recycling Service Rates Lawsuit. If CITY finds it necessary to procure eliminated services, it shall do so from CONTRACTOR at commercially reasonable rates.

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

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

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

3076 reached between CONTRACTOR and CITY.

3077 28.02.3 Nothing herein is intended to imply that California Constitution Articles
3078 XIII(C) or (D) apply to the Maximum Recycling Service Rates provided for under this Contract.
3079 The foregoing paragraphs are merely intended as a contractual allocation of risks in the event of
3080 an unanticipated event affecting the ability to impose or collect Maximum Recycling Service
3081 Rates.

3082 28.03 Service Resumption Protocol (Labor Disruptions). (Different requirements for
3083 different services) In the event of a Labor Disruption whereby employees of CONTRACTOR do
3084 not perform work for CONTRACTOR at normally anticipated levels or efficiency which affects
3085 the ability of the CONTRACTOR to provide Recycling Services in accordance with this Contract,
3086 CONTRACTOR shall comply with the following provisions, and only for the periods set forth
3087 below:

3088 28.03.1 From the outset of any Labor Disruption, CONTRACTOR shall take all
3089 commercially reasonable actions to minimize disruptions to Recycling Services.

3090 28.03.2 In conjunction with the execution of this Contract, CONTRACTOR shall
3091 develop and provide a General Contingency Plan to address CONTRACTOR's program to best
3092 provide continued service during a Labor Disruption that may significantly interfere with
3093 CONTRACTOR's ability to provide Recycling Services. The General Contingency Plan shall be
3094 provided to CITY sufficiently in advance for review and acceptance prior to July 1, 2015. From
3095 time to time during the term of this Agreement, CONTRACTOR and CITY shall meet to discuss
3096 whether modifications and updates to the General Contingency Plan are needed.

3097 28.03.3 CONTRACTOR will bring in alternate work forces within ten (10) Work
3098 Days of the commencement of a Labor Disruption for the purpose of providing Recycling
3099 Services in accordance with this Contract and to implement the General Contingency Plan. If
3100 CONTRACTOR's alternate work force is not providing Recycling Services in accordance with
3101 the schedules, volumes and routing set forth in this Contract, or the schedules, volumes and
3102 routing in the General Contingency Plan within ten (10) Work Days of a Labor Disruption, then
3103 CONTRACTOR shall meet with CITY to develop any agreed upon modifications to the General
3104 Contingency Plan that may be required to successfully carry out the plan's objectives. In the
3105 event CONTRACTOR's alternate work force is unable to provide Recycling Services in
3106 accordance with the modified General Contingency Plan, within twenty (20) Work Days of a
3107 Labor Disruption, CITY shall have the right, but not the obligation, to bring in outside forces to
3108 provide Recycling Services which are not being provided by CONTRACTOR and charge
3109 CONTRACTOR for the reasonable direct and indirect expenses (including administrative and
3110 overhead) incurred by CITY in this regard.

3111 28.03.4 If after twenty (20) Work Days from the commencement of a Labor
3112 Disruption there is a continuing CONTRACTOR failure to materially perform the services set
3113 forth in Section 28.03.3 above, such failure to perform shall be considered a default under
3114 Section 29.01.9 and CITY may cancel this Contract. In such an event, CITY shall not waive its
3115 right to seek damages from CONTRACTOR for any increase in cost of Collection incurred by
3116 CITY as a result of the breach of this Agreement by CONTRACTOR and the consequential
3117 election by CITY to cancel the Contract and move forward with alternate Collection alternatives.

3118 28.03.5 If CONTRACTOR fails to meet the obligations as set forth in Section
3119 28.03.3 above within ten (10) Work Days of the Labor Disruption, then CITY may begin to

3120 impose liquidated damages for such failure no earlier than twelve (12) Work Days after
3121 CONTRACTOR provides notice of the Labor Disruption to CITY, subject to the limitations in
3122 28.03.6.

3123 28.03.6 The following limitations shall also apply with regard to application of
3124 liquidated damages:

3125 28.03.6.1 A claim for liquidated damages may not be sought unless
3126 the Labor Disruption is caused by a dispute between CONTRACTOR, and CONTRACTOR's
3127 employees, including the employees employed by CONTRACTOR at facilities covered by this
3128 Contract.

3129 28.03.6.2 In the event the application of the liquidated damage is
3130 conditioned upon CONTRACTOR's failure to complete a certain percentage of a task, that
3131 percentage shall be multiplied by eighty (80) percent.

3132 28.03.6.3 In the event the application of the liquidated damage is
3133 conditioned upon the number of times CONTRACTOR fails to perform or incorrectly performs a
3134 task, that number shall be divided by eighty (80) percent and rounded up to the nearest whole
3135 number.

3136 28.03.6.4 In the event the application of the liquidated damage is
3137 conditioned upon a single occurrence, the amount of the liquidated damage shall be multiplied
3138 by eighty (80) percent and rounded up to the nearest whole number.

3139 **Article 29. DEFAULT OF CONTRACT**

3140 29.01 CITY Termination.

