

DRAFT
EXCLUSIVE
FRANCHISE AGREEMENT FOR
SOLID WASTE REFUSE COLLECTION FORT BRAGG
SERVICE AREA FOR SINGLE-FAMILY, MULTI-FAMILY, AND
COMMERCIAL GENERATORS

BETWEEN THE

City of Fort Bragg

AND

CONTRACTOR NAME

DATE OF AGREEMENT

CONTENTS

RECITALS	1
ARTICLE 1: GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL AND COMMERCIAL FRANCHISE	2
ARTICLE 2: DEFINITIONS	3
ARTICLE 3: TERMS OF AGREEMENT	24
3.1 Term of Agreement.....	24
3.2 Limitations to Scope.....	24
3.3 Subcontracting.....	26
3.4 Compliance with Laws and Regulations	26
3.5 Franchise Area Defined	27
ARTICLE 4: COLLECTION SERVICES	27
4.1 General.....	27
4.2 Ownership of Discarded Materials	27
4.3 Three-Container System.....	28
4.4 Public Litter and Recycling Container Services	29
4.5 Debris Box Collection.....	30
4.6 Bulky Items and Reusable Materials Collection	30
ARTICLE 5: OTHER SERVICES	30
5.1 Transfer, Processing, and Disposal.....	30
5.1.1 Approved Facilities	30
5.1.2 Allowable Organic Waste Facilities	31
5.1.3 Guaranteed Capacity and Facility Standards	31
5.1.4 Other Facility Provisions.....	32
5.1.5 Transportation and Facility Costs	32
5.1.6 Transportation to Non-Approved Facilities Prohibited	32
5.2 Contamination Monitoring	32
5.2.1 Contamination Monitoring Procedures	32
5.2.2 Contamination Monitoring – Hauler Route Review Option Methodology and Frequency.....	36
5.2.3 Contamination Monitoring – Waste Evaluation Option	37
5.3 Education and Outreach	40
5.3.2 Program Objectives.....	40
5.3.3 Contractor Cooperation.....	40
5.3.4 Annual Education Plan	40
5.3.5 Annual Budget.....	41
5.3.6 Education Requirements during Program Implementation/Roll-Out.....	41
5.3.7 Annual and/or Ongoing Education Requirements.....	43
5.3.8 Minimum Content Requirements.....	46
5.3.9 Material Distribution Methods.....	47
5.3.10 Non-English Language Requirements	48

5.3.11	Record Keeping and Reporting Requirements.....	48
5.4	Food Recovery Program Support	48
5.5	Billing	48
5.6	Generator Waiver Program Coordination.....	49
5.6.1	Types of Generator Waivers	49
5.6.2	Contractor Waiver Request on Behalf of Generator	50
5.6.3	Contractor Review of Generator Waiver Requests.....	50
5.6.4	Contractor Change in Customers' Service Levels	51
5.6.5	Waiver Reverification	51
5.6.6	Contractor Recordkeeping of Generators Granted Waivers	51
5.7	Service Waiver Program Coordination.....	51
5.7.1	Low Population Area Waivers.....	51
5.7.2	Processing Facility Temporary Equipment or Operational Failure Waiver 51	
5.7.3	Disaster Waivers	52
5.8	Inspection and Enforcement	53
5.8.1	Annual Compliance Reviews.....	53
5.9	Service Complaints.....	55
5.9.1	Documentation of Complaints.	55
5.10	Contractor's Responsibility in Lieu of Direction by City	56
5.11	Invalidation of City Flow Control Voids Franchise	56
5.12	Other Special Services	57
5.13	Emergency Services	57
5.14	Free Environmental Services.....	57
5.15	CRV Redemption Center	57
ARTICLE 6: STANDARDS OF PERFORMANCE		57
6.1	Name and Office Hours	57
6.2	Operating Hours and Schedules	58
6.3	Service Complaints	58
6.4	Overcharge	58
6.5	Collection Standards.....	58
6.6	Collection Vehicle and Equipment Standards	59
6.7	Collection Vehicles – Identification.....	60
6.8	Collection Vehicles and Equipment Inspection	60
6.9	Container Requirements	60
6.10	Personnel.....	64
6.11	Diversion Standard	66
ARTICLE 7: RECORD KEEPING AND REPORTING		66
ARTICLE 8: CITY FEES		66
8.1	Franchise fee	66
8.1.1	Franchise Fee – Amount	66
8.1.2	Franchise Fee – Quarterly Payments and Revenue Statements.....	66
8.1.3	Franchise Fee – Deposit.....	66
8.1.4	Franchise Fee – Delinquency Penalty	67

