

ORIGINAL

**RESIDENTIAL RECYCLING  
COLLECTION SERVICE  
CONTRACT**

**Executed between**

**City of Oakland**

**and**

**California Waste Solutions, Inc.**

**July 1, 2015**

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- 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.

162 1.19 Container. A Bin, Cart, Roll-Off Box, Compactor or other item approved by CITY  
163 for use in containing Recyclable Materials set out for Collection under the terms of this Contract.

164 1.20 Contamination. The inclusion in a Container designated for Source-Separated  
165 Recyclable Materials of Unacceptable Waste of any amount; or materials other than Recyclable  
166 Materials in a Recyclable Materials Container, which render more than ten (10) percent of the  
167 contents of the Container materially unsuitable for Diversion.

168 1.21 Contamination Surcharge. The charges CONTRACTOR may impose on a  
169 Customer for Contamination of a Recyclable Materials Container that were approved by CITY  
170 and are contained in Exhibit 1, which is attached to and included in this Contract.

171 1.22 Contract or Franchise Contract. This franchise document and all amendments  
172 thereto, between CITY and CONTRACTOR, governing the provision of Residential Recycling  
173 Collection Services as provided herein, including all exhibits hereto, as it may be amended from  
174 time to time.

175 1.23 Contract Manager. The CITY employee(s) designated by the CITY Administrator  
176 to act as his/her designee regarding the day-to-day management of this Contract.

177 1.24 Contract Year. Each twelve (12) month period from July 1 to June 30 beginning  
178 July 1, 2015.

179 1.25 CONTRACTOR. California Waste Solutions, Inc., a California corporation

180 1.26 Covered Electronic Device or CED. Discarded electronic devices that the  
181 California Department of Toxic Substances Control (DTSC) has determined to be a covered  
182 electronic device (California Public Resources Code section 42463). CEDs include cathode ray  
183 tube (CRT) devices (including televisions and computer monitors); LCD desktop monitors;  
184 laptop computers with LCD displays; LCD televisions; plasma televisions; portable DVD players  
185 with LCD screens; and other electronic devices as may be added by the DTSC from time to  
186 time.

187 1.27 Customer. The Person or Persons who have the legal right to initiate, cancel or  
188 make changes to Residential Recycling Collection Services.

189 1.28 Difficult to Serve. A set-out site for Containers which has any of the following  
190 features:

191 1.28.1 A grade greater than fifteen (15) percent;

192 1.28.2 An obstructed vertical clearance of less than fifteen (15) feet;

193 1.28.3 A paved, concrete or similar surface over which Containers must be rolled  
194 that contains large deep grooves;

195 1.28.4 An unpaved surface over which Containers must be rolled;

196 1.28.5 A turn radius of less than fifty (50) feet; or

197 1.28.6 Is more than one hundred (100) feet from the public road.

198           1.29 Disposal (Dispose). The disposition of Mixed Materials, Garbage and Recycling  
199 Residue received from CONTRACTOR and CITY at the Disposal Facility under the terms of this  
200 Contract, or a) the placement of any materials Collected pursuant to this Contract in landfills,  
201 including as “beneficial reuse” as defined by California Code of Regulations Title 27, Chapter 3,  
202 Article 1, Section 20686; or (b) disposition to “incinerators” as defined by Alameda County  
203 Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION  
204 64.150 T.

205           1.30 Disposal Contractor. Waste Management of Alameda County, Inc.

206           1.31 Disposal Facility or Landfill. The Altamont Landfill located at 10840 Altamont  
207 Pass Road, Livermore, California 94551 that is owned and operated by the Disposal Contractor  
208 or such other facility that is selected by CONTRACTOR and approved by CITY for the Disposal  
209 of Recycling Residue that is designed, operated, and legally permitted for the purpose of  
210 receiving and Disposing of Recycling Residue.

211           1.32 Divert/Diversion. The avoidance of Disposal at the Disposal Facility or other  
212 landfill, or through “transformation” as defined by Public Resources Code section 40201, of any  
213 materials Collected pursuant to this Contract, through Processing.

214           1.33 Dwelling Unit. Any individual living unit that includes a kitchen, and a room or  
215 suite of rooms, and is designed or occupied as separate living quarters for an individual or  
216 group of individuals. Dwelling Units include live/work units, as defined by Oakland Planning  
217 Codes section 17.65.160. Dwelling Units do not include work/live units, as defined by Oakland  
218 Planning Code section 17.65.150.

219           1.34 E-Waste. Waste that is powered by batteries or electricity, such as computers,  
220 telephones, answering machines, radios, stereo equipment, tape players/recorders,  
221 phonographs, videocassette players/recorders, compact disc players/recorders, calculators and  
222 other items also defined as CEDs.

223           1.35 Fixed Body Vehicle. Any wheeled vehicle that does not rely on a Roll-Off Box or  
224 other detachable Container to Collect, contain and transport material.

225           1.36 Food Scraps. Raw or cooked vegetable, fruit, grain, fish, and other items,  
226 including meat, bones, dairy products, cooking fats, oil or kitchen grease; paper, cardboard and  
227 other compostable items that have been contaminated with food, cooking fats, oil or kitchen  
228 grease, compostable paper or plastics associated with food preparation or consumption such as  
229 paper towels, paper plates, paper cups, tissue, waxed paper and waxed cardboard and other  
230 materials designated by CITY that are capable of being composted and that are set out  
231 separate from Mixed Materials for Collection as Organic Materials.

232           1.37 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms,  
233 floods, pestilence, freezing, earthquakes, explosions, sabotage, civil disturbances, acts of a  
234 public enemy, wars, terrorism, blockades, riots, or other industrial disturbances, eminent  
235 domain, condemnation or other taking, or other events of a similar nature, not caused or  
236 maintained by CITY or CONTRACTOR, which event is not reasonably within the control of the  
237 party claiming the excuse from its obligations due to such event, to the extent such event has a  
238 significant and material adverse effect on the ability of a party to perform its obligations  
239 thereunder. Force Majeure shall not include power outages, fuel shortages, strikes, work

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

251 1.38 Garbage. All, putrescible and non-putrescible waste, non-recyclable packaging  
252 and rubbish attributed to normal activities of a Service Address wherein the Garbage is  
253 generated and Collected which is set out for Collection by the Service Recipient. Garbage does  
254 not include abandoned automobiles or those items defined herein as Unacceptable Waste.

255

256 1.39 Generator. A Single Family Dwelling, Multi-Family Dwelling, or a Commercial  
257 Service Addressee subscribing to Commercial Non-Exclusive Recycling Collection Services  
258 provided under the terms of Section 11.02 herein, that produce Recyclable Materials.

259 1.40 Gross Receipts. CONTRACTOR revenue collected for the provision of the  
260 Residential Recycling Collection Services exclusive of taxes and government fees.

261 1.41 Hazardous Waste. For purposes of this Contract, Hazardous Waste shall include  
262 those wastes defined as Hazardous Waste in Oakland Municipal Code section 8.28.010 or as  
263 subsequently amended. Section 8.28.010 currently defines Hazardous Waste as any  
264 hazardous waste, material, substance or combination of materials which because of its quantity,  
265 concentration, or physical, chemical, or infectious characteristics may cause, or significantly  
266 contribute to an increase in mortality or an increase in serious irreversible, or incapacitating  
267 reversible illness; or may pose a substantial present or potential risk to human health or the  
268 environment when improperly treated, stored, transported, Disposed or otherwise managed;  
269 and which requires special handling under any present or future federal, state or local law,  
270 excluding de minimis quantities of waste of a type and amount normally found in residential  
271 Garbage after implementation of programs for the safe Collection, recycling, treatment and  
272 Disposal of Household Hazardous Waste in compliance with sections 41500 and 41802 of the  
273 California Public Resources Code. "Hazardous Waste" shall include, but not be limited to: (a)  
274 substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil  
275 (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials,  
276 toxic substances or related hazardous materials; and (d) substances defined, regulated or listed  
277 (directly or by reference) by applicable local, State or federal law as "hazardous substances,"  
278 "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste," or  
279 "toxic substances," or similarly identified as hazardous to human health or the environment,  
280 including those so defined in or pursuant to any of the following statutes: (i) the Comprehensive  
281 Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC section  
282 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC section 1802,  
283 et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 et seq.; (iv) the  
284 Clean Water Act, 33 USC section 1251 et seq.; (v) California Health and Safety Code section

285 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7901 et seq.;  
286 and (vii) California Water Code section 13050; all rules and regulations adopted and  
287 promulgated pursuant to such statutes, and future amendments to or recodifications of such  
288 statutes, and any regulations adopted pursuant to these statutes after the date of this Contract,  
289 as well as any subsequently enacted federal or California statute relating to the use, release or  
290 disposal of toxic or hazardous substances, or to the remediation of air, surface waters,  
291 groundwater, soil or other media contaminated with such substances; any other hazardous or  
292 toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or  
293 regulated under any other applicable federal, State or local environmental laws currently  
294 existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated  
295 biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products. The  
296 parties intend that this definition not be limited to any particular statutory or regulatory regime  
297 and that it be construed as broadly as possible.

298 1.42 Household Hazardous Waste (HHW). Any Hazardous Waste generated at a  
299 SFD or MFD Service Address within the Service Area, including, but not limited to, cleaning  
300 products, automotive products, fuel, lubricants, E-Wastes, paints, painting supplies, fluorescent  
301 lamps, compact fluorescent lamps, varnishes, solvents, herbicides, pesticides, fertilizers,  
302 automobile batteries, household batteries, adhesives, and Universal Waste. Household  
303 Hazardous Waste does not include Used Oil or Used Oil Filters, and dry cell household  
304 batteries when placed for Collection as set forth in this Contract or as directed by CITY.

305 1.43 Labor Disruption. Strikes, slowdowns, sickout, picketing, other concerted job  
306 actions, directed at CONTRACTOR, CONTRACTOR's employees or subcontractors, excluding  
307 lockouts or stoppages conducted or initiated by CONTRACTOR.

308 1.44 Large Plant Debris. Oversized Plant Debris such as tree trunks, branches or  
309 untreated and unpainted wood with a diameter of more than six (6) inches and not more than  
310 two (2) feet, or a length of more than four (4) feet and no more than six (6) feet, or weighing not  
311 more than seventy-five (75) pounds.

312 1.45 Material Recovery Facility (or MRF). Any facility selected by CONTRACTOR and  
313 approved or specifically designated by CITY, designed, operated, and legally permitted for the  
314 purpose of receiving and Processing Recyclable Materials. The MRFs owned by  
315 CONTRACTOR located at 1820 10th Street and 3300 Wood Street in CITY are approved  
316 facilities. CONTRACTOR intends to build a MRF located on a portion of the former Oakland  
317 Army Base in the general vicinity of the intersection of Maritime Street and West Grand Avenue  
318 ("North Gateway Facility"). If constructed, the North Gateway Facility may be an approved MRF  
319 upon approval of CITY.

320 1.46 Maximum Recycling Service Rates. Those per Dwelling Unit rates and ancillary  
321 charges that were approved by CITY and are contained in Exhibits 1A and 1B, which are  
322 attached to and included in this Contract and those Non-Exclusive Commercial Collection  
323 Service rates and charges for services provided under the terms of Section 11.02 herein that  
324 were approved by CITY and are contained in Exhibit 1C, which is attached to and included in  
325 this Contract.

326 1.47 MFD or Multi-family Dwelling. Any residence with five (5) or more Dwelling Units,  
327 including any flat, apartment, condominium, town home, service-enriched housing or other  
328 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.

449 1.77 Used Oil. Any oil that has been refined from crude oil or has been synthetically  
450 produced, and is no longer useful to the Service Recipient because of extended storage,  
451 spillage or contamination with non-hazardous impurities such as dirt or water; or has been used  
452 and as a result of such use has been contaminated with non-hazardous physical or chemical  
453 impurities. Used Oil must be generated at the Service Address from which the Used Oil is  
454 Collected. Used Oil does not include other automotive fluids.

455 1.78 Used Oil Collection Service. The Collection of Used Oil in Used Oil Containers  
456 and Used Oil Filters in Used Oil Filter Containers from SFD and MFD Service Addresses in the  
457 Service Area and the appropriate disposition of the Used Oil and Used Oil Filters in accordance  
458 with the requirements of this Contract.

459 1.79 Used Oil Container. A plain plastic container that is at least four (4) quarts in  
460 capacity and leak-proof, has a screw-on lid and a label designating it for use as a Used Oil  
461 Container, is approved by CITY, and is provided by CONTRACTOR for the accumulation of  
462 Used Oil.

463 1.80 Used Oil Filter. Any oil filter that is no longer useful to the Service Recipient  
464 because of extended storage or contamination with non-hazardous impurities such as dirt or  
465 water; or has been used and as a result of such use has been contaminated with non-  
466 hazardous physical or chemical impurities. Used Oil Filters must be generated at the Service  
467 Address from which the Used Oil Filter is Collected.

468 1.81 Used Oil Filter Container. A sealable container that has a label designating it for  
469 use as a Used Oil Filter Container, is approved by CITY, and is provided by CONTRACTOR for  
470 the accumulation of Used Oil Filters.

471 1.82 Work Day. Any day, Monday through Friday that is not a holiday as set forth in  
472 Section 6.10 of this Contract.

473 **Article 2. REPRESENTATIONS AND WARRANTIES OF**  
474 **CONTRACTOR**

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

477 2.01 Corporate Status. CONTRACTOR is a corporation duly organized, validly  
478 existing and in good standing under the laws of the State of California. It is qualified to transact  
479 business in the State of California and has the corporate power to own its properties and to  
480 carry on its business as now owned and operated and as required by this Contract.

481 2.02 Corporate Authorization. CONTRACTOR has full legal right, power and authority  
482 to execute, deliver and perform its obligations under this Contract. The Board of Directors of  
483 CONTRACTOR (or the shareholders if necessary) has taken all actions required by law, its  
484 articles of incorporation, its bylaws or otherwise to authorize the execution and delivery of this  
485 Contract. The persons signing this Contract on behalf of CONTRACTOR have authority to do  
486 so.

487 2.03 Contract Duly Executed. The Persons signing this Contract on behalf of  
488 CONTRACTOR have been authorized by CONTRACTOR to do so, and this Contract has been

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

492         2.04 No Conflict With Applicable Law or Other Documents. To the best of  
493 CONTRACTOR's knowledge, neither the execution and delivery by CONTRACTOR of this  
494 Contract nor the performance by CONTRACTOR of its obligations hereunder:

495                 2.04.1 Conflicts with, violates or will result in a violation of any existing applicable  
496 law; or

497                 2.04.2 Conflicts with, violates or will result in a breach or default under any term  
498 or condition of any existing judgment, order or decree of any court, administrative agency or  
499 other governmental authority, or of any existing contract, agreement or instrument to which  
500 CONTRACTOR is a party, or by which CONTRACTOR or any of CONTRACTOR's properties or  
501 assets is bound; or

502                 2.04.3 Will result in the creation or imposition of any lien, charge, or  
503 encumbrance of any nature whatsoever upon any of the properties or assets of CONTRACTOR  
504 which will interfere materially with CONTRACTOR's performance hereunder.

505         2.05 No Litigation. There is no action, suit, proceeding or action at law or equity, or to  
506 the best of CONTRACTOR's knowledge, any investigation before or by any court or  
507 governmental entity, pending or threatened against CONTRACTOR or otherwise affecting  
508 CONTRACTOR, wherein an unfavorable decision, ruling or finding, in any single case or in the  
509 aggregate, would materially adversely affect CONTRACTOR's performance hereunder, or  
510 which in any way would adversely affect the validity or enforceability of this Contract, or which  
511 would have a material adverse effect on the financial condition of CONTRACTOR or its parent  
512 company.

513         2.06 Financial Ability, Disclosures, No Material Change. CONTRACTOR has  
514 sufficient financial resources to perform all aspects of its obligations hereunder.  
515 CONTRACTOR has provided CITY with audited financial statements which present fairly, in  
516 accordance with generally accepted accounting principles, the financial resources of  
517 CONTRACTOR. There has been no material adverse change in CONTRACTOR's or  
518 CONTRACTOR's parent company's financial circumstances since the date of the most recent  
519 financial statements.