3141 29.01.1 CONTRACTOR Events of Default. The following shall be
3142 CONTRACTOR Events of Default, following which CITY may cancel this Contract, except as
3143 otherwise provided below in this Article, by giving CONTRACTOR thirty (30) calendar days
3144 advance written notice, to be served as provided in Article 45:

3145 29.01.1.1 CONTRACTOR shall take the benefit of any present or
3146 future insolvency statute, or shall make a general assignment for the benefit of creditors, or file
3147 a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its
3148 reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or
3149 under any other law or statute of the United States or any state thereof, or consent to the
3150 appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

3151 29.01.2 By order or decree of a Court, CONTRACTOR shall be adjudged
3152 bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of
3153 the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its
3154 indebtedness under the Federal bankruptcy laws or under any law or statute of the United
3155 States or of any state thereof, provided that if any such judgment or order is stayed or vacated
3156 within sixty (60) calendar days after the entry thereof, any notice of default shall be and become
3157 null, void and of no effect; unless such stayed judgment or order is reinstated in which case,
3158 said default shall be deemed immediate; or

3159 29.01.3 By, or pursuant to, or under the authority of any legislative act,

3160 resolution or rule or any order or decree of any Court or governmental board, agency or officer
3161 having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or
3162 substantially all of the property of CONTRACTOR, and such possession or control shall
3163 continue in effect for a period of sixty (60) calendar days; or

3164 29.01.4 CONTRACTOR has failed or refused to pay in a timely manner the
3165 liquidated damages or any other monies due CITY and said default is not cured within thirty (30)
3166 calendar days of receipt of written notice by CITY to do so; or

3167 29.01.5 CONTRACTOR has allowed any final judgment, in favor of CITY, for the
3168 payment of money to stand against it unsatisfied and said default is not cured within thirty (30)
3169 calendar days of receipt of written notice by CITY to do so; or

3170 29.01.6 In the event that the monies due CITY under Section 4 above or an
3171 unsatisfied final judgment under Section 29.01.5 above is the subject of a judicial proceeding,
3172 CITY may, at its option call the Performance Bond, or hold CONTRACTOR in default of this
3173 Contract. All bonds shall be in the form acceptable to the CITY Attorney; or

3174 29.01.7 CONTRACTOR has failed to maintain the Performance Bond required
3175 under Section 24.01 and/or the additional Performance Security required under Section 24.02 at
3176 all times during this Contract; or

3177 29.01.8 In the event that CONTRACTOR substantially fails to implement the
3178 Diversion Recovery Plan in Exhibit 7, CITY and CONTRACTOR shall meet and confer to
3179 implement a corrective action plan for CONTRACTOR to achieve compliance with the Diversion
3180 Recovery Plan and the material Diversion standard in Section 8.01. If CONTRACTOR fails to
3181 meet the agreed-upon corrective action plan, then CITY may, at its option, call the Performance
3182 Security, assess liquidated damages for each Work Day that the Diversion plan goals are not
3183 met, or take such other actions under this Contract, including holding CONTRACTOR in default
3184 of this Contract; or

3185 29.01.9 CONTRACTOR has failed to materially perform the services set forth in
3186 Section 28.03.3 above; or

3187 29.01.10 Except in the event of a Labor Disruption, CONTRACTOR has failed or
3188 refused to perform or observe the terms, conditions or covenants in this Contract not otherwise
3189 addressed in this Section 29.01, the service levels prescribed herein, or any of the rules and
3190 regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply
3191 with the instructions of the Contract Manager relative thereto; provided that said default is not
3192 cured within thirty (30) calendar days of receipt of written notice from CITY to do so, or if by
3193 reason of the nature of such default, the same cannot be remedied within thirty (30) calendar
3194 days following receipt by CONTRACTOR of written demand from CITY to do so,
3195 CONTRACTOR fails to commence the remedy of such default within said thirty (30) calendar
3196 days following such written notice or having so commenced shall fail thereafter to continue with
3197 diligence the curing thereof. In any dispute concerning failure to remedy or diligence in pursuing
3198 a cure, CONTRACTOR shall have the burden of proof to demonstrate (a) that the default cannot
3199 be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said
3200 default, and such default will be cured within a reasonable period of time. For purposes of
3201 clarity, this Section 29.01.9 shall not apply where the failure to perform is caused by a Force
3202 Majeure event or if this Section conflicts with Article 28.

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

29.01.12 Repetitive Compliance Issues. Notwithstanding CONTRACTOR's timely cure of previous breaches, in the event that CONTRACTOR's record of performance shows that it has regularly and frequently failed to meet a particular material Contract obligation, despite written notices from CITY and beyond what is common by industry standards, CITY and CONTRACTOR agree to meet and confer, in good faith, regarding operational changes necessary to resolve the issue. If the parties cannot agree on necessary operational changes, then the matter will be mediated pursuant to Section 54.01.1. Once the operational changes have been agreed upon, CONTRACTOR shall be responsible for their implementation.

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

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

29.04 CONTRACTOR Termination.

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

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

29.04.1.2 CITY has failed or refused to perform or observe the terms, conditions or covenants in this Contract not otherwise addressed in this Section 29.05; provided that said breach is not cured within thirty (30) calendar days of receipt of written notice from CONTRACTOR to do so, or if by reason of the nature of such breach, the same cannot be remedied within thirty (30) calendar days following receipt by CITY of written demand from CONTRACTOR to do so, CITY fails to commence the remedy of such breach within said thirty (30) calendar days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof. In any dispute concerning failure to remedy or diligence in pursuing a cure, CITY shall have the burden of proof to demonstrate (a) that the

breach cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said breach, and such breach will be cured within a reasonable period of time. In the event that CITY fails to cure any breach pursuant to this provision, CONTRACTOR shall have the right to terminate this Contract. CONTRACTOR shall provide written notice of termination to CITY upon CITY's failure to cure and this Contract shall terminate one (1) year after service of such notice.