8.1.5	Refund of Franchise Fees	67
8.2	Proposal Development Fee	67
8.3	SB 1383 Regulatory Reimbursement.....	67
8.4	Food Recovery Program Contribution.....	67
ARTICLE 9: COMPENSATION AND RATE REGULATION		68
9.1	Contractors Rates	68
9.2.1	City's Powers	68
9.2.2	Rate Requirements.....	68
9.2	Rate Adjustment Procedures	69
9.2.1	Pass-through Rate Adjustment.....	69
9.2.2	Cost-of-Living, Fuel Rate, and Commodity Price Adjustments	71
9.2.3	Larger Rate Increases	72
9.2.4	Rate Decreases.....	73
ARTICLE 10: INDEMNITY, INSURANCE, AND PERFORMANCE BOND		74
10.1	Indemnification.....	74
10.2	Insurance Requirements.....	76
10.3	Performance Bond.....	77
ARTICLE 11: DEFAULT AND REMEDIES		78
11.1	Events of Default.....	78
11.2	Right to Terminate Upon Default.....	80
11.3	Suspension or Revocation – Equipment Use by City.....	80
11.4	Franchise Revocation – Emergency Actions	80
11.5	Labor Dispute – City Assumption of Duties – Authorized.....	80
11.6	Labor Dispute – City Assumption of Duties – Use of Revenue	81
11.7	Labor Dispute – City Assumption of Duties – Employees	81
11.8	Liquidated Damages	81
ARTICLE 12: OTHER AGREEMENTS OF THE PARTIES		84
12.1	Relationship of Parties	84
12.2	Compliance with City Code.....	84
12.3	Governing Law.....	84
12.4	Binding on Successors.....	84
12.5	Representations.....	84
12.6	Emergencies, Disasters – Major Service Disruption	85
12.7	Notice Procedures	86
12.8	Appeals.....	86
12.9	Court Costs and Attorney Fees.....	87
ARTICLE 13: MISCELLANEOUS AGREEMENTS		88
13.1	Privacy.....	88
13.2	Public Records Act.....	89
13.3	Entire Agreement.....	89
13.4	Force Majeure.....	89
13.5	Independent Contractor	90

13.6	Roadway Damage	90
13.7	Property Damage.....	90
13.8	Interpretation.....	90
13.9	Amendment	91
13.10	Severability.....	91
13.11	Incorporation of Contractor's Proposal	91
13.12	Exhibits	91

DRAFT

EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE REFUSE FORT BRAGG SERVICE AREA

BETWEEN

CITY OF FORT BRAGG AND

CONTRACTOR NAME

This Agreement for Solid Waste Refuse Fort Bragg Service Area Between the City of Fort Bragg and _____. (the "Agreement") is made and entered into as of the last date of execution (the "Effective Date") between the City of Fort Bragg (hereinafter, "City") and _____ (hereinafter, "Contractor"), a STATE corporation, each of whom shall separately be a "Party" and collectively be the "Parties."

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City of Fort Bragg City Council has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified enterprise for the Collection and recovery of Solid Waste, Organic Waste, and Recyclable Materials from certain residential, industrial, and commercial areas in the City; and

WHEREAS, City and Contractor are mindful of the provisions of local, state, and federal laws governing the safe Collection, Transport, and Disposal of Solid Waste, Organic Waste, and Recyclable Materials, including, but not limited to AB 341, AB 876, AB 901, AB 939, AB 1594, AB 1826, SB 1383, the Resource Conservation and Recovery Act ("RCRA") and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"); and

WHEREAS, City has not, and by this Agreement does not, instruct Contractor on its Collection Methods, nor supervise the Collection of waste; and