520         2.07 Expertise. CONTRACTOR has the expert, professional, and technical capability  
521 to perform all of its obligations under this Contract.

522         2.08 CONTRACTOR's Statements. CONTRACTOR's proposal and any other  
523 supplementary information submitted to CITY that CITY has relied on in negotiations and  
524 entering into this Contract, do not: (i) contain any untrue statement of a material fact, or (ii) omit  
525 to state a material fact that is necessary in order to make the statements made, in light of the  
526 circumstances in which they were made, not misleading.

527         2.09 CONTRACTOR's Investigation. CONTRACTOR has made an independent  
528 investigation (satisfactory to it) of the conditions and circumstances surrounding this Contract  
529 and the work to be performed by CONTRACTOR under the Contract, and enters into this  
530 Contract on the basis of that independent investigation.

531

### **Article 3. TERM OF CONTRACT**

532           3.01 Term. The term of this Contract shall be for a twenty (20) year period beginning  
533 July 1, 2015, and terminating on June 30, 2035.

534           3.01.1 No Right to Extension. Nothing in the foregoing paragraph or otherwise  
535 set forth in this Contract is intended to create a right in favor of CONTRACTOR to obtain an  
536 extension.

537           3.01.2 Nothing in Section 3.01 affects CONTRACTOR's obligations to perform  
538 prior to July 1, 2015, as required in this Contract.

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

541           4.01 General. CONTRACTOR covenants that it shall obtain and deliver to CITY an  
542 exemplar of the document set forth in Section 4.02 below together with a commercially  
543 reasonable assurance that such Performance Security will be in full force and effect  
544 commencing July 1, 2015. If such documents are not delivered to CITY in satisfactory form by  
545 June 15, 2015, CITY may terminate this Contract with absolutely no continuing financial  
546 obligations to CONTRACTOR and may resort to the rights and remedies provided for in Article  
547 26 hereof.

548           4.02 Receipt of Performance Security. CONTRACTOR shall provide CITY with, and  
549 CITY shall accept if it complies with Article 24, the Performance Security described in Article 24  
550 of this Contract.

551           4.03 Termination. This Contract may be terminated prior to the expiration of its term  
552 only in accordance with the provisions of this Contract. At the expiration of the term provided for  
553 hereunder, CONTRACTOR, at its own expense for a period of up to six (6) months, shall  
554 cooperate fully with CITY, as reasonably necessary, to ensure an orderly transition to any and  
555 all new service providers, and CITY shall have no continuing obligations to CONTRACTOR  
556 other than those expressly provided for under this Contract. CONTRACTOR shall transfer,  
557 Process or Dispose of all materials that have been Collected or are in Process under this  
558 Contract as of the date of expiration or termination.

559                           **Article 5. SERVICES PROVIDED BY CONTRACTOR**

560           5.01 Grant of Exclusive Contract. Except as otherwise provided in this Contract,  
561 CONTRACTOR is herein granted an exclusive Contract to provide Recycling Services, other  
562 than Commercial Non-Exclusive Recycling Collection Service, within the Service Area. No  
563 other services shall be exclusive to CONTRACTOR.

564           5.02 Limitations to Scope of Exclusive Contract. Nothing in this Contract shall limit the  
565 right of any Person to donate or sell his or her Recyclable Materials. Persons other than  
566 CONTRACTOR may pay to Collect or Collect at no charge such Recyclable Materials.  
567 Similarly, nothing in this Contract shall limit the right of any Person to haul the Recyclable  
568 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



736 serviceability. This continual replacement is estimated to be at a rate of up to three percent  
737 (3%) per Contract Year, but in any event shall be sufficient to maintain serviceability and a well-  
738 maintained appearance.

739 6.06.7 Replacement of Carts and Bins Damaged by CONTRACTOR.  
740 CONTRACTOR's employees shall take care to prevent damage to Carts or Bins by  
741 unnecessary rough treatment. However, any Cart or Bin damaged by CONTRACTOR shall be  
742 replaced or repaired by CONTRACTOR, at CONTRACTOR's expense, no later than the next  
743 regularly scheduled Collection day or within six (6) Work Days (whichever is later), at no cost or  
744 inconvenience to the Service Recipient or Customer.

745 6.06.8 Replacement of Carts and Bins Due to Normal Wear and Tear. Upon  
746 notification to CONTRACTOR by a Service Recipient or Customer of the need for replacement  
747 or repair to a Cart(s) or Bin(s) due to normal wear and tear, CONTRACTOR shall replace or  
748 repair such Cart(s) or Bin(s) at CONTRACTOR's expense, by the next regularly scheduled  
749 Collection day, or within six (6) Work Days (whichever is later) at no cost or inconvenience to  
750 the Service Recipient or Customer.

751 6.06.9 Replacement of Carts and Bins Required Through No Fault of  
752 CONTRACTOR. Upon notification to CONTRACTOR by CITY or a Service Recipient that the  
753 Service Recipient's Recyclable Materials Cart(s), or Bin(s) have been stolen or damaged  
754 beyond repair through no fault of CONTRACTOR, CONTRACTOR shall deliver a replacement  
755 Cart(s), or Bin(s) to the Service Address no later than the next regularly scheduled Collection  
756 day, or within six (6) Work Days (whichever is later) at no cost, subject to the limitations set forth  
757 below, or inconvenience to the Service Recipient or Customer. Notwithstanding the foregoing,  
758 in cases where CONTRACTOR can demonstrate that the replacement is due to factors other  
759 than CONTRACTOR mishandling or damage, ordinary wear and tear, or third-party theft,  
760 CONTRACTOR may invoice the Customer or Service Recipient requesting such a replacement  
761 in accordance with the "Cart Replacement" Maximum Recycling Service Rate set forth in Exhibit  
762 1 to this Contract or as may be adjusted under the terms of this Contract from time to time by  
763 including the allowed charge on its invoice for non-Recurring Ancillary Services to the MM&O  
764 Contractor. CONTRACTOR shall maintain records documenting all Cart and Bin replacements  
765 occurring on a monthly basis.

766 6.06.10 Reporting Requirements for Replacements. No later than July 15,  
767 2016, and annually thereafter during the term of this Contract, CONTRACTOR shall provide  
768 CITY with an electronic report of Cart and Bin Replacements provided during the preceding  
769 Contract Year in a form and format approved by CITY and using software approved by CITY. At  
770 a minimum the report shall include the size, type, and number of Bins and Carts replaced and  
771 the reason for such replacement based upon one of the following five (5) categories: Missing;  
772 Stolen; Damaged; Destroyed; or Normal Wear and Tear. The report shall also include a  
773 calculation of the base number for Cart and Bin replacements under Section 6.06.6 for the prior  
774 Contract Year and the current Contract Year.

775 6.06.11 Cart or Bin Change. As provided below, upon notification to  
776 CONTRACTOR by CITY or a Customer that a change in the size or number of Carts or Bins is  
777 required, including a change to provide additional Recyclable Materials capacity  
778 CONTRACTOR shall deliver such Carts or Bins to the Service Address by the next regularly  
779 scheduled Collection day or within six (6) Work Days (whichever is later).

780 6.06.11.1 Each SFD Service Address shall be entitled to receive two

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

783 6.06.11.2 Each MFD Address shall be entitled to receive two (2) free  
784 service exchanges in the first Contract Year. Beginning on July 1, 2016, each MFD Service  
785 Address shall be entitled to receive one (1) free service exchange per Contract Year during the  
786 term of this Contract. For the purposes of this Section, a service exchange represents the  
787 exchange of as few as one (1) and as many as the total number of Carts and Bins provided by  
788 CONTRACTOR to the Service Address.

789 6.06.11.3 CONTRACTOR shall be compensated for the cost of those  
790 exchanges in excess of the limitations set forth herein per Contract Year, in accordance with the  
791 "Cart or Bin Exchange" Maximum Recycling Service Rate as set forth in Exhibit 1 of this  
792 Contract.

793 6.06.12 Ownership of Carts. Ownership of Carts shall rest with CONTRACTOR  
794 and upon termination of this Contract, CONTRACTOR shall be responsible for removing all  
795 Carts in service from the Service Area. In the case of the termination of this Contract prior to  
796 the expiration of the term, CITY shall have the right to take temporary possession of the Carts  
797 and shall retain such possession for a reasonable period until satisfactory arrangements can be  
798 made to provide Recycling Services using other equipment (not to exceed five (5) months).  
799 There shall be no monies owing to CONTRACTOR from CITY for such use of the carts. Upon  
800 the receipt of written notice from CITY, CONTRACTOR shall submit to the Contract Manager an  
801 inventory of Carts, including their locations.

802 6.07 Compactors. Compactor equipment may be owned by the Customer or leased  
803 from CONTRACTOR or any other source provided the Compactor Container is compatible with  
804 CONTRACTOR's Collection vehicles.

805 6.08 Annual Inspection and Cleaning of Bins and Roll-Off Boxes. At least once each  
806 Contract Year, at no charge to CITY or the Customer, CONTRACTOR shall inspect all  
807 CONTRACTOR provided Bins and Roll-Off Boxes at the Service Address and shall replace  
808 those Bins or Roll-Off Boxes needing cleaning or repair with clean, undamaged Bins or Roll-Off  
809 Boxes, and remove the dirty or damaged Bins or Roll-Off Boxes for cleaning or repair.

810 6.09 Labor and Equipment. CONTRACTOR shall provide and maintain all labor,  
811 equipment, tools, facilities, and personnel supervision required for the performance of  
812 CONTRACTOR's obligations under this Contract. CONTRACTOR shall at all times have  
813 sufficient backup equipment and labor (subject to the Service Resumption protocol) to fulfill  
814 CONTRACTOR's obligations under this Contract. No compensation for CONTRACTOR's  
815 services or for CONTRACTOR's supply of labor, equipment, tools, facilities or supervision shall  
816 be provided or paid to CONTRACTOR by CITY or by any Customer except as expressly  
817 provided by this Contract.

818 6.10 Holiday Service. January 1, Thanksgiving Day and December 25 shall be legal  
819 holidays. CONTRACTOR shall not be required to provide Recycling Services on the designated  
820 holidays. In any week in which one of these holidays falls on a Work Day, and CONTRACTOR  
821 elects to not provide Recycling Services, SFD Recycling Services for the holiday and each Work  
822 Day thereafter may be delayed one (1) Work Day for the remainder of the week with normally  
823 scheduled Friday SFD Recycling Services being performed on Saturday. MFD Recycling  
824 Services and Commercial Non-Exclusive Recycling Collection Services provided under the

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

829           6.11   Processing and Disposal.

830                   6.11.1 Permits, Approvals and Compliance with Regulations. CONTRACTOR  
831 must assure that all facilities selected by CONTRACTOR shall possess all necessary permits  
832 and approvals by local enforcement agencies to be in full compliance with all regulatory  
833 agencies to conduct all operations at the approved location. CONTRACTOR shall, upon written  
834 request from CITY, arrange for the facilities selected by CONTRACTOR to provide copies of  
835 facility permits, notices of violations, inspection areas or concerns, or administrative action to  
836 correct deficiencies related to the operation. Failure to provide facility information shall result in  
837 the levy of liquidated damages as specified in Article 22 of this Contract and may result in  
838 CONTRACTOR being in default under this Contract.

839                   6.11.1.1   Regulatory Inquiry.   In those instances where  
840 CONTRACTOR is required by any law or regulation to submit written or electronic materials  
841 related to the provision of Recycling Services under the terms of this Contract to any regulatory  
842 agency, CONTRACTOR shall submit copies of such written or electronic materials to CITY  
843 simultaneously with CONTRACTOR's submittal to such regulatory agency.

844                   6.11.2 Material Recovery Facility. All Recyclable Materials Collected as a result  
845 of performing Recycling Services shall be delivered to the Material Recovery Facility (MRF). In  
846 the event the MRF is closed on a Work Day, CONTRACTOR shall transport and deliver the  
847 Recyclable Materials to such other legally permitted MRF as is approved by CITY. Failure to  
848 comply with this provision shall result in the levy of liquidated damages as specified in Article 22  
849 of this Contract and may result in CONTRACTOR being in default under this Contract.

850                   6.11.3 Used Oil Processing. CONTRACTOR shall Recycle all Used Oil  
851 Collected and Used Oil Filters pursuant to this Contract to the extent feasible and shall properly  
852 Dispose of all Used Oil and Used Oil Filters that are contaminated or otherwise cannot be  
853 Recycled.

854                   6.11.3.1       CONTRACTOR shall Recycle the Used Oil and Used Oil  
855 Filters only with persons who are authorized by the State of California to Recycle these  
856 materials. In the event the Used Oil or Used Oil Filters Collected pursuant to this Contract is  
857 contaminated to the extent that the Used Oil or Used Oil Filters require Disposal as a  
858 Hazardous Waste, CONTRACTOR shall Dispose of such Used Oil or Used Oil Filters, at  
859 CONTRACTOR's own cost and expense in accordance with applicable State and federal law.

860                   6.11.3.2       CONTRACTOR shall notify the Contract Manager, by e-  
861 mail, of any contamination which renders the Used Oil unacceptable for Recycling or which  
862 requires Disposal of the Used Oil or Used Oil Filters as a Hazardous Waste.

863                   6.11.4 Segregation of Used Oil. CONTRACTOR shall keep all Used Oil and  
864 Used Oil Filters Collected pursuant to this Contract segregated from other materials.

865           6.12   Recycling - Improper Procedure. CONTRACTOR shall not be required to Collect  
866 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.

910                    6.14.6 Oil, Other Vehicle Fluid Spills or Vehicle Load Fires. In the event of a  
911 vehicle fluid spill from CONTRACTOR's vehicle or vehicle load fire CONTRACTOR shall  
912 immediately respond in the manner as set forth in the "Spill Response Plan" approved by CITY  
913 in Exhibit 9 of this Contract.

914                    6.15 Ownership of Materials.

915                    6.15.1 Title to Recyclable Materials Collected under the terms of this Contract  
916 shall pass to CONTRACTOR at such time as said materials are placed in a Container and set  
917 out for Collection, or for those materials that are not required to be Containerized, at the time  
918 the materials are set out for Collection.

919                    6.15.2 Title to Used Oil and Used Oil Filters Collected under the terms of this  
920 Contract shall pass to CONTRACTOR at such time as said materials are placed in a Used Oil or  
921 Used Oil Filter Container, as appropriate and set out for Collection.

922                    6.16 Hazardous Waste. Except regarding services provided outside the scope of this  
923 Contract, under no circumstances shall CONTRACTOR's employees knowingly Collect  
924 Hazardous Waste, or knowingly remove unsafe or poorly containerized Hazardous Waste, from  
925 a Recycling Container. If CONTRACTOR determines that material placed in any Container for  
926 Collection is Hazardous Waste, or other material that may not legally be accepted at the MRF,  
927 or presents a hazard to CONTRACTOR's employees, CONTRACTOR shall have the right to  
928 refuse to accept such material. The Generator shall be contacted by CONTRACTOR and  
929 requested to arrange for proper Disposal. If the Generator cannot be reached immediately,  
930 CONTRACTOR shall, before leaving the premises, leave a Non-Collection Notice that indicates  
931 the reason for refusing to Collect the material and submit an incident report to the Contract  
932 Manager.

933                    6.16.1 If Hazardous Waste is found in a recycling Container that poses an  
934 imminent danger to people, property, or environment, CONTRACTOR shall immediately call  
935 911 to notify the City of Oakland Fire Department. CONTRACTOR shall immediately notify  
936 CITY of any Hazardous Waste that has been identified and submit an incident report to the  
937 Contract Manager.

938                    6.16.2 If Hazardous Waste is identified at the time of delivery to the MRF and the  
939 Generator cannot be identified, CONTRACTOR shall be solely responsible for handling and  
940 arranging transport and disposition of the Hazardous Waste.

941                    6.17 Regulations and Record Keeping. CONTRACTOR shall comply with emergency  
942 notification procedures required by applicable laws and regulatory requirements. All records  
943 required by regulations shall be maintained at CONTRACTOR's facility. These records shall  
944 include waste manifests, waste inventories, waste characterization records, inspection records,  
945 incident reports and training records.