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

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

Article 30. CONTRACT MODIFICATIONS AND CHANGES IN SCOPE

30.01 Contract Modifications and Changes in Law. CITY and CONTRACTOR understand and agree that the California Legislature has the authority to make comprehensive changes in Recyclable Materials management legislation and that these and other changes in law in the future that mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Contract. CONTRACTOR agrees that the terms and provisions of CITY's Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Contract and the Customers of CONTRACTOR located within the Service Area, provided, however, that CITY will not amend CITY's Municipal Code in a way that is inconsistent with the Contract unless compelled to do so by federal or State law. In the event any Change in Law materially alters the obligations of CONTRACTOR, including but not limited to a substantial change in the California Beverage Container Recycling and Litter Reduction Act, California Public Resources Code section 14500 et seq., modifications to CITY's Municipal Code, or directed changes by CITY, then the affected compensation as established under this Contract shall be adjusted. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. CITY and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Contract, which may be required in order to implement changes in the interest of the public welfare or due to Change in Law. When such modifications are made to this Contract, CITY and CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of CONTRACTOR due to any modification in the Contract under this Section 30.01. CITY and CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

30.01.1 Compensation Adjustments. In the event of a Change in Law or regulations of any governmental agency that will require additional or different services to be provided by CONTRACTOR or that require CONTRACTOR to pay additional government fees which are not otherwise covered by this Contract, CONTRACTOR shall provide CITY with a written rate increase request for additional compensation to CONTRACTOR based on such additional or different services. The rate increase request shall include but not be limited to the information set forth in Sections 30.02.1 through 30.02.9 below. If the proposed rate increase exceeds five (5) percent and CITY does not agree with such rate increase, CITY, in addition to negotiating with CONTRACTOR, may submit the matter to non-binding mediation as set forth in Article 54. However, no governmental fees or changes to which CONTRACTOR agrees

contractually or negotiates shall be passed through to Customers unless agreed to in writing by CITY.

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

30.03 The commodity market for recyclables frequently experiences cyclical changes and significant fluctuations in market price due to supply and demand, periodic strikes, transportation issues, and other reasonably foreseeable events. This Section 30.03 is not intended to address market price fluctuations or other changes due to this type of events. If such events occur during the term of this Contract, CONTRACTOR shall be solely responsible for mitigating any potential economic impacts and shall not look to CITY for compensation adjustments. However, if a recyclable commodity market becomes unavailable or economically non-viable due to an extraordinary circumstance not reasonably foreseeable, for example the Chinese Government prohibit the import of recyclables from the United States, and such event affects the ability of CONTRACTOR to comply with the provisions of Article 8, or significantly increases CONTRACTOR's costs, CITY or CONTRACTOR may request that the parties enter into good faith negotiations regarding modifications to this Contract in order to provide CONTRACTOR relief from such an extraordinary event causing a material change. Under such extraordinary circumstances, CITY and CONTRACTOR agree to negotiate in good faith a reasonable modification to the provisions of Article 7 and/or 8 and/or other adjustments to CONTRACTOR's obligations under this Contract. CITY and CONTRACTOR shall not unreasonably withhold agreement to such modification.

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

30.04.1 All sums that appear in this Section 30.02 are expressed in July 2015 dollars and shall be adjusted beginning July 1, 2016, and annually thereafter during the Contract's term, by the same percentage as the percentage used to adjust the Maximum Recycling Services Rates for that fiscal year as set forth in Section 7.07, except that in no year shall the adjustment be less than zero (0) percent.

3339 30.04.2 Implementing Changes in Service. CONTRACTOR shall submit a
3340 proposal to perform such services pursuant to Section 30.04.3 below. CITY shall consider
3341 CONTRACTOR's proposal and shall determine the amount by which the rates should be
3342 adjusted. CONTRACTOR shall implement the changes in accordance with the schedule
3343 directed by CITY, regardless of whether the parties agree on the rate adjustment amount. If the
3344 parties do not agree on the rate adjustment amount, CONTRACTOR may challenge the
3345 adequacy of the rates pursuant to Section 54.01.

3346 30.04.3 Service Proposal. Within sixty (60) calendar days of receipt of a
3347 request for a service change from CITY under Section 30.02.4, CONTRACTOR shall submit a
3348 proposal to provide such service. At a minimum, the proposal shall contain a complete
3349 description of the following:

3350 30.04.3.1 Collection methodology to be employed (equipment,
3351 manpower, etc.);

3352 30.04.3.2 Equipment to be utilized, including equipment to be
3353 purchased (vehicle number, types, capacity, age, etc.);

3354 30.04.3.3 Labor requirements (number of employees by
3355 classification);

3356 30.04.3.4 Type of Carts or Bins to be utilized;

3357 30.04.3.5 Provision for program publicity, outreach, and marketing;

3358 30.04.3.6 Five (5) year projection of the financial results of the
3359 program's operations in an operating statement format including documentation of the key
3360 assumptions underlying the projections and the support for those assumptions, giving full effect
3361 to the savings or costs to existing services;

3362 30.04.3.7 Advantages and disadvantages of the change;

3363 30.04.3.8 A recommendation as to whether the change should be
3364 implemented; and

3365 30.04.3.9 An implementation schedule.