WHEREAS, Contractor has represented and warranted to the City that it has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional, and other entities in the Franchise Area for the collection and safe transport to Approved or Designated Facilities for Solid Waste, Organic Waste, and Recyclable Materials, the City of Fort Bragg City Council determines and finds that the

public interest, health, safety, and well-being would be best served in Contractor were to make arrangements with residents and other entities to perform these services; and

WHEREAS, the City of Fort Bragg City Council declares its intention of maintaining reasonable rates for the collection and transportation of Solid Waste, Organics Waste, and Recyclable Materials within the area covered by this grant of franchise; and

WHEREAS, the City wishes to contract with Contractor for Solid Waste, Organic Wastes, and Recyclable Materials collection and processing services; and

WHEREAS, the City and Contractor wish to enter into this Agreement on the terms and conditions stated herein; and

NOW, THEREFORE, the Parties agree to the terms and conditions set forth herein.

ARTICLE 1: GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL AND COMMERCIAL FRANCHISE

- 1.1** City grants to Contractor, for the term of and in accordance with this Agreement (including all extensions or renewals), an exclusive privilege, duty and right to make and enter into independent agreements with residents of single family units, residents and/or owners of multifamily units, and Persons in charge of commercial, industrial, institutional and other entities in the Franchise Area for the collection, transportation and disposal of Solid Waste, Organic Waste, and Recyclable Materials, generated or accumulated within the Franchise Area, with the exception of sewage sludge and seepage, which has been placed in a Contractor-provided Container, in the areas covered by this Agreement, as its boundaries are now constituted or may be hereafter be amended.
- 1.2** Contractor agrees to be bound by and comply with all the requirements of this Agreement.
- 1.3** In the event of and to the extent that any of the following (Items A to C below) require or are amended to require that either party take certain action or desist from taking certain action that affects the promises, covenants and/or performance of the parties hereunder, then this Agreement shall be amended to provide for the satisfaction of such requirements. Further, should such amendments to this Agreement result in the Contractor having to incur additional expenses in performing its obligations hereunder, or if certain cost cutting measures are implemented that

justify lower rates, then Contractor or City may seek rate adjustments therefore in accordance the procedures under Article 9 below.

- A. The City Code, the California Public Resources Code, other applicable state and federal laws, rules and regulations promulgated thereunder;
- B. The County of Mendocino County-wide Integrated Waste Management Plan and the County's Source Reduction and Recycling Elements and Household Hazardous Waste elements; and
- C. Any and all amendments to said laws, plans, and regulations.

ARTICLE 2: DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the words and phrases in this Article shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement.

2.1 AB 341

"AB 341" means the Assembly Bill approved by the Governor of the State of California on October 5, 2011, which amended Chapter 476 Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded and replaced from time to time.

2.2 AB 876

"AB 876" means the Assembly Bill approved by the Governor of the State of California on October 8, 2015, which added Section 41821.4 to Chapter 593 of the Public Resources Code, relating to Solid Waste as amended, supplemented, superseded, and replaced from time to time.

2.3 AB 901

"AB 901" means Assembly Bill approved by the Governor of the State of California on October 10, 2015, which amended Chapter 746 Section 41821.5 of, amended, renumbered and added Section 41821.6 of, and added Sections 41821.7 and 41821.8 to, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

2.4 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq.), Chapter 1095, as amended, supplemented, superseded, and replaced from time to time.

2.5 AB 1594

“AB 1594” means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which amended Chapter 719 Sections 40507 and 41781.3 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

2.6 AB 1826

“AB 1826” means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, Chapter 727 which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

2.7 Affiliate

“Affiliate” means all businesses (including corporations, limited and general partnerships, and sole proprietorships) that are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management and shall be deemed to be “Affiliated with” Contractor and included within the term “Affiliates” as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in Contractor, and/or a business that is also owned, controlled, or managed by any business or individual that has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that: (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater. Affiliate includes Subsidiaries.

2.8 Agreement

“Agreement” means this Exclusive Franchise Agreement between the City and Contractor, including all exhibits and attachments, and any amendments thereto.

2.9 Alternative Daily Cover (ADC)

“Alternative Daily Cover” or “ADC” has the same meaning as in 27 CCR Section 20690.