946                    6.18 Transition. CONTRACTOR understands and agrees that the time between the  
947 formal Contract signing and July 1, 2015, is intended to provide CONTRACTOR with ample and  
948 sufficient time to, among other things, order equipment, prepare necessary routing schedules  
949 and route maps, obtain any permits and licenses, establish/build facilities, and begin the public  
950 awareness campaign as part of CONTRACTOR's transition program as specified in Exhibit 5  
951 which is attached to and included in this Contract. CONTRACTOR shall be responsible for the  
952 provision of all Recycling Services beginning July 1, 2015.

953            6.19 Property Damage. CONTRACTOR shall be responsible for the repair or  
954 replacement, if repair is not adequate, of any damages to public or private property caused by  
955 CONTRACTOR during the provision of Recycling Services.

956            6.20 Safety. In no event shall CONTRACTOR be obligated to Collect any Cart,  
957 Bin or other Container that presents a risk of injury to CONTRACTOR's employees or damage  
958 to CONTRACTOR's equipment and CONTRACTOR's staff is unable to mitigate these risks by  
959 using commercially reasonable alternative Collection methods or safe-handling procedures.

## Article 7. CHARGES AND RATES

960  
961            7.01 General. CONTRACTOR shall perform all services required by this Contract in  
962 consideration of the right to bill and collect, to the extent set forth herein, from CITY's MM&O  
963 Contractor, the Maximum Recycling Service Rates and Contamination Surcharge as set forth in  
964 Exhibit 1, and as may be adjusted under the terms of this Contract. CITY does not guarantee  
965 collection of such Maximum Recycling Service Rates and Contamination Surcharge.  
966 CONTRACTOR shall not look to CITY for payment of any sums under this Contract and CITY  
967 has no obligation to pay CONTRACTOR any public funds under this Contract, except as set  
968 forth in Article 18. Nothing in this paragraph is intended to alter the parties' obligations under  
969 Articles 26 and 28.

970            7.01.1 Rates are Comprehensive Compensation. The Maximum Recycling  
971 Service Rates and Contamination Surcharge, as set forth in Exhibit 1 and as may be adjusted  
972 under the terms of this Contract, shall be the full, entire and complete compensation due to  
973 CONTRACTOR for furnishing all labor, materials, equipment, supplies and other things  
974 necessary to perform all the services required by this Contract in the manner and at the times  
975 prescribed. The Maximum Recycling Service Rates include, without limitation, all costs for the  
976 items mentioned in the preceding sentence and also for all taxes, franchise fees, insurance,  
977 bonds, overhead, profit and all other costs necessary to perform all the services required by this  
978 Contract in the manner and at the times prescribed. The Maximum Recycling Service Rates  
979 and Contamination Surcharge include all costs associated with complying with all current  
980 federal and State statutes, and CITY and County ordinances concerning public health, safety  
981 and environmental issues and all laws, regulations, rules, orders, judgments, degrees, permits,  
982 approvals, or other requirement of any governmental agency having jurisdiction over the  
983 services provided by CONTRACTOR under the terms of this Contract, including any current  
984 provisions that become effective on or which require compliance by a date after the effective  
985 date of this Contract. CONTRACTOR shall not be entitled to other or further compensation for  
986 or in connection with its performance of services under this Contract except as may be  
987 specifically allowed under the terms of this Contract.

988            7.01.2 Annual Rate Adjustment. On July 1, 2016, and each July 1 thereafter  
989 during the term of the Contract (each an "Adjustment Date"), the Maximum Recycling Service  
990 Rates shall be adjusted by an "Annual Rate Adjustment." The Annual Rate Adjustment will  
991 include the Refuse Rate Index adjustment (Section 7.07.3 and Exhibit 2), adjustments due to  
992 changes in Franchise Fees (Section 7.01.3) and Changes in Government Fees (Section 7.01.4)  
993 and the special adjustment set forth in Section 7.08.1. In addition the maximum SFD per  
994 Dwelling Unit and MFD per Dwelling Unit service rates shall also be adjusted due to special  
995 adjustments as set forth in Sections 7.08.2 and 7.08.3 and may be adjusted for the special  
996 adjustment set forth in Section 7.08.4 if such special adjustment is approved as set forth in  
997 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



1083 Ancillary Services charges that CONTRACTOR will incur in the upcoming quarter in accordance  
1084 with Exhibit 12. Such information shall be in the form and format required by Exhibit 12 and  
1085 include, at a minimum, the Customer name, Service Address and billing address along with a  
1086 specific description of each Recurring Ancillary Services charge. To the extent such information  
1087 is received in a timely manner and contains the necessary information, the MM&O Contractor  
1088 shall include those Recurring Ancillary Services charges in the SFD invoices prepared for the  
1089 upcoming billing cycle. In the event such information is not submitted in the required format or  
1090 received in a timely manner, CONTRACTOR shall be notified of such discrepancies by the  
1091 MM&O Contractor, and the MM&O Contractor will not be required to include such Recurring  
1092 Ancillary Services charges in the invoices prepared for that billing cycle. However, if  
1093 CONTRACTOR provides the required information in the correct format for invoicing at least  
1094 fifteen (15) days before the first day of the immediately subsequent billing cycle (relative to the  
1095 billing cycle for which the charges were incurred), then the MM&O Contractor shall be required  
1096 to include such Recurring Ancillary Services charges in the invoices prepared for that  
1097 immediately subsequent billing cycle.

1098 7.02.2 MFD Recurring Ancillary Services. No less than fifteen (15) calendar  
1099 days before the first day of each monthly billing period beginning on July 1, 2015,  
1100 CONTRACTOR may submit to the MM&O Contractor information regarding MFD Recurring  
1101 Ancillary Services charges that CONTRACTOR will incur in the upcoming month in accordance  
1102 with Exhibit 12. Such information shall be in the form and format required by Exhibit 12 and  
1103 include, at a minimum, the Customer name, Service Address and billing address along with a  
1104 specific description of each Recurring Ancillary Services charge. To the extent such information  
1105 is received in a timely manner and contains the necessary information, the MM&O Contractor  
1106 shall include those Recurring Ancillary Services charges in the MFD invoices prepared for the  
1107 upcoming billing cycle. In the event such information is not submitted in the required format or  
1108 received in a timely manner, CONTRACTOR shall be notified of such discrepancies by the  
1109 MM&O Contractor, and the MM&O Contractor will not be required to include such Recurring  
1110 Ancillary Services charges in the invoices prepared for that upcoming billing cycle. However, if  
1111 CONTRACTOR provides the required information in the correct format for invoicing at least  
1112 fifteen (15) days before the first day of the immediately subsequent billing cycle (relative to the  
1113 billing cycle for which the charges were incurred), then the MM&O Contractor shall be required  
1114 to include such Recurring Ancillary Services charges in the invoices prepared for that  
1115 immediately subsequent billing cycle.

1116 7.02.3 SFD and MFD Contamination Surcharges and Non-Recurring Ancillary  
1117 Services Charge Invoices. CONTRACTOR shall prepare and provide information to the MM&O  
1118 Contractor regarding SFD and MFD Contamination Surcharges and non-recurring Ancillary  
1119 Service charges incurred during the prior billing period, not less than fifteen (15) calendar days  
1120 before the first day of each quarter for SFD Customers, or the first day of each month for MFD  
1121 Customers. Such Contamination Surcharges shall have been assessed in accordance with the  
1122 Contamination Reduction Program as set forth in Exhibit 11, and based on the Contamination  
1123 Surcharges as set forth in Exhibit 1. CONTRACTOR shall provide this information in  
1124 accordance with the terms and conditions set forth in Exhibit 12. In the event CONTRACTOR  
1125 does not provide the information in a timely manner or in the required form and format,  
1126 CONTRACTOR shall not be entitled to have those Contamination Surcharges or non-recurring  
1127 Ancillary Service charges included in the invoices prepared for that upcoming billing cycle by the  
1128 MM&O Contractor. CONTRACTOR understands and agrees that 1) SFD and MFD Customers  
1129 will be billed for Contamination Surcharges and non-recurring Ancillary Service charges in  
1130 arrears on a separate invoice during the regular billing cycle, 2) the separate invoice will indicate

1131 that the charge(s) are assessed by CONTRACTOR and will provide CONTRACTOR's  
1132 telephone number, 3) the MM&O Contractor will maintain a separate Customer account from  
1133 that used for regular Residential Recycling Collection Service for the purpose of receiving  
1134 payment from Customers, and 4) CONTRACTOR shall be paid for Contamination Surcharges  
1135 and non-recurring Ancillary Service charges after the MM&O Contractor receives payment of  
1136 those charges from Customers.

1137           7.02.4 Accounts Receivable. No later than the fifteenth (15th) day of September  
1138 2015 and monthly thereafter, CONTRACTOR shall be entitled to receive from the MM&O  
1139 Contractor a statement of the accounts receivable balance for Contamination Surcharges and  
1140 non-recurring Ancillary Service charges and payments received from Customers for those  
1141 charges in the preceding calendar month. CONTRACTOR understands and agrees that 1) the  
1142 MM&O Contractor shall not be responsible for any collection activities with regard to  
1143 Contamination Surcharges and charges for non-recurring Ancillary Service charges other than  
1144 to promptly notify CONTRACTOR of nonpayment of those charges, and 2) the MM&O  
1145 Contractor's communication with SFD and MFD Customers regarding these billings shall be  
1146 limited to informing the Customer of the contact information for CONTRACTOR.

1147           7.02.5 Reimbursement of Billing Costs. CONTRACTOR shall reimburse MM&O  
1148 Contractor for performing all billing and payment processing services on behalf of  
1149 CONTRACTOR for Contamination Surcharges and/or non-recurring Ancillary Service charges.  
1150 Reimbursement shall be for all reasonable billing, accounting, and administrative costs incurred  
1151 by the MM&O Contractor that are associated with preparing and mailing SFD and MFD  
1152 Customer Contamination Surcharge and non-recurring Ancillary Service invoices and receiving  
1153 payment from such Customers for such invoices, on behalf of CONTRACTOR. Such costs may  
1154 include, but not be limited to, recordkeeping, invoicing, credit card fees, printing, and postage.  
1155 CONTRACTOR and the MM&O Contractor shall agree to a process for reimbursement in  
1156 Exhibit 12. If CONTRACTOR fails to timely reimburse the MM&O Contractor, then the MM&O  
1157 Contractor will reconcile such reimbursable costs pursuant to the true-up process set forth in  
1158 Section 7.04. CONTRACTOR may, at any time, provide written notice to the MM&O Contractor  
1159 and CITY directing the MM&O Contractor to cease performance of Customer billing and  
1160 payment processing services for Contamination Surcharges and/or non-recurring Ancillary  
1161 Service charges. Such notice shall specify a date upon which the MM&O Contractor's  
1162 obligation shall terminate.

1163           7.02.6 Authorization of Payment by CITY. In accordance with the terms and  
1164 conditions of the Memorandum of Understanding between CONTRACTOR, CITY and the  
1165 MM&O Contractor as set forth in Exhibit 12 to this Contract, CITY may provide payment  
1166 authorization to the MM&O Contractor prior to the payment of each Recycling invoice to  
1167 CONTRACTOR.

1168           7.03 Timing of Recycling Invoice Payment. On or before the tenth (10th) day of each  
1169 calendar month, CONTRACTOR shall be entitled to receive payment from the MM&O  
1170 Contractor for Residential Recycling Collection Services, by CONTRACTOR in the preceding  
1171 calendar month based upon the number of SFD and MFD Dwelling Units for which the MM&O  
1172 Contractor has invoiced SFD and MFD Customers for that month, as adjusted pursuant to  
1173 Section 7.04. At that time CONTRACTOR shall also be entitled to receive payment from the  
1174 MM&O Contractor for Recurring Ancillary Services based upon the information regarding those  
1175 Recurring Ancillary Services that shall have been timely provided to the MM&O Contractor by  
1176 CONTRACTOR as adjusted pursuant to Section 7.04. Such services and payment shall be  
1177 based on the Customer information exchanged and agreed to herein, in the form and format set  
1178 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 CONTACTOR and the payments by the MM&O Contractor to CONTACTOR  
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

1222 Contract shall be adjusted on July 1, 2015 to account for the change in the Government Fees, if  
1223 any as set forth in Section 7.01.4

1224 7.07.2 Annual Adjustment to Maximum Recycling Service Rates after Start of  
1225 Recycling Services. Beginning on July 1, 2016, and annually thereafter during the term of this  
1226 Contract, and subject to compliance with all provisions of this Article, CONTRACTOR shall  
1227 receive an annual adjustment to the Maximum Recycling Service Rates that are set forth in  
1228 Exhibit 1 to this Contract, in accordance with the provisions of Section 7.07 and Exhibit 2 to this  
1229 Contract, and to the extent applicable, the special adjustments provided for in Section 7.08.

1230 7.07.3 Annual Rate Adjustment. On the Adjustment Date during the term of this  
1231 Contract, the Maximum Recycling Service Rates set forth in Exhibit 1 shall be adjusted by a RRI  
1232 adjustment pursuant to this Section 7.07 and Exhibit 2 to this Contract.

1233 7.07.4 Cost Category Weight. CONTRACTOR shall calculate the total of all  
1234 Allowable Expenses (as defined in Exhibit 2) for each Cost Category (also defined in Exhibit 2)  
1235 for the period of July 1, 2015 through December 31, 2015. Each Cost Category will then be  
1236 assigned an "item weight" based on the proportionate share of its Allowable Expenses total to  
1237 the total of all Allowable Expenses for all Cost Categories. For example, if the Allowable  
1238 Expenses of the Diesel Fuel Cost Category total One Hundred Dollars (\$100), and the  
1239 Allowable Expenses within all Cost Categories is Two Thousand Dollars (\$2,000), then the  
1240 Diesel Fuel Cost Category's item weight will be five (5) percent. The Cost Categories shall be  
1241 reweighed every year based on allowable expenses thereafter from January 1 through  
1242 December 31.

1243 7.07.5 Annual Rate Adjustment Calculation. The RRI adjustment (a component  
1244 of the Annual Rate Adjustment) shall be the lower of: (i) six (6) percent, or (ii) the sum of the  
1245 weighted percentage change (based on the total of all Cost Categories) in the Cost Indicators  
1246 of Cost Categories 1 - 7 (each described in Exhibit 2) from the previous review date to the  
1247 current review date. For Cost Category Items 2 (Diesel Fuel), 3 (CNG Fuel), 4 (Vehicle  
1248 Replacement), 5 (Vehicle Maintenance), 6 (Processing), and 7 (All Other), the current review  
1249 year is the most recent calendar year ended December 31. For Cost Category Item 1 (RR  
1250 Union Labor), and the Union Labor Cost Category of Item 6 (Processing), the current review  
1251 date is July 1 of the current year. For purposes of clarification the parties agree and understand  
1252 that Categories 8 (Government Fees – Processing), and 9 (Franchise Fees) will be used for  
1253 purposes of weighting the RRI Cost Categories, but they will not be included in the RRI  
1254 calculation. Instead, they will be added to the RRI calculation.

1255 7.07.6 RRI Caps and Carry-Forwards. The weighted percentage change in the  
1256 Cost Indicator of a Cost Category may be either positive or negative. There shall be no limit on  
1257 Annual Rate Adjustments, but an RRI adjustment shall not be greater than six (6) percent in any  
1258 individual year (except the final year of the Contract term when it may not be greater than eight  
1259 (8) percent) or lower than negative 5 (-5) percent. In any year that the RRI adjustment  
1260 calculation is more than six (6) percent, the amount above six (6) percent and up to eight (8)  
1261 percent shall be carried-forward to successive RRI adjustments under this Contract until applied  
1262 or the Contract terminates. RRI adjustments in any year in excess of eight (8) percent shall not  
1263 be carried forward to any future year. With regard to the July 1, 2034, RRI adjustment, carried-  
1264 forward RRI adjustment amounts that had not been recouped in previous RRI adjustments due  
1265 to the six (6) percent cap shall be recouped to the extent they do not exceed eight (8) percent.