3366 30.05 Services Outside of Scope. CITY may request CONTRACTOR to submit a
3367 proposal to provide new services outside of the scope of this Contract. If CONTRACTOR either
3368 refuses to provide the new services or the parties are unable to agree on the terms and
3369 conditions of such services within one hundred twenty (120) days from the date when CITY first
3370 requests a proposal from CONTRACTOR, CONTRACTOR acknowledges and agrees that CITY
3371 may permit other persons or companies besides CONTRACTOR to perform those services
3372 outside of the scope of this Contract.

3373 30.06 New Technology. In the event that technological advancements in the
3374 Collection, transportation, Processing, or handling of Recyclable Materials are made, and which
3375 if implemented alone or in conjunction with another technology would cumulatively reduce the
3376 initial rates established by this Contract by approximately ten (10) percent or more,
3377 CONTRACTOR shall so notify CITY, and CITY may require CONTRACTOR to utilize or

implement said new technology and new rates shall be mutually agreed upon and established. CONTRACTOR shall retain the ability to propose changes to CITY in its Residential Recycling Services for the purpose of maximizing efficiency. Said changes will not be implemented without the prior written approval of CITY.

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

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

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

Article 31. [RESERVED]

Article 32. FINANCIAL INTEREST

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

Article 33. CONTRACTOR'S PERSONNEL

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

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

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

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

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

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

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

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

Article 34. UNACCEPTABLE WASTE

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

Article 35. INDEPENDENT CONTRACTOR

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

3452 or any other compensation or benefits, which accrue, to CITY employees and CONTRACTOR
3453 expressly waives any claim it may have or acquire to such compensation or benefits.

3454 **Article 36. LAWS TO GOVERN**

3455 36.01 The laws of the state of California shall govern the rights, obligations, duties and
3456 liabilities of CITY and CONTRACTOR under this Contract and shall govern the interpretation of
3457 this Contract.

3458 **Article 37. CONSENT TO JURISDICTION**

3459 37.01 The parties agree that any litigation between CITY and CONTRACTOR
3460 concerning or arising out of this Contract shall be filed and maintained exclusively in the
3461 municipal or superior Courts of Alameda County, state of California, or in the United States
3462 Court for the Northern District of California to the fullest extent permissible by law. Each party
3463 consents to service of process in any manner authorized by California law.

3464 **Article 38. ASSIGNMENT**

3465 38.01 CITY's Right to Terminate in Event of Assignment. CONTRACTOR
3466 acknowledges that this Contract involves rendering a vital service to CITY's residents and
3467 businesses, and that CITY has selected CONTRACTOR to perform the services specified
3468 herein based on (1) CONTRACTOR's experience, skill and reputation for conducting its
3469 operations in a safe, effective and responsible fashion, at all times in keeping with applicable
3470 environmental laws, regulations and best management practices for the provision of Recycling
3471 Services and (2) CONTRACTOR's financial resources to maintain the required equipment and
3472 to support its indemnity obligations to CITY under this Contract. CITY has relied on each of
3473 these factors, among others, in choosing CONTRACTOR to perform the services to be
3474 rendered by CONTRACTOR under this Contract. Any assignment by CONTRACTOR, either
3475 directly or indirectly, in whole or in part, of its rights or any interest it may have in this Contract
3476 including any transfer of its stock or assets to a third party shall give CITY, in its sole discretion,
3477 the basis for terminating this Contract in whole or in part upon the giving of a thirty (30) day
3478 written notice to CONTRACTOR. In the event such notice of termination is given as authorized
3479 by this Article, CONTRACTOR shall continue, for up to six (6) months following notice of
3480 termination, to provide any or all of the services it is obligated to perform under this Contract if
3481 requested by CITY in writing. CITY's right to terminate the Contract in whole or in part shall
3482 expire unless exercised within sixty (60) days of receiving written notice from CONTRACTOR as
3483 provided herein of an assignment by CONTRACTOR. "Assignment" or "Assign" as used in this
3484 Contract shall include, but not be limited to, (i) a sale, exchange or other transfer of substantially
3485 all of CONTRACTOR's assets dedicated to any or all of the services to be provided under this
3486 Contract to a third party (ii) a sale, exchange or other transfer of outstanding common stock of
3487 CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of
3488 control of CONTRACTOR or any sale, exchange or transfer of the common stock of
3489 CONTRACTOR which results in the effective transfer of control of substantially all of
3490 CONTRACTOR's assets dedicated to any or all of the services to be provided under this
3491 Contract to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-
3492 capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow
3493 arrangement, liquidation or other transaction to which results in a change of ownership or
3494 control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or
3495 bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution

3496 being levied against this Contract, appointment of a receiver taking possession of
3497 CONTRACTOR's property, or transfer occurring in the event of a probate proceeding; and (v)
3498 any combination of the foregoing (whether or not in related or contemporaneous transactions)
3499 which has the effect of any such transfer or change of ownership, or change of control of
3500 CONTRACTOR, or substantially all of the assets used for providing any of the services under
3501 this Contract to a third party.