2.10 Alternative Facility

“Alternative Facility” means any Facility approved by City for use pursuant to Section 5 or Exhibit D.

2.11 Alternative Intermediate Cover (AIC)

“Alternative Intermediate Cover” or “AIC” has the same meaning as in 27 CCR Section 20700.

2.12 Applicable Law

“Applicable Law” means all federal, State, County, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, Processing, and Disposal of Discarded Materials that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383 and corresponding regulations.

2.13 Approved C&D Processing Facility

“Approved C&D Processing Facility” means the FACILITY NAME at FACILITY ADDRESS, which is owned and operated by OWNER NAME, that is a C&D Processing Facility and was Contractor selected and City approved.

2.14 Approved Disposal Facility

“Approved Disposal Facility” means the FACILITY NAME at FACILITY ADDRESS, which is owned and operated by OWNER NAME, that is a Disposal facility and was Contractor selected and City approved.

2.15 Approved Facilities

“Approved Facility(ies)” means any one of or any combination of the: Approved C&D Processing Facility; Approved Disposal Facility, Approved Organic Waste Processing Facility; and Approved Recyclable Materials Processing Facility, each of which are defined in this Article and listed in Exhibit D.

2.16 Approved Organic Waste Processing Facility

“Approved Organic Waste Processing Facility” means the FACILITY NAME at FACILITY ADDRESS which is owned and operated by OWNER NAME that is an Organic Waste Processing Facility and was Contractor selected and City approved.

2.17 Approved Recyclable Materials Processing Facility

“Approved Recyclable Materials Processing Facility” means the FACILITY NAME at FACILITY ADDRESS, which is owned and operated by OWNER NAME that is a Source Separated Recyclable Materials Processing Facility and was Contractor selected and City approved.

2.18 Back-Haul

“Back-Haul” means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

2.19 Bin

“Bin” shall mean a container designed for mechanical emptying with a close-fitting cover and of a design approved by the City with capacity of approximately one (1) to six (6) cubic yards.

2.20 Blue Container

“Blue Container” has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and Collection of Source Separated Recyclable Materials or SSBCOW.

2.21 Board

“Board” means the Board of Supervisors of Mendocino County.

2.22 Bulky Waste

“Bulky Waste” means and includes, but not by way of limitation, discarded white goods (i.e., major household appliances), furniture, tires, carpets, mattresses, and similar large items, which cannot be placed in a covered Container.

2.23 Business Day(s)

“Business Days” mean days during which the City offices are open to do business with the public.

2.24 C&D

“C&D” means Construction and Demolition Debris.

2.25 C&D Collection Site

“C&D Collection Site” means properties where construction and demolition work is performed as evidenced by City issuance of a land clearing, building, or demolition permit, or from a non-permitted municipal project or as otherwise stated per City Code Chapter 18.35.

2.26 California Code of Regulations (CCR)

“California Code of Regulations” or “CCR” means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR, Division 7, Chapter 12” refers to Title 14, Division 7, Chapter 12 of the California Code of Regulations).

2.27 CalRecycle

“CalRecycle” means California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on Counties and Cities and other regulated entities.

2.28 Cart

“Cart” means a plastic Container with a hinged lid and wheels serviced by automated or semi-automated Collection vehicles and with a Container capacity of 20, 35, 65, or 95 gallons (or similar volumes).

2.29 City Council

“City Council” means the City Council of the City of Fort Bragg.

2.30 City

“City” means the City of Fort Bragg, California.

2.31 Collect/Collection

“Collect” or “Collection” means the act of taking physical possession of Discarded Materials at Single-Family, Multi-Family, or Commercial Premises within the City and from City facilities and transporting the Discarded Materials to an Approved or Designated Facility for Processing, Transfer, or Disposal.

2.32 Commercial Business (Commercial)

“Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, or industrial facility, or as otherwise defined in 14 CCR Section 18982(a)(6), with the exception that Multi-Family is excluded from the definition of Commercial Business for the purposes of this Agreement.

2.33 Commercial Edible Food Generators

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

2.34 Community Composting

“Community Composting” means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100

cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or as otherwise defined in 14 CCR Section 18982(a)(8).