1266 7.07.7 Differential Adjustment. Should CONTRACTOR agree to labor increases

1267 with Local 70 that exceed the labor increase allowable under the 2007 CBA ("differential"), those  
1268 differential amounts shall not be included in the RRI adjustment (i.e., as a CONTRACTOR cost  
1269 for purposes of calculating a percent change of the RR Union Labor Cost Category). However,  
1270 such differential amounts shall be recovered by CONTRACTOR in Annual Rate Adjustments by  
1271 applying them to the Maximum Recycling Service Rates in equal installments ("Differential  
1272 Adjustments") over a three (3) year period, including the year in which the differential is first  
1273 incurred. For example, if the weighted differential between the 2007 CBA and a subsequent  
1274 CBA is three tenths (0.3) percent, then the current Annual Rate Adjustment would be increased  
1275 by one tenth (0.1) percent and the two (2) subsequent Annual Rate Adjustments by one tenth  
1276 (0.1) percent. For purposes of clarity, recovery of the differential amounts shall not be subject to  
1277 any cap under this Section.

1278           7.07.8 Diversion Adjustment. Beginning with the July 1, 2017 rate adjustment,  
1279 the Diversion adjustment shall be applied to the RRI adjustment as set forth below and shown in  
1280 Table 4 of Exhibit 2 to this Contract. Except for those instances as set forth in Section 7.07.8.5  
1281 when the reciprocal of the Diversion adjustment is required to be used, the Diversion adjustment  
1282 shall be the lesser of one hundred (100) percent or the percentage calculated by dividing the  
1283 Diversion rate achieved by CONTRACTOR, in accordance with Section 8.01, in the calendar  
1284 year immediately preceding the effective date of the rate adjustment, by the minimum annual  
1285 Diversion requirement for that calendar year, pursuant to Section 8.01 of this Contract.

1286           7.07.8.1       In the event the Diversion adjustment is applied in  
1287 accordance with Section 8.02, the adjustment shall only be effective for one (1) year and shall  
1288 be removed prior to calculating the subsequent year's rate adjustment as set forth in Section  
1289 7.07.5.

1290           7.07.8.2       In the event the Diversion adjustment is applied in  
1291 accordance with Section 8.03, the adjustment shall be effective for the remaining term of the  
1292 Contract and shall not removed prior to calculating the subsequent year's rate adjustment as set  
1293 forth in Section 7.07.5.

1294           7.07.8.3       In any year that the RRI adjustment results in a positive  
1295 number, the RRI adjustment shall be adjusted by multiplying the RRI adjustment by the  
1296 Diversion adjustment.

1297           7.07.8.4       In any year that the RRI adjustment results in a negative  
1298 number, RRI Adjustment shall be adjusted by multiplying the RRI adjustment by the reciprocal  
1299 of the Diversion adjustment. For example if the Diversion adjustment was ninety-five (95)  
1300 percent, the reciprocal of the Diversion adjustment would be calculated by dividing one hundred  
1301 (100) percent by ninety-five (95) percent. ( $100.00\% / 95\% = 105.26\%$ ).

1302           7.07.8.5       In any year that the Annual Rate Adjustment is a negative  
1303 number, CITY may, at its sole discretion, chose to postpone the implementation of the  
1304 adjustment for one (1) year. In that event the current year rate would remain the same and the  
1305 subsequent year rate would be calculated by first, applying the negative Maximum Recycling  
1306 Service Rate adjustment to the current rate and then applying the subsequent years Maximum  
1307 Recycling Service Rate adjustment to that rate. For example if the Year X rate was \$100.00  
1308 and the Year X+1 Maximum Recycling Service Rate adjustment was -2.2% and the Year X+2  
1309 Maximum Recycling Service Rate adjustment was +2.2% and CITY chose to not apply the  
1310 negative Maximum Recycling Service Rate adjustment in Year X+1 then the rate in Year X+1  
1311 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

1358 take place during April 2016 and will utilize Dwelling Unit data from the April 1, 2016 billing  
1359 cycle. The second Review will take place during April 2017 and will utilize Dwelling Unit data  
1360 from the April 2017 billing cycle. The purpose of each Review is to assess whether  
1361 CONTRACTOR is experiencing a shortfall of billed gross revenue under this Contract due to the  
1362 number of SFD and MFD Dwelling Units billed. The Review shall evaluate billed gross  
1363 revenues generated from this Contract and any impact due to the difference of SFD and MFD  
1364 Dwelling Units billed and the SFD and MFD Dwelling Unit count of 165,239 (102,274 SFD  
1365 Dwelling Units and 62,965 MFD Dwelling Units) used by CONTRACTOR in preparing its  
1366 proposal submitted on June 12, 2014.

1367 One-Time Adjustments. Based on the results of each Review, CITY will determine whether a  
1368 special one-time adjustment to the SFD and MFD maximum per Dwelling Unit Recycling Rates  
1369 as set forth in Section A of Exhibits 1A and 1B respectively (the "One-Time Adjustment") may  
1370 be warranted. The One-Time Adjustments will take into account the cumulative differences in  
1371 gross billed revenue generated by all the rate components. If such One-Time Adjustment is  
1372 warranted, each One-Time Adjustment will be effective as of the upcoming July 1 but will not be  
1373 part of the rate base thereafter. However, if the SFD and MFD Dwelling Unit count at the time  
1374 of any review is found to be equal to or greater than ninety-nine and one half (99.5) percent of  
1375 the SFD and MFD Dwelling Unit count of 165,239 then CITY shall not be required to evaluate  
1376 this further and no further One-Time Adjustments shall be made.

1377 7.08.4.1.1. Review and Adjustment. In the event a Review  
1378 indicates that a One-Time Adjustment is warranted it will be calculated to account for any  
1379 shortfall or overage in billed gross revenues for the period July 1, 2015 through June 30 of the  
1380 current Contract Year and any shortfall in billed gross revenues projected for the next Contract  
1381 Year as such billed gross revenues are calculated in accordance with the example set forth in  
1382 Section 7 of Exhibit 2 to this Contract. For purposes of clarity, in the event the April 2016  
1383 Review indicates that a One-Time Adjustment is warranted it will be calculated to account for  
1384 any shortfall or overage in billed gross revenues for the period July 1, 2015 through June 30,  
1385 2016 and any shortfall in billed gross revenues projected for the period July 1, 2016 through  
1386 June 30, 2017. In the event the April 2017 Review indicates that a One-Time Adjustment is  
1387 warranted it will be calculated to account for any shortfall or overage in billed gross revenues for  
1388 the period July 1, 2015 through June 30, 2017 and any shortfall in billed gross revenues  
1389 projected for the period July 1, 2017 through June 30, 2018.

1390 7.09 Contamination Surcharges. The Annual Rate Adjustment and Special  
1391 Adjustments shall not be applied to the Contamination Surcharges. Contamination Surcharges  
1392 may only be adjusted as set forth in Section 7.09.1 below.

1393 7.09.1 CITY and CONTRACTOR shall meet and confer regarding the  
1394 Contamination Surcharges within sixty (60) days of July 1, 2018. At that time the parties may  
1395 discuss the need for a change in the Contamination Surcharge rates, the results of the use of  
1396 the Contamination Surcharges or other matters related to the Contamination Surcharges in  
1397 general.

1398 7.10 Financial Information. On or before March 1, 2016, or such later time as may be  
1399 agreed to between CITY and CONTRACTOR and annually thereafter during the term of this  
1400 Contract, CONTRACTOR shall deliver to CITY financial information for the specific services  
1401 performed under this Contract for the preceding calendar year. Such financial information shall  
1402 be in the format as set forth in Exhibit 2, or as may be further revised by CITY from time to time.  
1403 If CONTRACTOR fails to submit the financial information in the required format by March 1, or  
1404 such later time as may be agreed to between CITY and CONTRACTOR it is agreed that

1405 CONTRACTOR shall be deemed to have waived the RRI adjustment for the next billing period  
1406 and if the delayed submission exceeds three (3) months then the increase will be delayed for a  
1407 second billing period.

1408 7.11 Recyclable Materials Collected Data. On or before March 1, 2017, and annually  
1409 thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY data for Tons of  
1410 Recyclable Materials Collected during the preceding calendar year from SFD and MFD Service  
1411 Addresses under the terms of this Contract in the format specified by CITY. If CONTRACTOR  
1412 fails to submit the Recyclable Materials Tonnage data in the required format by March 1, it is  
1413 agreed that CONTRACTOR shall be deemed to have waived the entire annual RRI adjustment  
1414 to the Maximum Recycling Service Rates for that year.

1415 7.12 Rate Adjustments. Annual Maximum Recycling Service Rate adjustments shall  
1416 be made only in units of one cent (\$0.01). Fractions of less than one cent (\$0.01) shall not be  
1417 considered in making adjustments. The indices used in calculating the RRI shall be rounded at  
1418 four (4) decimal places for the adjustment calculations.

1419 7.13 Unusual Circumstances. If CONTRACTOR's failure to submit the financial  
1420 information and data required under Section 7.10 is the result of extraordinary or unusual  
1421 circumstances as demonstrated by CONTRACTOR to the reasonable satisfaction of the  
1422 Contract Manager, CITY, at its reasonable discretion, may consider the request for the annual  
1423 Maximum Service Rate adjustment.

1424 7.14 Notification. As of May 15, 2016, and annually thereafter during the term of this  
1425 Contract, the Contract Manager shall notify CONTRACTOR of the Maximum Recycling Service  
1426 rate adjustments to take place on July 1 of that same calendar year.

1427 7.15 Adjustments Due to Changes in Law. CONTRACTOR agrees that no  
1428 extraordinary adjustment shall occur or rate adjustment be provided except as set forth in  
1429 Article 30 and Sections 28.01 and 28.02.

1430 7.16 CONTRACTOR's Payments to CITY. CONTRACTOR shall make payment to  
1431 CITY of a negotiated franchise fee, and such other fees as may be specified in this Contract.

1432 7.16.1 Franchise Fee. The franchise fee for the fiscal year July 1, 2015 through  
1433 June 30, 2016, shall be the initial franchise fee of Three Million Dollars (\$3,000,000). The  
1434 franchise fee for the next fiscal year and each subsequent fiscal year shall be adjusted annually  
1435 by the percentage change in the annual average of the Franchise Fee cost indicator (Series ID:  
1436 cuura422sa0 Consumer Price Index, All urban Consumers, All Items, San Francisco-San Jose-  
1437 Oakland, CA) as set forth in Section 2 of Exhibit 2 to this Contract except that in no year shall  
1438 the franchise fee adjustment be less than zero (0) percent. Notwithstanding the foregoing, no  
1439 adjustment shall be implemented for a particular fiscal year if CONTRACTOR's Gross Receipts  
1440 for the prior calendar year were less than the calendar year previous to that, but not including  
1441 any calendar years prior to July 1, 2015. Such determination of whether or not CONTRACTOR's  
1442 Gross Receipts for the prior calendar year were less than the calendar year previous to that  
1443 shall be based on the results of a Gross Receipts review to be performed by a qualified firm  
1444 under contract to CITY. CITY shall have the final responsibility and discretion for the selection  
1445 of the firm but shall seek and consider comments and recommendations from CONTRACTOR.  
1446 CONTRACTOR shall be responsible for, and shall upon request by CITY promptly pay, the cost  
1447 of the review up to a maximum of Twenty Five Thousand Dollars (\$25,000), adjusted annually



1448 by the annual CPI cost indicator (Series ID: cuura422sa0 Consumer Price Index, All Urban  
1449 Consumers, All Items, San Francisco-San Jose-Oakland, CA) as set forth in Exhibit 2, per  
1450 review. The franchise fee for each fiscal year shall be divided into twelve (12) equal payments,  
1451 and paid monthly no later than the twentieth (20th) day of each month for the preceding month  
1452 except that the first franchise fee payment will be due no later than August 15, 2015.

1453 7.16.2 Proposal Development and Cost Reimbursement Fee. CONTRACTOR  
1454 shall submit a proposal development and cost reimbursement fee to CITY in the amount of Five  
1455 Hundred Thousand Dollars (\$500,000) no later than the effective date of the first Special Unit  
1456 Count Adjustment described in Section 7.08.4, or, if City Council does not approve a Special  
1457 Unit Count Adjustment, December 31, 2105.

1458 7.16.3 Other Fees. CITY may set such other fees as it deems necessary.  
1459 However, CONTRACTOR shall not be responsible for remitting such other fees to CITY until  
1460 such time as the Maximum Recycling Service Rates as set forth in Exhibit 1 have been adjusted  
1461 to include such other fees.

1462 7.16.4 Acceptance of Payment. No acceptance by CITY of any payment shall  
1463 be construed as an accord, agreement or concession that the amount is in-fact the correct  
1464 amount, nor shall such acceptance of payment be construed as a release of any claim CITY  
1465 may have against CONTRACTOR for any additional sums payable under the provisions of this  
1466 Contract. All amounts paid shall be subject to independent audit and recalculation by CITY. If,  
1467 after the audit, such recalculation indicates an underpayment CONTRACTOR shall pay to CITY  
1468 the amount of the underpayment and shall reimburse CITY for all reasonable costs and  
1469 expenses incurred in connection with the audit and recalculation within ten (10) Work Days of  
1470 receipt of written notice from CITY that such is the case. If, after audit, such recompilation  
1471 indicates an overpayment, CITY shall notify CONTRACTOR in writing of the amount of the  
1472 overpayment, less costs and expenses incurred in connection with the audit and recalculation.  
1473 CONTRACTOR may offset the amounts next due following receipt of such notice by the amount  
1474 specified therein.

1475 7.17 Billing Records. CONTRACTOR shall keep records, electronic or paper, of all  
1476 billing documents and Customer account records, including but not limited to, invoices, receipts,  
1477 and collection notices, each in chronological order, for a period of three (3) years after the date  
1478 of receipt or issuance.

1479 7.18 CITY Access to Customer Account and Service Information. Within a reasonable  
1480 time after the commencement of the Collection Services, CONTRACTOR and CITY shall  
1481 determine a means by which the following information shall be electronically provided to CITY  
1482 via a live computer link or some other format acceptable to CITY: (i) all routing information from  
1483 route audits to include name and address of Customer, Service Recipient and route number; (ii)  
1484 records of daily Collection, Recycling Residue Disposal, and Processing figures; (iii) account  
1485 classification (i.e., SFD, MFD, Commercial, Roll-Off Box), and service level (i.e., number and  
1486 size of Containers, frequency of Collection); (iv) notes on location of Carts and Bins at Service  
1487 Addresses; (v) record of missed pickups; and (vi) Customer service log. Upon expiration or  
1488 termination of this Contract, CITY shall have the immediate and permanent right to access and  
1489 copy all such information contained in CONTRACTOR's Customer account and service  
1490 information system relevant to this Contract.

1491 7.19 Recycling Service Census Data. On or before July 15, 2016, and annually  
1492 thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY, Recycling

1493 Service census data for all Service Addresses as of the preceding July 1. This information shall  
1494 be delivered electronically in a format approved by CITY, using software approved by CITY.

1495 7.19.1 SFD Census Data. Census data for SFD Service Addresses shall consist  
1496 of a list of SFD Service Recipients receiving, SFD Recycling Service during the previous month  
1497 and include at a minimum: (i) Service Recipient name and Service Address; (ii) name and  
1498 address of Customer if different from Service Recipient and Service Address; and (iii) service  
1499 level (i.e., number and size of Containers, and frequency of Collection).

1500 7.19.2 MFD and Commercial Census Data. Census data for MFD, and  
1501 Commercial Service Addresses shall consist of the number of Service Recipients receiving MFD  
1502 Recycling Services, or Commercial Non-Exclusive Recycling Service during the preceding  
1503 month. The census data shall be segregated by Customer type, and include at a minimum: (i)  
1504 Service Recipient name and Service Address; (ii) name and address of Customer if different  
1505 from Service Recipient and Service Address; and (iii) service level (i.e., number and size of  
1506 Containers, and frequency of Collection).