3502 38.01.1 For purposes of this Contract, an "assignment" shall not include a sale,
3503 transfer or change in control if ownership of California Waste Solutions, Inc. is transferred to
3504 individual owners of California Waste Solutions, Inc. or their relatives within the third degree of
3505 consanguinity, provided such individuals or relatives possess the business, professional, and
3506 technical expertise and the financial capability to manage and provide Recycling Services under
3507 this Contract. Except in the case of a transfer of ownership occasioned by death or disability,
3508 within sixty (60) calendar days prior to any such transfer of ownership, CONTRACTOR shall
3509 provide written notice to CITY and provide CITY with an opportunity to meet and confer with the
3510 new owner to discuss matters related to this Contract. Such sixty (60)-day notice shall not be
3511 required in the event of cases involving death or legal incapacity. In such case, notice shall be
3512 provided as soon as practicable. Notwithstanding a change in ownership, the skill, acumen and
3513 relevant experience of the day-to-day management of CONTRACTOR shall remain satisfactory
3514 to CITY.

3515 38.02 Procedure for CITY Evaluation of Proposed Assignment. If CONTRACTOR
3516 requests CITY's consideration of and consent to an assignment, CONTRACTOR shall meet the
3517 following preliminary requirements:

3518 38.02.1 CONTRACTOR shall pay CITY its reasonable expenses for attorney's
3519 fees, consultant's fees and investigation costs necessary to investigate the suitability of any
3520 proposed assignee, and to review and finalize any documentation required as a condition for
3521 approving any such assignment;

3522 38.02.2 CONTRACTOR shall furnish CITY with audited financial statements of
3523 the proposed assignee's operations for the immediately preceding three (3) operating years;

3524 38.02.3 CONTRACTOR shall furnish CITY with satisfactory proof that: (1) the
3525 proposed assignee has at least ten (10) years of experience providing Residential Recycling
3526 Collection Services on a scale equal to or exceeding the scale of operations conducted by
3527 CONTRACTOR under this Contract; (2) in the last five (5) years, the proposed assignee has not
3528 suffered any significant citations or other censure from any federal, State or local agency having
3529 jurisdiction over its Residential Recycling Collection Services operations due to any significant
3530 failure to comply with State, federal or local environmental laws and the assignee has provided
3531 CITY with a complete list of such citations and censures; (3) the proposed assignee has at all
3532 times conducted its operations in an environmentally safe and conscientious fashion; (4) the
3533 proposed assignee conducts its Residential Recycling Collection Services operation practices in
3534 accordance with sound management practices in full compliance with all federal, State and local
3535 laws regulating the provision of Residential Recycling Collection Services; and, (5) of any other
3536 information required by CITY to ensure the proposed assignee can fulfill the terms of this
3537 Contract in a timely, safe and effective manner.

3538 38.03 the removal of any approved CONTRACTOR Defaults. Under no circumstances
3539 shall CITY be obliged to consider any proposed assignment if CONTRACTOR is in default at
3540 any time during the period of consideration.

3541 38.04 CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion,
3542 may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial
3543 assignment where CONTRACTOR becomes the subsidiary of another company, then CITY
3544 may require a corporate guaranty and the Performance Security provided in Article 24 shall
3545 remain in effect unless CITY in its sole discretion consents to adequate substitutes by the
3546 assignee or to a novation, and absent a novation CONTRACTOR shall not be released from
3547 liability under this Contract.

3548 38.05 Subcontractor. The use of a subcontractor to perform services under this
3549 Contract shall not constitute delegation of CONTRACTOR's duties provided that
3550 CONTRACTOR has received prior written authorization from CITY to subcontract such services
3551 and the Contract Manager has approved a subcontractor who will perform such services.
3552 CONTRACTOR shall be responsible for directing the work of CONTRACTOR's subcontractors
3553 and any compensation due or payable to CONTRACTOR's subcontractor shall be the sole
3554 responsibility of CONTRACTOR. CITY shall have the right to require subcontractor for
3555 reasonable cause.

3556 **Article 39. COMPLIANCE WITH LAWS**

3557 39.01 In the performance of this Contract, CONTRACTOR shall comply with all
3558 applicable laws, regulations, ordinances and codes of the federal, state and local governments,
3559 including without limitation the Municipal Code of the City of Oakland.

3560 39.02 CITY shall provide written notice to CONTRACTOR of any planned amendment
3561 of the CITY Municipal Code that would affect the performance of CONTRACTOR's services or
3562 obligations pursuant to this Contract, in which case Section 30.01 would apply if there is an
3563 effect on CONTRACTOR's costs or ability to provide contract services. Such notice shall be
3564 provided at least thirty (30) calendar days prior to the CITY Council's approval of such an
3565 amendment.

3566 **Article 40. PERMITS AND LICENSES**

3567 40.01 CONTRACTOR shall obtain, at its own expense, all permits and licenses
3568 required by law or ordinance and maintain same in full force and effect throughout the term of
3569 this Contract. CONTRACTOR shall provide proof of such permits, licenses or approvals and
3570 shall demonstrate compliance with the terms and conditions of such permits, licenses and
3571 approvals upon the request of the Contract Manager.