2.35 Compostable Plastics

“Compostable Plastics” or “Compostable Plastic” means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

2.36 Compost

“Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the Effective Date of this Agreement, that “Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized Facility.

2.37 Construction and Demolition Debris

“Construction and Demolition Debris” means: (1) Discarded materials generally considered to be not water soluble and nonhazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, gypsum, wallboard, and lumber from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure and/or landscaping, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing, landscaping and development operations for construction project; (2) Clean cardboard, paper, plastic, wood, and metal scraps from any construction and/or landscape project; (3) Non-construction and demolition debris wood scraps; (4) Insignificant amounts of other non-hazardous wastes that are generated at the construction or demolition projects provided such amounts are consistent with best management practices of the industry; (5) Mixing of construction and demolition debris with other types of Solid Waste will cause it to be classified as other than construction and demolition debris.

2.38 Contractor

“Contractor” means the Party (other than the City) that executed this Exclusive Franchise Agreement and its Affiliates, DBAs, and Subcontractors that perform services on Contractor’s behalf.

2.39 Container(s)

“Container(s)” means a receptacle for temporary storage of Discarded Materials. Containers may include Bins, Carts, Roll-Off Boxes, compactors, or other storage instruments to the extent such Containers are permitted by the City for use for Collection services provided under this Agreement.

2.40 County

“County” means the County of Mendocino, State of California.

2.41 Customer(s)

“Customer” means the Person who receives the Contractor’s Collection services and to whom the Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premise. The Customer may be either the occupant, owner, or property manager of the Premises, as allowed under the City Code.

2.42 DBA

“DBA” means a fictitious name, assumed name, or trade name that is different from Contractor’s legal name, which Contractor uses for “doing business as” to provide Collection services.

2.43 Debris Box

“Debris Box” means an open-top Container with a capacity of ten (10) to fifty (50) cubic yards that is serviced by a roll-off Collection vehicle.

2.44 Designated Disposal Facility

“Designated Disposal Facility” means the Willits Solid Waste Transfer Station located at 350 Franklin Avenue, Willits, CA, which is owned and operated by Solid Waste of Willits, for all Solid Waste collected within the Fort Bragg Service Area.

2.45 Discarded Materials

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

2.46 Disposal

“Disposal” or “Dispose” means the final disposition of any Solid Waste Collected by the Contractor at a permitted Landfill or other permitted Solid Waste Facility.

2.47 Diversion

“Diversion (or any variation thereof including “Divert”)” means activities which reduce or eliminate Discarded Materials from Disposal, including, but not limited to, source reduction, Reuse, salvage, Recycling, and composting.

2.48 Edible Food

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

2.49 Effective Date

“Effective Date” means the date on which the Agreement becomes binding upon the Parties, which is the date when the latter of the Parties has executed this Agreement.

2.50 Environmental Laws

“Environmental Laws” means all Federal and State statutes and County and City ordinances concerning public health, safety, and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; the Federal Clean Water Act, 33 USC Section 1251, et seq.; the Toxic Substance Control Act, 15 USC Section 2601, et seq.; the Occupational Safety and Health Act, 29 USC Section 651, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code Section 25100, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000, et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; all as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

2.51 Excluded Waste

“Excluded Waste” means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, Medical Waste, infectious, regulated radioactive waste, and toxic substances or material that Facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, Transfer, Processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III Landfills or accepted at the Facility by permit conditions, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

2.52 Facility(ies)

“Facility(ies)” means any plant, site, or operation used for the purpose of handling Discarded Materials, including, but not limited to, Disposal, Transfer, Recycling, composting, and Processing facilities or operations.

2.53 Food Recovery

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

2.54 Food Recovery Organization

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

- A food bank as defined in Section 113783 of the Health and Safety Code;
- A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

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

2.55 Food Recovery Service

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

2.56 Food Scraps

“Food Scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells.

2.57 Food-Soiled Paper

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

2.58 Food Waste

“Food Waste” means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Food Waste is a subset of SSGCOW. Edible Food separated for Food Recovery shall not be considered Food Waste.