1507 7.20 Security for Payment From MM&O Contractor. In order to insure timely payment  
1508 to CONTRACTOR of amounts not reasonably disputed by the MM&O Contractor, CITY and  
1509 MM&O Contractor will, together with a bank as provided below, enter into an escrow agreement  
1510 that requires MM&O Contractor to deposit into escrow an amount of One Million Five Hundred  
1511 Thousand Dollars (\$1,500,000.00) (the "RR Payment Escrow Agreement").

1512 7.20.1 The bank that is party to the RR Payment Escrow Agreement will be a  
1513 FDIC insured banking institution chartered to do business in the State of California as selected  
1514 by MM&O Contractor (the "Escrow Bank"). The RR Payment Escrow Agreement will be  
1515 structured so that, in the event funds are drawn by CITY, the MM&O Contractor shall restore the  
1516 balance of One Million Five Hundred Thousand Dollars (\$1,500,000) within two (2) Work Days.  
1517 Not later than July 1, 2015, CITY shall provide CONTRACTOR written notice that the MM&O  
1518 Contractor has deposited into escrow under the RR Payment Escrow Agreement the sum of  
1519 One Million Five Hundred Thousand Dollars (\$1,500,000.00).

1520 7.20.2 Not later than seven (7) Work Days before CITY may submit a withdrawal  
1521 request to the Escrow Bank, CITY will deliver written notice to MM&O Contractor stating the  
1522 amount CITY intends to withdraw. CITY may not request any withdrawal unless the claimed  
1523 amount exceeds ten (10) percent of the average monthly payments by the MM&O Contractor to  
1524 CONTRACTOR. CITY may proceed to submit a withdrawal request if the MM&O Contractor  
1525 does not timely deliver a written notice to CITY disputing the withdrawal request as provided in  
1526 the immediately following sentence. The MM&O Contractor may dispute the withdrawal request  
1527 by delivering to CITY, within five (5) Work Days following the MM&O Contractor's receipt of the  
1528 notice from CITY, a written notice stating the amount that the MM&O Contractor disputes and  
1529 promptly paying any undisputed portion to CONTRACTOR. Such written notice of dispute from  
1530 the MM&O Contractor shall commence dispute resolution between the MM&O Contractor and  
1531 CONTRACTOR in accordance with Article 54, subject to modification as provided below in  
1532 Section 7.20.3.

1533 7.20.3 CONTRACTOR and the MM&O Contractor shall have an informal meet  
1534 and confer period of seven (7) Work Days. If the dispute is not informally resolved, then the  
1535 parties shall agree to binding arbitration procedures as generally set forth in Section 54.01.3;  
1536 provided, however, that Section 54.01.3.3 shall have no applicability to disputes related to the  
1537 RR Payment Escrow Agreement or otherwise under this Section. Notwithstanding Section  
1538 54.01.3.1, the parties may agree to other expedited procedures for completing binding

1539 arbitration within ninety (90) days. Failure to agree upon such procedures will cause the parties  
1540 to proceed pursuant to the then-current JAMS Streamlined Arbitration Rules. During the  
1541 pendency of dispute resolution, CITY may not submit a withdrawal request to the Escrow Bank.  
1542 If the MM&O Contractor has not made payment to CONTRACTOR of amounts determined to be  
1543 owed as a result of written agreement between the parties following informal meet-and-confer or  
1544 as an award of the arbitrator pursuant to Section 54.01.3 within five (5) Work Days of such  
1545 agreement or award, CITY may submit to the Escrow Bank a withdrawal request for such  
1546 amounts.

1547 7.20.4 In the event the MM&O Contractor withholds payment of  
1548 CONTRACTOR's entire monthly bill or a substantial portion thereof ("substantial" shall mean no  
1549 less than Four Hundred Thousand Dollars (\$400,000.00)) and CITY reasonably determines,  
1550 after reviewing all information provided to CITY by CONTRACTOR and the MM&O Contractor,  
1551 such withholding by the MM&O Contractor is not justified, then CITY may submit a withdrawal  
1552 request to the Escrow Bank of the amount withheld and submit such payment to  
1553 CONTRACTOR, after first providing five (5) Work Days' notice to both CONTRACTOR and the  
1554 MM&O Contractor of CITY's determination. If, after withdrawal by CITY, final resolution of the  
1555 dispute under Section 7.20.3 affirms MM&O Contractor's withholding of payment, or a portion  
1556 thereof, to CONTRACTOR, then the MM&O Contractor shall be entitled to recapture the final  
1557 agreed-upon or arbitrated amount of the payment withdrawn from the Escrow Bank as well as  
1558 any legal interest thereon. CONTRACTOR may either reimburse the MM&O Contractor such  
1559 amounts or the MM&O Contractor may deduct such amounts from its subsequent monthly  
1560 payment(s) to CONTRACTOR.

## 1561 **Article 8. MATERIAL DIVERSION STANDARD**

1562 8.01 Material Diversion Standard. Beginning with calendar year 2016 and annually  
1563 thereafter, CONTRACTOR shall meet a minimum material Diversion standard of ninety (90)  
1564 percent by weight of the following: all Recyclable Materials Collected under the terms of this  
1565 Contract plus materials that are not Recyclable Materials but which CONTRACTOR can and  
1566 does Divert such as metal pots, scrap metal, and other items. Compliance with this standard  
1567 shall be determined using the results of waste characterization studies as provided in Section  
1568 8.01.1 and Processing Diversion studies as provided in Section 8.01.2, and the calculations as  
1569 provided in Section 8.01.3.

1570 8.01.1 Waste Characterization Studies. Waste characterization studies shall  
1571 determine by weight the percentage of Collected materials that are: Recyclable Materials plus  
1572 other materials which CONTRACTOR can and does Divert, prior to Processing. Waste  
1573 characterization studies shall be conducted one (1) time in 2015, and two (2) times in each  
1574 subsequent year of this Contract. The average of the results of the two (2) waste  
1575 characterization studies conducted in a calendar year shall be used to calculate compliance with  
1576 the standard in that year. Waste characterization studies shall be performed by a qualified third  
1577 party contractor subject to CITY's approval, which shall not be unreasonably withheld. The  
1578 studies shall be conducted at the MRF and shall be of sufficient scope to meet industry  
1579 practices and standards. The study methodology shall be subject to CITY's approval, which  
1580 shall not be unreasonably withheld. CONTRACTOR shall provide full access to the conduct of  
1581 the waste characterization studies, and all data and products of the studies, to CITY and its  
1582 representatives. Annual expenditures for the cost of the studies shall be capped at thirty  
1583 thousand dollars (\$30,000) in 2015, and sixty thousand dollars (\$60,000) in 2016. Beginning in  
1584 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.

1628                   8.02.1 Compliance with Material Diversion Standard. On or before February 15,  
1629 2016, and annually thereafter during the term of this Contract, CITY and CONTRACTOR shall  
1630 meet and confirm the prior year annual Diversion.

1631                   8.03 Failure to Meet Material Diversion Standard in Consecutive Years. In the event  
1632 CONTRACTOR fails to meet the minimum Diversion standard set forth in Section 8.01 for three  
1633 (3) consecutive calendar years, CITY, at its sole discretion, may impose a permanent Diversion  
1634 adjustment as set forth in Section 7.07.8.2.

## 1635                   **Article 9. SFD RECYCLING SERVICES**

1636                   9.01 SFD Recycling Services. These services shall be governed by the following  
1637 terms and conditions:

1638                   9.01.1 Size and Frequency of Service. CONTRACTOR shall offer Recycling  
1639 Carts in 20, 32, 64 and 96 gallon nominal Cart sizes, with the default Cart size being 64 gallons.  
1640 The size of the Cart shall be selected by the SFD Service Recipient or Customer. SFD  
1641 Recycling Services shall be provided one (1) time per week on a scheduled route basis. SFD  
1642 Recycling Services shall be scheduled so that the service is provided to a Service Address on  
1643 the same Work Day as the Mixed Material and Organics Collection Contractor Collects the  
1644 Mixed Materials.

1645                   9.01.2 Manner of Collection. CONTRACTOR shall provide SFD Recycling  
1646 Services with as little disturbance as possible. Except in the case of backyard SFD Recycling  
1647 Services, CONTRACTOR shall leave any Recycling Cart in an upright position, with the lid  
1648 closed, and replacement Used Oil Containers and Used Oil Filter Containers on the curb or at  
1649 the edge of street pavement for streets without curbs, without obstructing alleys, roadways,  
1650 driveways, sidewalks or mail boxes. In the case of backyard SFD Recycling Services,  
1651 CONTRACTOR shall remove the Recycling Container and Used Oil and Used Oil Filter  
1652 Containers from the back or side of the Service Address (or from such other location as agreed  
1653 to by CONTRACTOR and the Service Recipient), shall empty the contents into the Collection  
1654 vehicle, and shall return the Recycling Container and replacement Used Oil and Used Oil Filter  
1655 Containers to the location from which they were removed.

1656                   9.01.3 Curbside SFD Recycling Services. Curbside SFD Recycling Services  
1657 shall be provided where Recyclable Materials and Used Oil and Used Oil Filter Containers are  
1658 placed within three (3) feet of the curb, or at edge of street pavement for streets without curbs.

1659                   9.01.4 Premium Backyard SFD Recycling Services. CONTRACTOR shall  
1660 provide premium backyard Collection of Recyclable Materials and Used Oil and Used Oil Filters  
1661 to a SFD Service Address if requested by the SFD Customer for their convenience.  
1662 CONTRACTOR shall be compensated for such services at the approved Maximum Recycling  
1663 Service Rates provided in Exhibit 1 for premium backyard SFD Recycling Services.

1664                   9.01.5 Exempt Backyard SFD Recycling Services. Notwithstanding any term or  
1665 definition set forth in this Contract, CONTRACTOR shall provide exempt backyard SFD  
1666 Recycling Services to SFD Service Addresses whose occupants meet the requirements for the  
1667 exemption programs set forth below in Sections 9.01.6 through 9.01.8 and, based on  
1668 information provided by CITY to CONTRACTOR, those Service Addresses receiving such  
1669 service from the prior Collection Contractor. CONTRACTOR shall provide exempt SFD  
1670 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

1753 Containers, and Used Oil and Used Oil Filter Containers as are readily accessible to  
1754 CONTRACTOR's crew and vehicles and not blocked. However, CONTRACTOR shall provide  
1755 "push services" and "key services" as necessary during the provision of MFD Recycling  
1756 Services. Push services shall include, but not be limited to, dismounting from the Collection  
1757 vehicle for the purpose of moving the Bins or Carts from their storage location for Collection and  
1758 returning the Bins or Carts to their storage location. Push services may include unlocking and  
1759 relocking the Bin or enclosure. Key services shall include the provision of a master lock and key  
1760 by CONTRACTOR to the Service address for the convenience of CONTRACTOR.  
1761 CONTRACTOR shall be compensated for providing "push services" and/or "key services" in  
1762 accordance with the approved Maximum Recycling Service Rates as provided in Exhibit 1 or as  
1763 may be adjusted in accordance with the terms of this Contract.

1764                   10.01.3 Difficult to Serve. If CONTRACTOR determines that the set-out  
1765 location for Carts, Bins or Used Oil and Used Oil Filter Containers is Difficult to Serve,  
1766 CONTRACTOR shall contact the MFD Customer to discuss a change in the set out location. In  
1767 the event a new set out location is not agreed to between the CONTRACTOR and MFD  
1768 Customer, then CONTRACTOR shall be compensated for providing Difficult to Serve MFD  
1769 Recycling Collection Services in accordance with the approved Maximum Recycling Service  
1770 Rates as provided in Exhibit 1 or as may be adjusted in accordance with the terms of this  
1771 Contract.

1772                   10.02 MFD Recycling Collection Service. This service will be governed by the following  
1773 additional terms and conditions:

1774                   10.02.1 Containerized Recyclable Materials. CONTRACTOR shall provide MFD  
1775 Recycling Services to all MFD Service Addresses in the Service Area where the Recyclable  
1776 Materials are properly containerized in Carts or Bins, except as set forth in Section 10.02.5  
1777 regardless of whether the lid is fully closed, where the Carts or Bins are accessible as set forth  
1778 in Section 10.01.2 above.

1779                   10.02.2 Service Frequency. CONTRACTOR shall provide MFD Recycling  
1780 Services once per week on a scheduled route basis. However, in those instances where the  
1781 scheduled Collection day falls on a holiday as set forth in Section 6.10 herein, the Collection day  
1782 may be adjusted in a manner agreed to between the MFD Service Recipient and  
1783 CONTRACTOR as long as service is received one (1) time per week.

1784                   10.02.2.1       CONTRACTOR shall respond to requests for service  
1785 utilizing Roll-Off Boxes within two (2) Work Days of the request from the MFD Customer.

1786                   10.02.3 Container Sizes. CONTRACTOR shall offer Recyclable Materials  
1787 Containers in 20, 32, 64 and 96 gallon nominal Cart sizes and in 1, 1.5 2, 3, 4, 6' and 7 cubic  
1788 yard Bins. CONTRACTOR shall offer Roll-Off Boxes in 10, 20, 30 and 40 cubic yard sizes with  
1789 lids.

1790                   10.02.4 Minimum Capacity. CONTRACTOR shall provide Recyclable Materials  
1791 Container sizes as requested by the MFD Customer such that the total weekly capacity of  
1792 Recycling Collection Services is sufficient ensure that no Recyclable Materials, except as set  
1793 forth in Section 10.02.5 need be placed outside the Recyclable Materials Container on a regular  
1794 basis.

1795                   10.02.5 Collection of Recyclable Materials Overages. CONTRACTOR shall



1796 also be required to Collect all Recyclable Materials Overages that are set out for Collection  
1797 beside the Recycling Container in an additional Container, or in the case of corrugated  
1798 cardboard, bundled or tied in pieces not exceeding three (3) feet by three (3) feet, placed beside  
1799 the Recycling Container. CONTRACTOR may Collect corrugated cardboard exceeding three  
1800 (3) feet by three (3) feet or may leave the oversized material uncollected along with a Non-  
1801 Collection Notice that contains instructions on the proper procedures for setting out corrugated  
1802 cardboard.

1803                   10.02.6 Multiple Overages. In the case of repeated Overages of Recyclable  
1804 Materials, except corrugated cardboard, CONTRACTOR may send written notification to the  
1805 MFD Customer that includes dates of observed Overages, any previous notifications,  
1806 photographic documentation of said Overages and an offer to arrange for an appropriate  
1807 change in Bin or Cart size, and/or Collection frequency. Should Overages persist after three (3)  
1808 notifications and CONTRACTOR is unable to reach an agreement with the MFD Customer  
1809 regarding an appropriate change in Bin or Cart size and/or frequency of Collection,  
1810 CONTRACTOR may impose such service level increase as is needed to avoid the Overages  
1811 and notify the MFD Customer and Contract Manager in writing. The MFD Customer may  
1812 petition CITY regarding any change in Bin or Cart size and/or Collection frequency. Should  
1813 three (3) months elapse with no Overage recurrence taking place following the change in  
1814 service the Overage problem shall be considered resolved.

1815                   10.02.7 Additional Recyclable Materials Capacity.

1816                   10.02.7.1 Increase in Container Size. Upon notification to  
1817 CONTRACTOR by CITY or a Customer that additional Recyclable Materials capacity is  
1818 requested in the form of a larger Container or an additional Container, CONTRACTOR shall  
1819 deliver such Recyclable Materials Containers as are needed to meet the capacity requirements  
1820 of the Service Address no later than the next regularly scheduled Collection day or within six (6)  
1821 Work Days (whichever is later). CONTRACTOR shall not receive additional compensation for  
1822 the provision or Collection of larger or additional Recyclable Materials Containers.

1823                   10.02.7.2 Increase in Collection Frequency. Customers may obtain  
1824 additional Recyclable Material capacity through the subscription of Collection frequency in  
1825 excess of the default frequency of one (1) time per week. CONTRACTOR shall be  
1826 compensated for providing MFD Recycling Collection Services in excess of one (1) time per  
1827 week in accordance with the approved "Excess Frequency" Maximum Recycling Service Rate  
1828 as provided in Exhibit 1 or as may be adjusted under the terms of this Contract.