3572 **Article 41. OWNERSHIP OF WRITTEN MATERIALS**

3573 41.01 All reports, documents, brochures, public education materials, and other written,
3574 printed, electronic or photographic materials developed by CITY or CONTRACTOR for CITY as
3575 required by this Contract, whether developed directly or indirectly by CITY or CONTRACTOR
3576 shall be and shall remain the property of CITY without limitation or restrictions on the use of
3577 such materials by CITY. CONTRACTOR shall not use such materials in connection with any
3578 project not connected with this Contract without the prior written consent of the Contract
3579 Manager. This Article 41 does not apply to ideas or concepts described in such materials and
3580 does not apply to the format of such materials.

Article 42. WAIVER

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

Article 43. POINT OF CONTACT

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

Article 44. CONFLICT OF INTEREST

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

Article 45. NOTICES

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

As to CITY:

City Administrator
Office of the City Administrator
CITY OF OAKLAND
One Frank Ogawa Plaza, Third Floor
Oakland, CA 94612
Telephone: 510-238-3301
E-mail: cityadministrator@oaklandnet.com

With copies to:

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

3617 City Attorney
3618 Office of the City Attorney
3619 CITY OF OAKLAND
3620 One Frank Ogawa Plaza, Sixth Floor
3621 Oakland, CA 94612
3622 Telephone: (510) 238-3601
3623 E-mail: info@oaklandcityattorney.org

3624 Director of Finance and Management
3625 Finance and Management Agency
3626 CITY OF OAKLAND
3627 150 Frank Ogawa Plaza, Suite 5215
3628 Oakland, CA 94612
3629 Telephone: (510) 238-2220
3630 E-mail: sjohnson@oaklandnet.com

3631 As to CONTRACTOR:

3632 President
3633 California Waste Solutions, Inc.
3634 1820 10th Street
3635 Oakland, CA 94607
3636 Telephone: (510) 832-8111
3637 E-mail: davidduong@calwaste.com

3638 And

3639 Vice-President
3640 California Waste Solutions, Inc.
3641 1820 10th Street
3642 Oakland, CA 94607
3643 Telephone: (510) 832-8111
3644 E-mail: kristinaduong@calwaste.com

3645 With copies to:

3646 Richard Norris
3647 Archer Norris, PLC
3648 2033 N. Main Street, Suite 800
3649 Walnut Creek, CA 94596
3650 Telephone: (925) 930-6600
3651 E-mail: rnorris@archernorris.com

3652 45.02 Notices shall be effective when received at the address as specified above.
3653 Changes in the respective address to which such notice is to be directed may be made by
3654 written notice with a courtesy copy provided by email. The original of items that are transmitted
3655 by email must also be mailed as required herein.

3656 45.03 Notice by CITY to CONTRACTOR of a Collection or other Customer problem or
3657 complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR's local office
3658 with confirmation sent as required above by the end of the Work Day.

Article 46. TRANSITION TO NEXT CONTRACTOR

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

Article 47. CONTRACTOR'S RECORDS

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

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

47.03 CONTRACTOR shall make available any and all records and documents required to be maintained pursuant to this Contract for inspection or audit, at any time during regular business hours, upon written request by the Contract Manager, the CITY Attorney, CITY Auditor, CITY Manager or a designated representative of any of these officers. CONTRACTOR shall provide copies of such documents to CITY for inspection at CITY offices if it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR's address indicated for receipt of notices in this Contract.

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

Article 48. ENTIRE CONTRACT

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

Article 49. SEVERABILITY

49.01 If any provision of this Contract or the application of it to any Person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the

3698 application of such provisions to persons or situations other than those as to which it shall have
3699 been held invalid or unenforceable, shall not be affected, shall continue in full force and effect,
3700 and shall be enforced to the fullest extent permitted by law.

3701 **Article 50. RIGHT TO REQUIRE PERFORMANCE**

3702 50.01 The failure of either party at any time to require performance by the other of any
3703 provision hereof shall in no way affect the right thereafter to enforce same. Nor shall waiver by
3704 a party of any breach of any provision hereof be taken or held to be a waiver of any succeeding
3705 breach of such provision or as a waiver of any provision itself.

3706 **Article 51. [RESERVED]**

3707

3708 **Article 52. EMPLOYEE RETENTION REQUIREMENTS**

3709 52.01 CONTRACTOR acknowledges that if and when Recycling Services are
3710 transferred to CONTRACTOR, as the successful proposer, that workers who perform services
3711 for CITY's current Contractor (if different from CONTRACTOR) may be displaced from their
3712 employment. CONTRACTOR represents and warrants that it shall offer employment to all
3713 qualified displaced workers who have been employed by the current Contractor for at least one
3714 hundred twenty (120) calendar days prior to July 1, 2015, provided that CONTRACTOR shall
3715 not be required to create additional positions that CONTRACTOR does not need nor to lay-off
3716 or discharge CONTRACTOR's employees in order to employ qualified displaced workers. A
3717 qualified displaced worker includes non-management workers of the current Contractor who
3718 have been employed, in a full-time paid status, for at least one hundred twenty (120) calendar
3719 days prior to July 1, 2015, and who would otherwise be laid-off. CONTRACTOR is prohibited
3720 from discharging any qualified displaced workers for at least ninety (90) calendar days after
3721 July 1, 2015, except for cause. After the initial ninety (90) calendar days, the continued
3722 employment of qualified displaced workers will be under the terms and conditions established
3723 for all of CONTRACTOR's workers in the particular job classification. CONTRACTOR shall
3724 submit displaced worker hiring status reports to the Contract Manager on the last working day of
3725 October 2015 and on the last working day of June 2016.