2.59 Franchise Area

“Franchise Area” means the incorporated City limits of Fort Bragg as designated on the map entitled “Fort Bragg Solid Waste Refuse Collection Area” (included as Exhibit F) including all amendments and changes thereto.

2.60 Franchise Fee

“Franchise Fee” means the fee or assessment imposed by the City on Contractor solely because of its status as party to this Agreement, and which, inter alia, is intended to compensate City for its expenses in administering this Agreement and other Solid Waste-related activities.

2.61 Generator

“Generator” means any Person as defined by the Public Resources Code, whose act or process produces Solid Waste, Organic Waste, or Recyclable Materials as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

2.62 Gray Container

“Gray Container” has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and Collection of Gray Container Waste.

2.63 Gray Container Waste

“Gray Container Waste” means Solid Waste that is collected in a Gray Container that is part of a three-Container Organic Waste Collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b) or as otherwise defined in 14 CCR Section 17402(a)(6.5). For the purposes of this Agreement, Gray Container Waste includes carpet and textiles.

2.64 Green Container

“Green Container” has the same meaning as in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and Collection of SSGCOW.

2.65 Green Waste

“Green Waste” means those discarded materials that will decompose and/or putrefy, including but not limited to green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of yard waste. Green Waste to be placed in a Container for Collection shall not exceed six inches in diameter and four feet in length. Tree stumps

and logs are not to be considered “Green Waste” unless they are reduced to a chipped form; they shall be considered Bulky Waste. Biodegradable plant material, which is mixed with other kinds of Solid Waste, shall not be considered “Green Waste”. Green Waste is a subset of SSGCOW.

2.66 Gross Revenues

“Gross Revenues” means any and all revenue or compensation in any form derived directly or indirectly by Contractor, its affiliates, subsidiaries, parents or any other Person or entity in which Contractor has a financial interest, in collecting, transporting, arranging, handling, and Processing Solid Wastes, Organic Waste, and Recyclable Materials, generated in the Franchise Area pursuant to this Agreement

2.67 Hauler Route

“Hauler Route” means the designated itinerary or sequence of stops for each segment of the City’s Collection service area.

2.68 Hazardous Substance

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

2.69 Hazardous Waste

“Hazardous Waste” or “Hazardous Wastes” means any waste which meets the definitions set forth in 22 CCR Section 66261.3, et seq. and is required to be managed; or as otherwise defined in 14 CCR Section 17402(a)(7). Hazardous Waste includes hazardous wood waste, which means wood that falls within the definition of “treated wood” or “treated wood waste” in 22 CCR Section 67386.4, or as otherwise defined in 14 CCR Section 18982(a)(30.5).

2.70 Holidays

“Holidays” are defined as New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas Day.

2.71 Incompatible Materials

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

2.72 Independent Government Agencies

“Independent Government Agencies” means any Federal, State, or local government agencies, including but not limited to special districts, school districts, Indian reservations, California Department of Parks and Recreation, California State Department of Corrections, United States Forest Service, Bureau of Land Management, United States Corp of Engineers, which due to provisions of California State Law do not have to comply or recognize the Contractor as the City’s exclusively franchised Solid Waste Collector.

2.73 Industrial Solid Waste

“Industrial Solid Waste” means Solid Waste in an amount exceeding an average of five hundred pounds (500 lbs.) per operating day produced by any Person principally engaged in the business of Processing or manufacturing agricultural, animal, or other products or materials whose principal outlet for such products is wholesale rather than retail, and by any Person engaged in the business of building construction and demolition. Industrial Solid Waste excludes Non-Discarded Recyclable Materials.

2.74 Inerts

“Inerts” means materials such as concrete, soil, asphalt, and ceramics.

2.75 Landfill

“Landfill” means a “Solid Waste Landfill” defined by Public Resources Code Section 40195.1.

2.76 Large Event

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

2.77 Large Venue

“Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

2.78 Liquidated Damages

“Liquidated Damages” means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 11.8 and Exhibit G.

2.79 Medical Waste

“Medical Waste” means any Solid Waste that is generated or has been used in the diagnosis, treatment, or immunization of human beings or animals, or research pertaining thereto, and shall include, but not be limited to, biomedical, biohazardous and medical waste, or other Solid Waste resulting from medical activities or services as defined by the Public Resources Code, as currently enacted or subsequently amended.