1829                   10.02.8 Materials Recovery Facility. All Recyclable Materials Collected as a  
1830 result of performing MFD Recycling Services shall be delivered to the Materials Recovery  
1831 Facility.

1832                   10.03 Used Oil Collection Service. CONTRACTOR shall perform Used Oil Collection  
1833 Service in accordance with the following terms and conditions:

1834                   10.03.1 Conditions of Service. CONTRACTOR shall provide Used Oil  
1835 Collection Service to all MFD Service Addresses in the Service Area utilizing Used Oil  
1836 Containers for the accumulation and set-out of Used Oil, and Used Oil Filter Containers for the  
1837 accumulation and set out of Used Oil Filters where the Used Oil Containers and Used Oil Filter  
1838 Containers have been placed in a Collection box at a location agreed to by CONTRACTOR and  
1839 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.

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

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 (10<sup>th</sup>) 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.

2348 **Article 18. EMERGENCY SERVICE PROVISIONS**

2349 18.01 Emergency Services. CONTRACTOR shall provide emergency services (i.e.,  
2350 special Collections, transport, processing,) at CITY's request in the event of a declared local,  
2351 state or federal state of emergency, major accidents, disruptions or natural calamities.  
2352 CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours  
2353 of notification by CITY, or as soon thereafter as is reasonably practical in light of the  
2354 circumstances. An emergency contact number shall be accessible during the term of this  
2355 Contract twenty-four hours per day for the Contract Manager or other CITY Administrator to  
2356 contact CONTRACTOR. CONTRACTOR shall receive additional compensation, above the  
2357 normal compensation contained in this Contract, to cover the costs of rental equipment,  
2358 additional personnel, overtime hours and other documented expenses based on the Maximum  
2359 Recycling Service Rates set forth in Exhibit 1 to this Contract provided CONTRACTOR has first  
2360 secured written authorization and approval from CITY through the CITY Administrator.

2361 18.02 In the event of an emergency as set forth above, the Contract Manager may  
2362 grant CONTRACTOR a variance from regular routes and schedules. As soon as practicable  
2363 after such event, CONTRACTOR shall advise the Contract Manager when it is anticipated that  
2364 normal routes and schedules can be resumed. The Contract Manager shall make an effort  
2365 through the local news media to inform the public when regular services may be resumed.

2366 **Article 19. RECORD KEEPING & REPORTING REQUIREMENTS**

2367 19.01 Record Keeping.

2368 19.01.1 Accounting Records. CONTRACTOR shall maintain full, complete and  
2369 separate financial, statistical and accounting records, pertaining to cash, billing, and all  
2370 Recycling Services provided under this Contract, prepared on an accrual basis in accordance  
2371 with generally accepted accounting principles. Such records shall be subject to audit and  
2372 inspection by CITY. Gross Receipts derived from provision of the Recycling Services shall be  
2373 recorded as revenues in the accounts of CONTRACTOR. These records shall be separate and  
2374 segregated from other records maintained by CONTRACTOR for the provision of other services  
2375 outside the scope of this Contract as may be provided by CONTRACTOR. CONTRACTOR  
2376 shall maintain and preserve all cash, billing and Disposal records for a period of not less than  
2377 five (5) years following the close of each of CONTRACTOR's fiscal years.

2378 19.01.2 CONTRACTOR Payments to CITY. CONTRACTOR shall maintain  
2379 records of all payments made to CITY for all items listed in Section 7.16.

2380 19.01.3 Tonnage Records. CONTRACTOR shall maintain records of the  
2381 incoming and outgoing quantities of Recyclable Materials Collected, processed, composted,  
2382 purchased, sold, donated or given for no compensation and Recycling Residue Disposed under  
2383 the terms of this Contract.

2384 19.01.4 Records. CONTRACTOR shall maintain all other records relevant to  
2385 the provision of Residential Recycling Collection Services under this Contract. After a meet and  
2386 confer if CONTRACTOR so requests, CONTRACTOR shall maintain such additional records as  
2387 reasonably required by CITY and agreed to by CONTRACTOR.

2388 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.

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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

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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"> <li>• Greater than three minutes and up to four minutes</li> <li>• Greater than four minutes and up to five minutes</li> <li>• Over five minutes</li> </ul> (Section 16.02.3)	\$1,000 per week \$2,000 per week \$3,000 per week
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.

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## Article 23. FRANCHISE FEE AUDIT AND PERFORMANCE REVIEWS

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### 23.01 Franchise Fee Audit and Performance Review.

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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.

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

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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.

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

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

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23.01.2.4 Verify the Diversion recovery percentages reported by CONTRACTOR.

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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.

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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.

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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

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2641           24.01 Performance Bond. A performance bond as required under Section 4.01 shall  
2642 be furnished by CONTRACTOR. The performance bond shall be in a form and with language  
2643 that is acceptable to CITY, for the faithful performance of this Contract and all obligations arising  
2644 hereunder in an amount of Three Million Dollars (\$3,000,000), except as provided below in  
2645 Section 24.02.

2646           24.01.1 Renewal. Beginning July 1, 2016, and each April 1 thereafter,  
2647 CONTRACTOR shall have the performance bond renewed annually and executed by a surety  
2648 company that is acceptable to CITY; an admitted surety company licensed to do business in the  
2649 State of California; has an "A:VII" or better rating by A. M. Best or Standard and Poor's; and is  
2650 included on the list of surety companies approved by the Treasurer of the United States.

2651           24.02 Additional Performance Security. To guarantee the timely and full performance  
2652 of CONTRACTOR's obligations, including CONTRACTOR's indemnification obligations,  
2653 CONTRACTOR shall provide additional Performance Security.

2654           24.02.1 From July 1, 2015 through June 30, 2016, CONTRACTOR shall cause  
2655 the performance bond required under Section 24.01 to be in the amount of Six Million Dollars  
2656 (\$6,000,000), which is Three Million Dollars (\$3,000,000) greater than the performance bond  
2657 required under Section 24.01. Through June 30, 2016, CITY shall cover any additional costs  
2658 associated with CONTRACTOR's obtaining and holding the performance bond in the amount of  
2659 Six Million Dollars (\$6,000,000) compared to CONTRACTOR's costs for obtaining and holding a  
2660 performance bond in the amount of Three Million Dollars (\$3,000,000).

2661           24.02.2 Beginning on July 1, 2016 and for the remaining Term of this Contract,  
2662 CONTRACTOR shall be responsible for maintaining an additional Performance Security.  
2663 CONTRACTOR shall either (1) maintain the amount of the performance bond as set forth in  
2664 Section 24.02.1 at Six Million Dollars (\$6,000,000), at CONTRACTOR's sole cost and expense,  
2665 which shall be renewed annually as provided in Section 24.01.1; or (2) provide CITY with an  
2666 alternate form of financial security that is equal to or greater than an amount of Three Million  
2667 Dollars (\$3,000,000), such as a corporate guaranty, which requires CITY's review and approval.  
2668 CONTRACTOR may propose an alternate form of financial security at any time. CITY shall  
2669 review and consider CONTRACTOR's proposal and CITY's approval shall not be unreasonably  
2670 withheld. If CITY accepts CONTRACTOR's proposal for an alternate form of financial security  
2671 and CONTRACTOR provides the agreed-upon substituted security, then CONTRACTOR's  
2672 obligation to furnish a performance bond shall be governed by Section 24.01 and not by Section  
2673 24.02, 24.02.1, or 24.02.2.

2674           24.03 Letter of Credit. As an alternative to the performance bond required by Section  
2675 24.01, at CITY's option, CONTRACTOR may deposit with CITY an irrevocable letter of credit in  
2676 an amount as set forth in Section 24.01. If allowed, the letter of credit must be issued by an  
2677 FDIC insured banking institution chartered to do business in the state of California, consistent  
2678 with the Uniform Customs and Practice for Documentary Credits, then current revision or similar  
2679 uniform convention approved by CITY in CITY's name, and be callable at the discretion of CITY.  
2680 Nothing in this Article shall, in any way, obligate CITY to accept a letter of credit in lieu of the  
2681 performance bond.



## Article 25. INSURANCE

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2683           25.01 Insurance Policies. CONTRACTOR shall secure and maintain throughout the  
2684 term of this Contract, at CONTRACTOR's own cost and expense, insurance against claims for  
2685 injuries to persons or damages to property, which may arise from or in connection with  
2686 CONTRACTOR's performance of work or services under this Contract. CONTRACTOR's  
2687 performance of work or services shall include performance by CONTRACTOR's employees,  
2688 agents, representatives and subcontractors.

2689           25.02 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

2690                   25.02.1 Commercial General Liability: Insurance Services Office (ISO)  
2691 Occurrence Form CG 0001 or, if approved by CITY, Claims Made Form No. CG0 0002.  
2692 Automobile Liability: Insurance Services Office Form No. CA 0001, code 1 "any auto."

2693                   25.02.2 Workers' Compensation Insurance as required by the state of California  
2694 and Employers Liability Insurance.

2695                   25.02.3 Hazardous Waste and Environmental Impairment Liability Insurance.

2696                   25.02.4 Crime Insurance for Employee Theft.

2697           25.03 Minimum Limits of Insurance. CONTRACTOR shall maintain insurance limits no  
2698 less than:

2699                   25.03.1 Commercial General Liability. Three Million Dollars (\$3,000,000) each  
2700 occurrence, including products and completed operations coverage.

2701                   25.03.1.1 Coverage afforded on behalf of the CITY,  
2702 Councilmembers, directors, officers, agents, employees and volunteers shall be primary  
2703 insurance, but only as respects the services provided by CONTRACTOR under this Contract.  
2704 Any other insurance available to CITY, Councilmembers, directors, officers, agents, employees  
2705 and volunteers under any other policies shall be excess insurance (over the insurance required  
2706 by this Contract).

2707                   25.03.2 Automobile Liability. Three Million Dollars (\$3,000,000) combined  
2708 single limit per accident for bodily injury and property damage.

2709                   25.03.3 Workers' Compensation and Employers Liability. Workers'  
2710 Compensation insurance as required by the state of California, with statutory limits and  
2711 Employers Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each  
2712 accident, Two Million Dollars (\$2,000,000) policy limit bodily injury by disease, and Two Million  
2713 Dollars (\$2,000,000) each employee bodily injury by disease.

2714                   25.03.4 Hazardous Waste and Environmental Impairment Liability. Three  
2715 Million Dollars (\$3,000,000) each occurrence covering liability arising from the release of waste  
2716 materials and/or irritants, contaminants or pollutants. Hazardous Waste and Environmental  
2717 Impairment Liability will include coverage for all operations of CONTRACTOR, and include all  
2718 owned landfills or waste disposal sites and transfer stations. If coverage is on a Claims Made  
2719 basis, the retroactive date must be shown, and must be before the date of the Contract or the  
2720 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).

2940                    26.07.1 This provision is in addition to all other provisions in this Contract and is  
2941 intended to survive the end of the term of this Contract. CONTRACTOR's Performance Security  
2942 shall extend to the indemnification obligation hereunder.

2943                    26.08 Separate Counsel. In circumstances where CONTRACTOR is obligated to  
2944 indemnify CITY, CITY may elect to have separate legal counsel from CONTRACTOR at any  
2945 time at its sole discretion, and in such case CONTRACTOR will pay one-half (1/2) of all fees  
2946 and costs and charges for such separate legal counsel.

2947                    26.09 Consideration. It is specifically understood and agreed that the consideration  
2948 inuring to CONTRACTOR for the execution of this Contract consists of the promises, payments,  
2949 covenants, rights and responsibilities contained in this Contract.

2950                    26.10 Obligation. The execution of this Contract by CONTRACTOR shall obligate  
2951 CONTRACTOR to comply with the foregoing indemnification provisions; however, the collateral  
2952 obligation of providing insurance must also be fully complied with as set forth in Article 25  
2953 above.

2954                    26.11 Subcontractors. CONTRACTOR shall require all subcontractors to enter into an  
2955 Contract containing the provisions set forth Sections 26.01, 26.02, 26.03, 26.04, 26.05, 26.06,  
2956 26.07, and Article 25 in its entirety and in the preceding subsection in which Contract the  
2957 subcontractor fully indemnifies CITY in accordance with this Contract.

2958                    26.12 Exception. Notwithstanding Sections 26.01, 26.02 and 26.03, CONTRACTOR's  
2959 obligation to indemnify, hold harmless and defend CITY, its officers and employees pursuant to  
2960 this Article 26 shall not extend to any loss, liability, penalty, claim, damage, action or suit to the  
2961 extent caused by or based on the acts or omissions constituting willful misconduct or active  
2962 negligence on the part of CITY or any other indemnitee. This Section is not intended to modify  
2963 in any way the parties' respective rights and obligations under Section 26.06.

2964                    26.13 Damage by CONTRACTOR. If CONTRACTOR's employees or subcontractors  
2965 cause any injury, damage or loss to CITY property, including but not limited to CITY streets or  
2966 curbs, CONTRACTOR shall reimburse CITY for CITY's cost of repairing such injury, damage or  
2967 loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by  
2968 CONTRACTOR for any such injury, damage or loss. With the prior written approval of CITY,  
2969 CONTRACTOR may repair the damage at CONTRACTOR's sole cost and expense.

2970                    **Article 27. DEFENSE OF CONTRACTOR'S RIGHTS**

2971                    27.01 When either CITY or CONTRACTOR determines in their reasonable discretion  
2972 that there are infringements of CONTRACTOR's rights under this Contract, CITY shall take all  
2973 commercially reasonable actions necessary to prevent the infringement, including legal actions.  
2974 If requested by CITY, CONTRACTOR shall, with counsel reasonably acceptable to CITY,  
2975 assume the prosecution necessary to enforce such rights, and, shall defend, with counsel  
2976 reasonably approved by CITY, indemnify and hold harmless CITY, its employees and officials,  
2977 against any and all claims arising out of CITY's performance under this Article 27. CITY will  
2978 fully cooperate with CONTRACTOR in prosecuting and defending CONTRACTOR's exclusive  
2979 Contract rights. CONTRACTOR shall reimburse CITY within thirty (30) days of receipt of an  
2980 invoice, for all actual, reasonable costs associated with defense of Contract rights (including, but  
2981 not limited to, CITY staff and CITY Attorney time, including applicable CITY overhead  
2982 allocations, and outside consultants, including attorney fees and costs).

2983           27.02 CITY and CONTRACTOR believe that it is in the best interests of CITY to ensure  
2984 that Residential Recyclable Materials are not Collected by third parties in violation of CITY's  
2985 Municipal Code and CONTRACTOR's exclusive rights under this Agreement and that all  
2986 appropriate steps should be taken within the parties' power to eliminate the occurrence of such  
2987 violations within CITY. Accordingly, CITY shall consider, in its discretion, revisions to the  
2988 Municipal Code, in sufficient time for them to become effective on or before July 1, 2015, that, to  
2989 the extent permitted by law, would make unlawful the placement of Containers and/or provision  
2990 of services for the Collection of Recyclable Materials within CITY that are not authorized by  
2991 CITY and that would, among other things, would authorize CITY to impound such Containers  
2992 after notice to the violator. The proposed revisions shall give the CITY Administrator the ability  
2993 to delegate the authority to impound such Containers to CONTRACTOR. In the event such  
2994 revisions are adopted, the CITY Administrator may delegate such authority to CONTRACTOR in  
2995 such circumstances he or she deems appropriate, consistent with the first sentence of this  
2996 Section. Any actions taken by CONTRACTOR pursuant to the delegation shall be at  
2997 CONTRACTOR's sole risk.

## 2998           **Article 28. OBLIGATION TO PROVIDE SERVICE**

2999           28.01 CITY and CONTRACTOR agree, as more fully set forth in the Recitals to this  
3000 Contract, that proper Collection of Residential Recyclable Materials is fundamental to the  
3001 protection of the public health, safety and the well-being of the residents of CITY. CITY's  
3002 responsibility for ensuring the adequacy of these sanitation services in part provides the  
3003 justification for the granting of an exclusive franchise to CONTRACTOR. This exclusive grant  
3004 creates an obligation, subject to the terms and conditions of the Contract, that Recycling  
3005 Services are continued to be provided even under difficult or adverse circumstances, such as  
3006 but not limited to, natural disaster, labor unrest, and any period where legal actions impact the  
3007 effectiveness of portions of this Contract.