3726 **Article 53. SUBCONTRACTING**

3727 53.01 CONTRACTOR shall not engage any subcontractors to perform any of the
3728 services required of it under this Contract without the prior written approval of CITY.
3729 CONTRACTOR shall notify CITY no later than ninety (90) days prior to the date on which it
3730 proposes to enter into a subcontract, providing CITY with all information it requests with respect
3731 to the proposed subcontractor. CITY may approve or reject any proposed subcontract and/or
3732 subcontractor in its sole discretion if the proposed subcontract replaces essential services to be
3733 performed by CONTRACTOR pursuant to Article 9, Article 10, Article 11 and Article 12 of this
3734 Contract. CITY's consent to a subcontract and/or subcontractor shall not be unreasonably
3735 withheld as to other aspects of this Contract that are not deemed by CITY to involve essential
3736 services to CITY.

Article 54. DISPUTE RESOLUTION

54.01 Dispute Resolution. Except for a CONTRACTOR Default under Article 29, and except as provided below in Section 54.01.3, should any dispute arise under this Contract, including but not limited to the performance and obligations of the parties, or service or compensation changes, such disputes shall be resolved by the following procedures:

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

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

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

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

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

54.01.2.4 Should mediation be unsuccessful, and if the dispute does not concern valuation items for which binding arbitration is required in Section 54.01.3, then a party may commence an adversarial proceeding before any court of competent jurisdiction in the County of Alameda. Disputes that concern valuation items defined in Section 54.01.3 shall proceed with binding arbitration procedures as set forth below.

54.01.3 Binding Arbitration. This Section only applies to disputes over "Valuation Items," which are defined herein as disputes over a specific amount of money or compensation that is due or owed by either party, and the dispute arises under one of the following provisions of this Contract: Articles 7 and 8 and Sections 17.03, 18.01, 30.01, and 30.02. Disputes relating to Valuation Items shall be referred to binding arbitration upon mutual written approval of the disputing parties. If the disputing parties do not mutually agree in writing to binding arbitration, a party may commence an adversarial proceeding before any court of competent jurisdiction in the county of Alameda.

54.01.3.1 Binding arbitration proceedings shall be in accordance with

California Code of Civil Procedure section 1280 et seq., the then-current JAMS Streamlined Arbitration Rules, and the terms of Section 54.01.3 and its subsections. In the event of any inconsistency, the terms of Section 54.01.3 and its subsections shall control. The arbitration shall be administered by JAMS and conducted in the County of Alameda. If the parties are unable to select an arbitrator within twenty (20) days after delivering written notice requesting arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the parties may mutually designate another arbitration organization with similar procedures to serve as the provider of arbitration. If the parties cannot agree on the arbitration organization, the Presiding Judge of the Alameda County Superior Court shall designate such an organization upon the petition of either party.


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

54.01.3.3 Within twenty (20) days after initiation of the arbitration, if not previously done so under the terms of this Contract, the parties shall each submit to each other and the arbitrator their respective relevant value for the item subject to the valuation dispute, with such supporting information as is reasonably necessary to support such suggested value. If the two (2) valuations so submitted differ by less than or equal to ten (10) percent of the higher of the two (2), the average of the two (2) shall become the agreed upon amount for purposes of this Contract and the arbitration shall not be continued. If the two(2) valuations differ by more than ten (10) percent of the higher of the two (2), then the arbitrator shall make a determination of the relevant value and submit such determination to both the parties. This third valuation will then be averaged with the closer of the two (2) previous valuations and the result shall be the relevant value. In no event shall the resolution of a valuation dispute result in a valuation higher than that which was set forth by CONTRACTOR (e.g., a impact of a "material" disclosure or a higher tip fee adjustment). The final arbitrated value shall be binding on the parties.

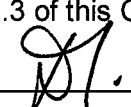
54.01.3.4 The arbitrator shall have the authority and power to award costs, including attorneys' fees and costs to the prevailing party. Unless otherwise awarded by the arbitrator, the parties shall evenly split the cost of any arbitration under this Article.

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

Acknowledgement of waiver of rights by trial by jury if proceeding with binding arbitration pursuant to Section 54.01.3 of this Contract.



CITY OF OAKLAND



CONTRACTOR

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

Article 55. LOCAL HIRE COMPLIANCE

55.01 CONTRACTOR represents and warrants that at least fifty (50) percent of all new hires in their workforce will be Oakland residents (i.e., for every two (2) new hires, one (1) will be a resident of Oakland). A compliance baseline will be determined on October 1, 2015. The baseline calculation will be total number of full-time equivalent employees with a verified Oakland address assigned to this Contract divided by the total number of full-time equivalent employees assigned to this Contract. CONTRACTOR shall provide documentation for the number of employees used in the baseline and employees that are used in the calculation as Oakland residents. Compliance with this Section 54.01 is subject to requirements of CONTRACTOR collective bargaining agreements.