2.80 Mulch

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

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

permitted under 27 CCR, Division 2.

2.81 Multi-Family or Multi-Family Dwelling Unit

“Multi-Family” means of, from, or pertaining to residential Premises with two (2) or more dwelling units. Multi-Family Premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses. References to “Multi-Family Dwelling Unit” refer to an individual residential unit of the Multi-Family Premises.

2.82 Non-Compostable Paper

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

2.83 Non-Discarded Recyclable Materials

“Non-Discarded Recyclable Materials” means any Recyclable Materials as defined herein, that the Generator retains, sells, or donates.

2.84 Non-Organic Recyclables

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

2.85 Occupant

“Occupant” means the Person in possession or control of the Premises, including but not limited to Persons such as tenant, lessee, licensee, manager, custodian, or caretaker.

2.86 Organic Waste

“Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, yard trimmings, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

2.87 Paper Products

“Paper Products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR Section 18982(a)(51).

2.88 Parent Company

“Parent Company” means a company that has a controlling interest in another company, enabling the Parent Company to control management and operations of the Affiliate or Subsidiary company.

2.89 Party or Parties

“Party” or “Parties” refers to the City and Contractor, individually or together.

2.90 Person

“Person” has the same meaning as in Public Resources Code Section 40170, which states, as of the Effective Date of this Agreement, that a Person includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

2.91 Premises

“Premises” means a parcel of real property to the center of any alley adjacent thereto, located in Franchise Area, upon which is situated any dwelling house or other place of human habitation, including each unit of a multiple dwelling building, or of a mobile home park; or upon which is conducted any business, occupation, or activity which results in the production or accumulation of Solid Waste.

2.92 Printing and Writing Papers

“Printing and Writing Papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications; or as otherwise defined in 14 CCR Section 18982(a)(54).

2.93 Process, Processed, or Processing

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

2.94 Prohibited Container Contaminants

“Prohibited Container Contaminants” means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City’s Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable SSGCOW for the City’s Green Container; (iii) Discarded Materials placed in the Gray Container that are acceptable Source

Separated Recyclable Materials and/or SSGCOW to be placed in City's Green Container and/or Blue Container ; and (iv) Excluded Waste placed in any Container.

2.95 Property Owner

"Property Owner" means the owner of real property, or as otherwise defined in 14 CCR Section 18982(a)(57).

2.96 Public Resources Code (PRC)

"Public Resources Code" or "PRC" means the California Public Resources Code.

2.97 Putrescible Waste

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

2.98 Rate

"Rate" means the maximum amount, expressed as a dollar unit, approved by the City that the Contractor may bill a Customer for providing specified services under this Agreement. A Rate has been established for each individual Service Level and the initial Rates for Rate Period One are presented in Exhibits A and B. The Rates approved by City are the maximum Rate that Contractor may charge a Customer for a particular Service Level and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate approved by the City.

2.99 Rate Period

"Rate Period" means a twelve (12) month period, commencing January 1 and concluding December 31 for which rates are calculated, with the exception that Rate Period One shall commence July 1, 2022 and conclude December 31, 2022.

2.100 Rate Zone

"Rate Zone" means specific zones within the Franchise Area where specific residential, commercial, and industrial rates shall be charges by the Contractor. Rate Zones are defined in Section 9.2.2.

2.101 Recyclable Material(s)

"Recyclable Material(s) includes materials which are reused or processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of the Public Resources Code. No materials shall be considered Recyclable Materials unless such material is separated from Solid Waste and Organic Waste. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, telephone books, grocery bags, colored paper, construction paper,

envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass containers of any color (including brown, clear, green and blue bottles and jars; aluminum (including beverage containers, foil, food containers, small pieces of scrap metal); small pieces of scrap metal weighing less than 10 pounds and fitting into the Blue Container; steel, tin or bi-metal cans; plastic containers (no. 1 to 7); and aseptic beverages boxes.