3008           28.02 Specifically, with reference to any Maximum Recycling Service Rates Lawsuit as  
3009 defined in Section 26.06, such legal actions shall not be considered a Change in Law or Force  
3010 Majeure event excusing CONTRACTOR's performance, except as otherwise excused as set  
3011 forth below.

3012           28.02.1 During the pendency of any such litigation, and in the event a court of  
3013 competent jurisdiction or other regulatory agency sets aside, invalidates or stays all or a portion  
3014 of the Maximum Recycling Service Rates, then CITY and CONTRACTOR agree to undertake  
3015 the following:

3016           28.02.1.1 CITY and CONTRACTOR agree to immediately meet and  
3017 confer to negotiate in good faith any modifications to CONTRACTOR's obligations under this  
3018 Contract to ensure provision of Recycling Services and to enable CONTRACTOR to continue to  
3019 collect for the ongoing cost of services, including its return on capital and costs of operations.  
3020 Nothing in this Contract, including those provisions relating to CITY's regulation of Maximum  
3021 Recycling Service Rates, shall be read to limit CONTRACTOR's right to collect for the cost of  
3022 continuing provision of Recycling Service.

3023           28.02.1.2 Except in the event of a Force Majeure, CONTRACTOR  
3024 shall provide a level of Recycling Services necessary to ensure compliance with AB 939 as  
3025 agreed to by and between CITY and CONTRACTOR. In the event CITY and CONTRACTOR  
3026 are unable to agree within a period not to exceed two (2) weeks from that date on which a court  
3027 of competent jurisdiction or other regulatory agency with authority reduces Maximum Recycling



3028 Service Rates, CONTRACTOR shall have the authority to make adjustments in services to  
3029 mitigate against any revenue impacts resulting from a Maximum Recycling Service Rates  
3030 lawsuit. CITY shall continue to provide nuisance abatement and may also take other urgency  
3031 actions as necessary to facilitate CONTRACTOR's continuation of Recycling Services and  
3032 ability to obtain compensation from Customers therefor. The intent of this provision is to ensure  
3033 that CONTRACTOR continues to receive compensation, including its rate of return, consistent  
3034 with that specified in the Contract for the level of services provided. If certain services are  
3035 reduced and/or eliminated as a result of a Maximum Recycling Service Rates Lawsuit, CITY  
3036 agrees that during the term of the elimination of said services it shall not contract with any other  
3037 company or party to provide these services and will contract only with CONTRACTOR to restore  
3038 said services either during or after the conclusion of the Maximum Recycling Service Rates  
3039 Lawsuit. If CITY finds it necessary to procure eliminated services, it shall do so from  
3040 CONTRACTOR at commercially reasonable rates.

3041                                   28.02.1.3       CONTRACTOR shall, in coordination with CITY, reduce  
3042 its charges to Customers in an amount corresponding to any CITY fee or charge set aside,  
3043 invalidated, or stayed by such court, regulatory agency, or otherwise agreed to.  
3044 CONTRACTOR's reduced charges, to the extent they correspond to the Maximum Recycling  
3045 Service Rates allowed under this Contract minus any such fee or charge set aside, are intended  
3046 to generate revenue to CONTRACTOR not less than CONTRACTOR's anticipated return on  
3047 investment for the applicable calendar year. CONTRACTOR shall thereafter not be required to  
3048 remit the amount of any disallowed fee or charge, provided it is not collected from Customers.

3049                                   28.02.1.4       CONTRACTOR shall not be obligated to refund Customers  
3050 for any amount of previously collected fees or charges later set aside or invalidated by a court.  
3051 CONTRACTOR and CITY deem the Maximum Recycling Service Rates to fix the actual  
3052 reasonable cost of service to Customers as these rates and the escalation methodology set  
3053 forth in this Contract are the result of a multi-year open competition for CITY's franchise  
3054 Recycling Services. Any CITY fees or charges set aside by any court or CITY during the  
3055 pendency of any Maximum Recycling Service Rates Lawsuit shall, to the extent they are  
3056 collected from Customers, be paid into an escrow account established by CITY, which shall be  
3057 made available for use pursuant to order of the court, or in the absence of such order to address  
3058 CONTRACTOR's losses, if any, consistent with CITY's obligations set forth below.

3059                                   28.02.2       If by virtue of an order by a court of competent jurisdiction, an order  
3060 issued by a regulatory agency with authority, or pursuant to or an agreement between  
3061 petitioner/plaintiff and CITY that affects all or a portion of the Maximum Recycling Service  
3062 Rates, and this results in a loss to CONTRACTOR not otherwise recovered through a temporary  
3063 reduction in services, CITY shall implement, with CONTRACTOR's consent, methods to  
3064 recapture any losses that CONTRACTOR sustained under this Article 28. Such methods may  
3065 include an adjustment in future Maximum Recycling Service Rates, a reduction in, or adjustment  
3066 to, services and/or other obligations under the Contract, or such other lawful methods which  
3067 may be agreed to by CITY and CONTRACTOR. Any method selected shall be designed to  
3068 produce revenues that ensure CONTRACTOR fully recoups any and all demonstrated losses  
3069 within no more than two years from that date on which Maximum Recycling Service Rates were  
3070 reduced (or within two years following the trial court's determination in the event of a Maximum  
3071 Recycling Service Rates Lawsuit), or, by the termination date of said Contract if less than two  
3072 (2) years remain on the Term. CONTRACTOR shall have the right to terminate the Contract  
3073 upon twelve (12) months written notice after the two (2) year period for recoupment of  
3074 CONTRACTOR losses has expired, in the event CONTRACTOR has not been made whole for  
3075 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.

3203                    29.01.11 In the event that the Contract is terminated, CONTRACTOR shall  
3204 furnish CITY with immediate access to all of its business records related to its Customer and  
3205 billing accounts for Recycling Services.

3206                    29.01.12 Repetitive Compliance Issues. Notwithstanding CONTRACTOR's  
3207 timely cure of previous breaches, in the event that CONTRACTOR's record of performance  
3208 shows that it has regularly and frequently failed to meet a particular material Contract obligation,  
3209 despite written notices from CITY and beyond what is common by industry standards, CITY and  
3210 CONTRACTOR agree to meet and confer, in good faith, regarding operational changes  
3211 necessary to resolve the issue. If the parties cannot agree on necessary operational changes,  
3212 then the matter will be mediated pursuant to Section 54.01.1. Once the operational changes  
3213 have been agreed upon, CONTRACTOR shall be responsible for their implementation.

3214                    29.02 Effective Date. In the event of the aforesaid events specified above, and except  
3215 as otherwise provided in said subsections, termination shall be effective upon the date specified  
3216 in CITY's written notice to CONTRACTOR and upon said date this Contract shall be deemed  
3217 immediately terminated and upon such termination all liability of CITY under this Contract to  
3218 CONTRACTOR shall cease, and CITY shall have the right to call the performance bond and  
3219 shall be free to negotiate with other contractors for the operation of the herein specified  
3220 services. CONTRACTOR for failure to perform shall reimburse CITY all direct and indirect costs  
3221 of providing interim Recycling Services.

3222                    29.03 Immediate Termination. CITY may terminate this Contract immediately upon  
3223 written notice to CONTRACTOR (provided CITY has first given CONTRACTOR written notice of  
3224 breach and ten (10) Work Days to cure) in the event CONTRACTOR fails to provide and  
3225 maintain the performance bond as required by this Contract, or if CONTRACTOR fails to obtain  
3226 or maintain insurance policies endorsements as required by this Contract, or if CONTRACTOR  
3227 fails to provide the proof of insurance as required by this Contract, or if CONTRACTOR offers or  
3228 gives any gift prohibited by CITY administrative policy.

3229                    29.04 CONTRACTOR Termination.

3230                    29.04.1 CITY Events of Default. The following shall be CITY Events of Default,  
3231 following which the CONTRACTOR may cancel this Contract (except as otherwise provided  
3232 below in this Article) by giving CITY thirty (30) calendar days advance written notice, to be  
3233 served as provided in Article 45:

3234                    29.04.1.1 CITY has allowed any final judgment, in favor of  
3235 CONTRACTOR, for the payment of money to stand against it unsatisfied and said default is not  
3236 cured within ninety (90) calendar days of receipt of written notice from CONTRACTOR to do so;  
3237 or

3238                    29.04.1.2 CITY has failed or refused to perform or observe the terms,  
3239 conditions or covenants in this Contract not otherwise addressed in this Section 29.05; provided  
3240 that said breach is not cured within thirty (30) calendar days of receipt of written notice from  
3241 CONTRACTOR to do so, or if by reason of the nature of such breach, the same cannot be  
3242 remedied within thirty (30) calendar days following receipt by CITY of written demand from  
3243 CONTRACTOR to do so, CITY fails to commence the remedy of such breach within said thirty  
3244 (30) calendar days following such written notice or having so commenced shall fail thereafter to  
3245 continue with diligence the curing thereof. In any dispute concerning failure to remedy or  
3246 diligence in pursuing a cure, CITY shall have the burden of proof to demonstrate (a) that the

3247 breach cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with  
3248 diligence to cure said breach, and such breach will be cured within a reasonable period of time.  
3249 In the event that CITY fails to cure any breach pursuant to this provision, CONTRACTOR shall  
3250 have the right to terminate this Contract. CONTRACTOR shall provide written notice of  
3251 termination to CITY upon CITY's failure to cure and this Contract shall terminate one (1) year  
3252 after service of such notice.

3253           29.05 Termination Cumulative. A party's right to terminate this Contract is cumulative  
3254 to any other rights and remedies provided by law or by this Contract.

3255           29.06 Force Majeure. The parties shall be excused from performing their respective  
3256 obligations under this Contract in the event they are prevented from so performing by reason of  
3257 Force Majeure.

## 3258           **Article 30. CONTRACT MODIFICATIONS AND CHANGES IN SCOPE**

3259           30.01 Contract Modifications and Changes in Law. CITY and CONTRACTOR  
3260 understand and agree that the California Legislature has the authority to make comprehensive  
3261 changes in Recyclable Materials management legislation and that these and other changes in  
3262 law in the future that mandate certain actions or programs for counties or municipalities may  
3263 require changes or modifications in some of the terms, conditions or obligations under this  
3264 Contract. CONTRACTOR agrees that the terms and provisions of CITY's Municipal Code, as it  
3265 now exists or as it may be amended in the future, shall apply to all of the provisions of this  
3266 Contract and the Customers of CONTRACTOR located within the Service Area, provided,  
3267 however, that CITY will not amend CITY's Municipal Code in a way that is inconsistent with the  
3268 Contract unless compelled to do so by federal or State law. In the event any Change in Law  
3269 materially alters the obligations of CONTRACTOR, including but not limited to a substantial  
3270 change in the California Beverage Container Recycling and Litter Reduction Act, California  
3271 Public Resources Code section 14500 et seq., modifications to CITY's Municipal Code, or  
3272 directed changes by CITY, then the affected compensation as established under this Contract  
3273 shall be adjusted. Nothing contained in this Contract shall require any party to perform any act  
3274 or function contrary to law. CITY and CONTRACTOR agree to enter into good faith  
3275 negotiations regarding modifications to this Contract, which may be required in order to  
3276 implement changes in the interest of the public welfare or due to Change in Law. When such  
3277 modifications are made to this Contract, CITY and CONTRACTOR shall negotiate in good faith  
3278 a reasonable and appropriate compensation adjustment for any increase or decrease in the  
3279 services or other obligations required of CONTRACTOR due to any modification in the Contract  
3280 under this Section 30.01. CITY and CONTRACTOR shall not unreasonably withhold agreement  
3281 to such compensation adjustment.

3282           30.01.1 Compensation Adjustments. In the event of a Change in Law or  
3283 regulations of any governmental agency that will require additional or different services to be  
3284 provided by CONTRACTOR or that require CONTRACTOR to pay additional government fees  
3285 which are not otherwise covered by this Contract, CONTRACTOR shall provide CITY with a  
3286 written rate increase request for additional compensation to CONTRACTOR based on such  
3287 additional or different services. The rate increase request shall include but not be limited to the  
3288 information set forth in Sections 30.02.1 through 30.02.9 below. If the proposed rate increase  
3289 exceeds five (5) percent and CITY does not agree with such rate increase, CITY, in addition to  
3290 negotiating with CONTRACTOR, may submit the matter to non-binding mediation as set forth in  
3291 Article 54. However, no governmental fees or changes to which CONTRACTOR agrees

3292 contractually or negotiates shall be passed through to Customers unless agreed to in writing by  
3293 CITY.

3294         30.02 Changes in Materials. In the event quantity, composition or quality of the  
3295 Recyclable Materials Collected under the terms of this Contract is shown to the reasonable  
3296 satisfaction of CITY to have substantially changed from what it was at the inception of this  
3297 Contract, such that CONTRACTOR's costs and/ or ability to achieve the annual Diversion  
3298 requirements set forth in Article 8 are materially affected, the parties shall negotiate in good faith  
3299 (a) a reasonable and appropriate modification to those annual Diversion requirements, and/ or  
3300 (b) other adjustments to the Contract potentially including CONTRACTOR's compensation if  
3301 modifications to the annual Diversion requirements are not desired by CITY or do not  
3302 adequately address the change in the Recyclable Materials Collected. CITY and  
3303 CONTRACTOR shall not unreasonably withhold agreement to such modifications.

3304         30.03 The commodity market for recyclables frequently experiences cyclical changes  
3305 and significant fluctuations in market price due to supply and demand, periodic strikes,  
3306 transportation issues, and other reasonably foreseeable events. This Section 30.03 is not  
3307 intended to address market price fluctuations or other changes due to this type of events. If  
3308 such events occur during the term of this Contract, CONTRACTOR shall be solely responsible  
3309 for mitigating any potential economic impacts and shall not look to CITY for compensation  
3310 adjustments. However, if a recyclable commodity market becomes unavailable or economically  
3311 non-viable due to an extraordinary circumstance not reasonably foreseeable, for example the  
3312 Chinese Government prohibit the import of recyclables from the United States, and such event  
3313 affects the ability of CONTRACTOR to comply with the provisions of Article 8, or significantly  
3314 increases CONTRACTOR's costs, CITY or CONTRACTOR may request that the parties enter  
3315 into good faith negotiations regarding modifications to this Contract in order to provide  
3316 CONTRACTOR relief from such an extraordinary event causing a material change. Under such  
3317 extraordinary circumstances, CITY and CONTRACTOR agree to negotiate in good faith a  
3318 reasonable modification to the provisions of Article 7 and/or 8 and/or other adjustments to  
3319 CONTRACTOR's obligations under this Contract. CITY and CONTRACTOR shall not  
3320 unreasonably withhold agreement to such modification.

3321         30.04 Changes in Required Services within the Scope. CITY may direct changes in the  
3322 services required under the scope of this Contract, including the addition of pilot programs and  
3323 innovative services that may entail new Collection methods or requirements for Customers and  
3324 Service Recipients, the deletion of existing services, and the modification of the manner in  
3325 which existing services are performed. However, no changes in services shall be construed so  
3326 as to impair the exclusive rights of CONTRACTOR granted hereunder. CITY's authority to  
3327 delete existing services is not in derogation of CONTRACTOR's exclusive Contract rights, i.e., if  
3328 CITY elects to discontinue a service that is within the scope of the under this Section, CITY shall  
3329 not allow a third party to perform it. CONTRACTOR shall promptly and cooperatively comply  
3330 with such directions and the rates shall be adjusted, pursuant to the procedures set forth in this  
3331 Section, to fairly and fully reflect the additional costs, or cost reduction, associated with the  
3332 directed change(s) in required services, but not for the preparation of CONTRACTOR's  
3333 proposal to perform such services.