55.02 Beginning November 2015, CONTRACTOR will provide a monthly report in accordance with Section 19.02.1.7 showing the total number of employees hired in the previous month and of those employees hired, the city of residence of those new employees. CITY will calculate annually the percent of new hires that are Oakland residents. Failure to comply with Section 54.01 hiring requirements may result in liquidated damages per Article 22. CITY may put CONTRACTOR on a corrective action plan to achieve compliance with Section 55.01. Failure to meet the corrective action plan may result in CITY not extending Contract per Article 3

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

Article 56. RELIGIOUS PROHIBITION

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

Article 57. POLITICAL PROHIBITION AND CAMPAIGN CONTRIBUTIONS

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

Article 58. BUSINESS TAX CERTIFICATE

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

Article 59. ATTORNEYS FEES

59.01 In any dispute between the parties, whether or not resulting in litigation or any

appeal therefrom, the prevailing party shall be entitled to recover from the other party all reasonable costs, including, without limitation, reasonable attorneys' fees. "Prevailing parties" shall include without limitation (i) a party who dismisses an action in exchange for sums allegedly due such party; (ii) the party which received performance from the other party of an alleged breach of a covenant or a desired remedy where such performance is substantially equal to the relief sought in an action; or (iii) the party determined to be the prevailing party by a court of law.

Article 60. LIMITATION OF FELONY DISCLOSURE ON JOB APPLICATION

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

Article 61. COMPETITIVE WAGES AND BENEFITS

61.01 Living Wage Requirements. CONTRACTOR shall comply with CITY Living Wage Ordinance Chapter 2.28 of the Oakland Municipal Code and its implementing regulations. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as Attachment 3. All of the provisions of Section 60.01, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

61.02 Competitive Wages and Benefits. CONTRACTOR shall pay Competitive Wages and Benefits. CONTRACTOR shall provide CITY evidence of compliance with this provision at CITY's request.

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

Article 62. VALIDITY OF CONTRACTS

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

Article 63. EQUAL BENEFITS ORDINANCE

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

63.02 The Ordinance shall only apply to those portions of CONTRACTOR's operations

3904 that occur (1) within CITY; (2) on real property outside Oakland if the property is owned by CITY
3905 or if CITY has a right to occupy the property, and if CONTRACTOR's presence at that location
3906 is connected to a contract with CITY; and (3) elsewhere in the United States where work related
3907 to a CITY contract is being performed. The requirements of this Article shall not apply to
3908 subcontracts or subcontractors of any contract or contractor. The Equal Benefits Ordinance
3909 requires among other things, submission of Schedule N-1, the Equal Benefits-Declaration of
3910 Nondiscrimination, incorporated herein.

3911

Article 64. LABOR PEACE

3912 64.01 CITY has determined that the level of vulnerability of the proposed Contract to
3913 labor disputes is sufficient to warrant that labor peace is essential to the proprietary interests of
3914 CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of
3915 CONTRACTOR's Employee and Labor Relations Plan set forth in Exhibit 14 to this Contract.

3916

Article 65. AMENDMENT

3917 65.01 No modification, amendment or supplement to this Contract will be binding on the
3918 parties unless it is made in writing, duly authorized by CONTRACTOR and CITY and signed by
3919 both parties.

3920

Article 66. ALL PRIOR CONTRACTS SUPERSEDED

3921 66.01 This document incorporates and includes all prior negotiations, correspondence,
3922 conversations, agreements and understandings applicable to the matters contained in this
3923 Contract and the parties agree that there are no commitments, agreements or understandings
3924 concerning the subject matter of this Contract that are not contained in this document or in the
3925 Disposal Services Contract or the Mixed Materials and Organics Collection Services Contract
3926 which are being executed simultaneously with this document. Accordingly, it is agreed that no
3927 deviation from the terms of this Contract shall be predicated upon any prior representations or
3928 agreements, whether oral or written.

3929

Article 67. HEADINGS

3930 67.01 Headings in this document are for convenience of reference only and are not to
3931 be considered in any interpretation of this Contract.

3932

Article 68. LEGAL REPRESENTATION

3933 68.01 It is acknowledged that each party was, or had the opportunity to be, represented
3934 by counsel in the preparation of and contributed equally to the terms and conditions of this
3935 Contract and, accordingly, the rule that a contract shall be interpreted strictly against the party
3936 preparing the same shall not apply herein due to the joint contributions of both parties.

3937

Article 69. EXHIBITS

3938 69.01 Each Exhibit referred to in this Contract forms an essential part of this Contract.
3939 Each such Exhibit is a part of this Contract and each is incorporated by this reference. In the
3940 event that any conflict exists between the language of this Contract and that contained in an
3941 Exhibit, the Contract language shall take precedence.

Article 70. EFFECTIVE DATE

3931

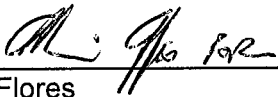
3932 This Contract shall become effective at such time as it is properly executed by CITY and
3933 CONTRACTOR and CONTRACTOR shall begin Recycling Services, as covered herein, as of
3934 July 1, 2015.


3935

3936 IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Contract on the day
3937 and year first written above.

3938 CITY OF OAKLAND

CALIFORNIA WASTE SOLUTIONS, INC.

3939 By: 
3940 John A. Flores
3941 Interim City Administrator

By: 
David Duong
President

3942 5/22/15
3943 Date

5/22/2015
Date

3944

3945

City of Oakland Business License Number

3946 The foregoing Contract has been reviewed and approval is recommended:

3947 Ordinance No. 13254 C.M.S.

3948 Approved by City Council

3949 APPROVED AS TO FORM:

3950 
3951 Celso Ortiz
3952 City Attorney