3334         30.04.1 All sums that appear in this Section 30.02 are expressed in July 2015  
3335 dollars and shall be adjusted beginning July 1, 2016, and annually thereafter during the  
3336 Contract's term, by the same percentage as the percentage used to adjust the Maximum  
3337 Recycling Services Rates for that fiscal year as set forth in Section 7.07, except that in no year  
3338 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



3378 implement said new technology and new rates shall be mutually agreed upon and established.  
3379 CONTRACTOR shall retain the ability to propose changes to CITY in its Residential Recycling  
3380 Services for the purpose of maximizing efficiency. Said changes will not be implemented  
3381 without the prior written approval of CITY.

3382         30.07 Monitoring and Evaluation. If CITY requests, CONTRACTOR shall meet with  
3383 CITY to describe the progress of each new program and other service issues. If applicable,  
3384 CONTRACTOR shall document the results of the new programs on a monthly basis, including  
3385 at a minimum the Tonnage Diverted by material type, the end use or processor of the Diverted  
3386 materials, the cost per Ton for transporting and Processing each type of material, and other  
3387 such information requested by CONTRACTOR and/or CITY necessary to evaluate the  
3388 performance of each program.

3389         30.07.1 At each meeting, CITY and CONTRACTOR shall have the opportunity  
3390 to discuss revisions to the program. CITY shall have the right to terminate a program if, in  
3391 CITY's sole discretion, CONTRACTOR is not cost effectively achieving the program's goals and  
3392 objectives. Prior to such termination, CITY shall meet and confer with CONTRACTOR for a  
3393 period of up to ninety (90) calendar days to resolve CITY's concerns. Thereafter, CITY may  
3394 utilize a third party to perform these services if CITY reasonably believes the third party can  
3395 improve on CONTRACTOR's performance and/or cost. Notwithstanding these changes,  
3396 CONTRACTOR shall continue the program during the ninety (90) calendar day period and,  
3397 thereafter, until the third party takes over the program.

3398         30.08 For clarification, any adjustment to the Maximum Recycling Service Rates under  
3399 this Article 30 is calculated separately from Annual Rate Adjustments and are not subject to a  
3400 cap.

3401                                     **Article 31. [RESERVED]**

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3403                                     **Article 32. FINANCIAL INTEREST**

3404         32.01 Representation. CONTRACTOR warrants and represents that no elected official,  
3405 officer, agent or employee of CITY has a financial interest, directly or indirectly, in this Contract  
3406 or the compensation to be paid under it and, further, that no CITY employee who acts in CITY  
3407 as a "purchasing agent" as defined in the appropriate section of California Statutes, nor any  
3408 elected or appointed officer of CITY, nor any spouse or child of such purchasing agent,  
3409 employee or elected or appointed officer, is a partner, officer, director or proprietor of  
3410 CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or  
3411 appointed officer, or the spouse or child of any of them, alone or in combination, has a material  
3412 interest in CONTRACTOR. Material interest means direct or indirect ownership of more than  
3413 five (5) percent of the total assets or capital stock of CONTRACTOR.

3414

### Article 33. CONTRACTOR'S PERSONNEL

3415            33.01 Personnel Requirements. CONTRACTOR shall employ and assign qualified  
3416 personnel to perform all services set forth herein. CONTRACTOR shall be responsible for  
3417 ensuring that its employees comply with all applicable laws and regulations and meet all federal,  
3418 State and local requirements related to their employment and position.

3419            33.01.1 CITY may request the transfer of any employee of CONTRACTOR who  
3420 materially violates any provision hereof, or who is wanton, negligent, or discourteous in the  
3421 performance of his duties.

3422            33.01.2 CONTRACTOR shall not permit its employees to demand or solicit,  
3423 directly or indirectly, any additional compensation or gratuity from Customers or Service  
3424 Recipients for the provision of Recycling Services under the terms of this Contract.

3425            33.01.3 CONTRACTOR's field operations personnel shall be required to wear a  
3426 clean uniform shirt bearing CONTRACTOR's name. CONTRACTOR's employees, who  
3427 normally come into direct contact with the public, including drivers, shall bear some means of  
3428 individual photographic identification such as a name tag or identification card.

3429            33.01.4 Each driver of a Collection vehicle shall at all times carry a valid  
3430 California driver's license and all other required licenses for the type of vehicle that is being  
3431 operated.

3432            33.01.5 Each driver of a Collection vehicle shall at all times comply with all  
3433 applicable state and federal laws, regulations and requirements.

3434            33.01.6 CONTRACTOR's employees, officers and agents shall at no time be  
3435 allowed to identify themselves or in any way represent themselves as being employees of CITY.

3436            33.01.7 CONTRACTOR's name and the Customer Service telephone number  
3437 shall be properly displayed on all Collection vehicles.

3438

### Article 34. UNACCEPTABLE WASTE

3439            34.01 CONTRACTOR shall not be required to Collect, transport or deliver for Disposal,  
3440 Unacceptable Waste, but may offer such services. All such Collection, transport and delivery  
3441 for Disposal of Unacceptable Waste is not regulated under this Contract, but if provided by  
3442 CONTRACTOR shall be in strict compliance with all federal, State and local laws and  
3443 regulations.

3444

### Article 35. INDEPENDENT CONTRACTOR

3445            35.01 In the performance of services pursuant to this Contract, CONTRACTOR shall be  
3446 an independent contractor and not an officer, agent, servant or employee of CITY.  
3447 CONTRACTOR shall have exclusive control of the details of the services and work performed  
3448 and over all persons performing such services and work. CONTRACTOR shall be solely  
3449 responsible for the acts and omissions of its officers, agents, employees, contractors and  
3450 subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors  
3451 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

Residential Recycling Collection Services Contract

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.

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## Article 42. WAIVER

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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.

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## Article 43. POINT OF CONTACT

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

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## Article 44. CONFLICT OF INTEREST

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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.

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## Article 45. NOTICES

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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:

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As to CITY:

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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

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With copies to:

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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.

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## **Article 46. TRANSITION TO NEXT CONTRACTOR**

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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.

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## **Article 47. CONTRACTOR'S RECORDS**

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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.

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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.

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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.

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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.

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## **Article 48. ENTIRE CONTRACT**

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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.

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## **Article 49. SEVERABILITY**

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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]**

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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

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3738 54.01 Dispute Resolution. Except for a CONTRACTOR Default under Article 29, and  
3739 except as provided below in Section 54.01.3, should any dispute arise under this Contract,  
3740 including but not limited to the performance and obligations of the parties, or service or  
3741 compensation changes, such disputes shall be resolved by the following procedures:

3742 54.01.1 The parties shall resolve their disputes informally to the maximum  
3743 extent possible and shall attempt to resolve such disputes in a cooperative and mutually  
3744 satisfactory manner. Either party shall give the other written notice of such dispute, and also  
3745 provide written notice to the Contract Manager. The Contract Manager shall then schedule a  
3746 meeting between CONTACTOR and the CITY Administrator or the CITY Administrator's  
3747 designee as soon as reasonably possible. In the event such dispute cannot be resolved by the  
3748 parties themselves within thirty (30) days of their first meeting, either party may propose the  
3749 appointment of a mediator. The parties shall agree on a mediator within thirty (30) days of  
3750 either party's request for mediation.

3751 54.01.2 Mediation. If the disputing parties cannot informally resolve the dispute,  
3752 they shall attempt to resolve such dispute through non-binding mediation for a period not to  
3753 exceed ninety (90) days from the date of their last informal meeting, absent a written agreement  
3754 to extend the time of non-binding mediation.

3755 54.01.2.1 The party desiring mediation shall give written notice  
3756 thereof to the other party to this Contract, specifying the dispute to be mediated.

3757 54.01.2.2 The mediation shall be held at Oakland, California, or at  
3758 such other location as may be mutually agreed among the parties. The mediation shall be  
3759 conducted and a mediator chosen pursuant to the rules of JAMS Mediation Rules.

3760 54.01.2.3 At least ten (10) days before the date of the mediation,  
3761 each side shall provide the mediator with a statement of its position and copies of all supporting  
3762 documents. Each party shall send to the mediation a person who has authority to bind the  
3763 party. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they  
3764 shall also be asked to participate in the mediation.

3765 54.01.2.4 Should mediation be unsuccessful, and if the dispute does  
3766 not concern valuation items for which binding arbitration is required in Section 54.01.3, then a  
3767 party may commence an adversarial proceeding before any court of competent jurisdiction in  
3768 the County of Alameda. Disputes that concern valuation items defined in Section 54.01.3 shall  
3769 proceed with binding arbitration procedures as set forth below.

3770 54.01.3 Binding Arbitration. This Section only applies to disputes over  
3771 "Valuation Items," which are defined herein as disputes over a specific amount of money or  
3772 compensation that is due or owed by either party, and the dispute arises under one of the  
3773 following provisions of this Contract: Articles 7 and 8 and Sections 17.03, 18.01, 30.01, and  
3774 30.02. Disputes relating to Valuation Items shall be referred to binding arbitration upon mutual  
3775 written approval of the disputing parties. If the disputing parties do not mutually agree in writing  
3776 to binding arbitration, a party may commence an adversarial proceeding before any court of  
3777 competent jurisdiction in the county of Alameda.

3778 54.01.3.1 Binding arbitration proceedings shall be in accordance with

3779 California Code of Civil Procedure section 1280 et seq., the then-current JAMS Streamlined  
3780 Arbitration Rules, and the terms of Section 54.01.3 and its subsections. In the event of any  
3781 inconsistency, the terms of Section 54.01.3 and its subsections shall control. The arbitration  
3782 shall be administered by JAMS and conducted in the County of Alameda. If the parties are  
3783 unable to select an arbitrator within twenty (20) days after delivering written notice requesting  
3784 arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable  
3785 to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause,  
3786 the parties may mutually designate another arbitration organization with similar procedures to  
3787 serve as the provider of arbitration. If the parties cannot agree on the arbitration organization,  
3788 the Presiding Judge of the Alameda County Superior Court shall designate such an organization  
3789 upon the petition of either party.

3790                                   54.01.3.2     The arbitrator shall be independent of, and unaffiliated  
3791 with, each party and shall not ever have been an employee of either party, under contract with  
3792 either party in the past five (5) years or acted as an arbitrator for such party within the past five  
3793 (5) years.

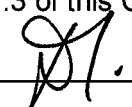
3794                                   54.01.3.3     Within twenty (20) days after initiation of the arbitration, if  
3795 not previously done so under the terms of this Contract, the parties shall each submit to each  
3796 other and the arbitrator their respective relevant value for the item subject to the valuation  
3797 dispute, with such supporting information as is reasonably necessary to support such suggested  
3798 value. If the two (2) valuations so submitted differ by less than or equal to ten (10) percent of  
3799 the higher of the two (2), the average of the two (2) shall become the agreed upon amount for  
3800 purposes of this Contract and the arbitration shall not be continued. If the two(2) valuations  
3801 differ by more than ten (10) percent of the higher of the two (2), then the arbitrator shall make a  
3802 determination of the relevant value and submit such determination to both the parties. This third  
3803 valuation will then be averaged with the closer of the two (2) previous valuations and the result  
3804 shall be the relevant value. In no event shall the resolution of a valuation dispute result in a  
3805 valuation higher than that which was set forth by CONTRACTOR (e.g., a impact of a "material"  
3806 disclosure or a higher tip fee adjustment). The final arbitrated value shall be binding on the  
3807 parties.

3808                                   54.01.3.4     The arbitrator shall have the authority and power to award  
3809 costs, including attorneys' fees and costs to the prevailing party. Unless otherwise awarded by  
3810 the arbitrator, the parties shall evenly split the cost of any arbitration under this Article.

3811                                   54.01.3.5     By agreeing to binding arbitration, the parties irrevocably  
3812 and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

3813                                   Acknowledgement of waiver of rights by trial by jury if proceeding with  
3814 binding arbitration pursuant to Section 54.01.3 of this Contract.

3815                                   \_\_\_\_\_   
3816                                   CITY OF OAKLAND

3815                                   \_\_\_\_\_   
3816                                   CONTRACTOR

3817                                   54.01.4     During the pendency of any dispute under this Article, all applicable  
3818 time periods directly related to the dispute shall be tolled until its resolution; provided, however,  
3819 that no tolling shall apply to any matters other than those directly related to the dispute and such  
3820 tolling shall not entitle a party to breach, default, or fail to perform its obligations under this  
3821 Contract.

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## **Article 55. LOCAL HIRE COMPLIANCE**

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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.

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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

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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.

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## **Article 56. RELIGIOUS PROHIBITION**

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

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## **Article 57. POLITICAL PROHIBITION AND CAMPAIGN CONTRIBUTIONS**

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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.

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## **Article 58. BUSINESS TAX CERTIFICATE**

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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.

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## **Article 59. ATTORNEYS FEES**

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

3863 appeal therefrom, the prevailing party shall be entitled to recover from the other party all  
3864 reasonable costs, including, without limitation, reasonable attorneys' fees. "Prevailing parties"  
3865 shall include without limitation (i) a party who dismisses an action in exchange for sums  
3866 allegedly due such party; (ii) the party which received performance from the other party of an  
3867 alleged breach of a covenant or a desired remedy where such performance is substantially  
3868 equal to the relief sought in an action; or (iii) the party determined to be the prevailing party by a  
3869 court of law.

3870 **Article 60. LIMITATION OF FELONY DISCLOSURE ON JOB**  
3871 **APPLICATION**

3872 60.01 CONTRACTOR shall exclude from the initial job application, any requirement of  
3873 the applicant to disclose felony history as long as it complies with governing laws.

3874 **Article 61. COMPETITIVE WAGES AND BENEFITS**

3875 61.01 Living Wage Requirements. CONTRACTOR shall comply with CITY Living  
3876 Wage Ordinance Chapter 2.28 of the Oakland Municipal Code and its implementing regulations.  
3877 The Ordinance requires among other things, submission of the Declaration of Compliance  
3878 attached and incorporated herein as Attachment 3. All of the provisions of Section 60.01, or any  
3879 part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver  
3880 is explicitly set forth in such agreement in clear and unambiguous terms.

3881 61.02 Competitive Wages and Benefits. CONTRACTOR shall pay Competitive Wages  
3882 and Benefits. CONTRACTOR shall provide CITY evidence of compliance with this provision at  
3883 CITY's request.

3884 61.02.1 CONTRACTOR shall provide CITY ninety (90) day notice for  
3885 expiration any of CONTRACTOR's collectively bargained contracts. CONTRACTOR shall  
3886 timely notice CITY should other issues arise with CONTRACTOR's collectively bargained  
3887 contracts.

3888 **Article 62. VALIDITY OF CONTRACTS**

3889 62.01 This Contract shall not be binding or of any force or effect until signed by the  
3890 CITY Administrator or his or her designee and approved as to form and legality by the CITY  
3891 Attorney or his or her designee.

3892 **Article 63. EQUAL BENEFITS ORDINANCE**

3893 63.01 This Contract is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of  
3894 the Oakland Municipal Code and its implementing regulations. Entities which enter into a  
3895 "contract" with the City for an amount of Twenty-Five Thousand Dollars (\$25,000.00) or more for  
3896 public works or improvements to be performed, or for goods or services to be purchased or  
3897 grants to be provided at the expense of the City or to be paid out of moneys deposited in the  
3898 treasury or out of trust moneys under the control of or collected by the City; and Entities which  
3899 enter into a "property contract" pursuant to Section 2.23.020(D) with the City in an amount of  
3900 Twenty-Five Thousand Dollars (\$25,000.00) or more for the exclusive use or occupancy (1) of  
3901 real property owned or controlled by the City or (2) of real property owned by others for the  
3902 City's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

3903 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.

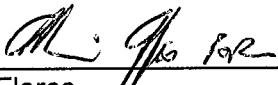
**Article 70. EFFECTIVE DATE**


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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

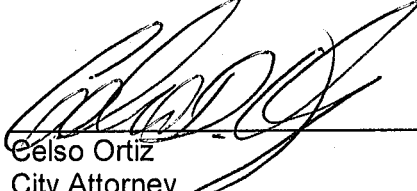
3944  
3945 \_\_\_\_\_  
City of Oakland Business License Number

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