2.102 Recycle/Recycling

“Recycle” or “Recycling” means the process of Collecting, sorting, cleansing, treating, and reconfiguring materials for the purpose of returning them to the economic mainstream in the form of raw material for new, Reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace. Recycling includes processes deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

2.103 Remnant Organic Material

“Remnant Organic Material” means the Organic Waste that is Collected in a Gray Container that is part of the Gray Container Collection stream, or as otherwise defined in 14 CCR 17402(a)(23.5).

2.104 Renewable Natural Gas (RNG)

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

2.105 Residual (or Residue)

“Residual” or “Residue” means the Solid Waste destined for Disposal, further transfer/processing as defined in 14 CCR Section 17402(a)(30) or 14 CCR Section 17402(a)(31), or transformation which remains after Processing has taken place and is calculated in percent as the weight of Residual divided by the total incoming weight of materials.

2.106 Responsible Party

“Responsible Party” means: 1) Any individual or any corporation, partnership, or business association or an officer, director, or management employee of a corporation, partnership, or business association that has the authority to make discretionary decisions with respect to the operations of financial management of the Contractor; or, 2) Any corporation, sole-proprietorship, partnership, or business association, or officer, director, or management employee of such entity, that holds at least five percent (5%) equity or debt interest in the Contractor. If any holder of such debt or equity is not a natural person,

the term “responsible party” includes only the debtor, equity holding Person and officers, directors, and management employees of the debt or equity holder who are empowered to make discretionary decisions with respect to the operation of financial management of the Contractor.

2.107 Reusable Items

“Reusable Items” means items that are capable of being Reused after minimal Processing. Reusable Items may be Collected Source Separated or recovered through a Processing Facility. Reusable Items may include, but are not limited to, clothing, furniture, and/or sporting equipment.

2.108 Reuse

“Reuse” or any variation thereof, means the use, in the same, or similar, form as it was produced, of a material which might otherwise be discarded, or as otherwise defined in 14 CCR Section 17402.5(b)(2).

2.109 Roll-Off Box

“Roll-Off Box” has the same meaning as “Debris Box”.

2.110 Salvageable Material (or Salvaged Material)

“Salvageable Material” or “Salvaged Material” means an object or material that results from salvaging, where salvaging means the controlled separation of Solid Waste material which do not require further processing for Reuse or Recycling prior to Transfer activities, or as otherwise defined in 14 CCR Section 17402(a)(24).

2.111 SB 1383

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

2.112 SB 1383 Regulations

“SB 138 Regulations” or “SB 1383 Regulatory” refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

2.113 Self-Hauler (or Self-Haul)

“Self-Hauler” or “Self-Haul” means a Person who hauls Solid Waste, Organic Waste, or recovered material they have generated to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who Back-Hauls waste.

2.114 Service Level

“Service Level” refers to the number and size of a Customer’s Container(s) and the frequency of Collection service, as well as ancillary services such as lock/unlock service, Container push/pull service, etc.

2.115 Single-Family or Single-Family Dwelling (SFD)

“Single-Family” or “Single-Family Dwelling” or “SFD” means any residential Premises with less than two (2) units.

2.116 Solid Waste

“Solid Waste” has the same meaning as defined in PRC Section 40191, which defines Solid Waste as all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

- Hazardous waste, as defined in PRC Section 40141.
- Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
- Medical waste regulated pursuant to the Medical Waste Management Act (Part 14, commencing with Section 117600, of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste Landfill, as defined in PRC Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to PRC, Division 30.

2.117 Solid Waste Ordinance

“Solid Waste Ordinance” means Chapter 6.08 of the Fort Bragg Municipal Code, as currently adopted by the City of Fort Bragg City Council and future amendments to Chapter 6.08 as adopted by the City Council.

2.118 Source Separated

“Source Separated” means materials, including commingled Recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or Processing those materials for Recycling or Reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section

17402.5(b)(4). For the purposes of the Agreement, Source Separated shall include separation of materials by the Generator, Property Owner, Property Owner's employee, property manager, or property manager's employee into different Containers for the purpose of Collection such that Source Separated materials are separated from Gray Container Waste and other Solid Waste for the purposes of Collection and Processing.

2.119 Source Separated Blue Container Organic Waste (SSBCOW)

"Source Separated Blue Container Organic Waste" or "SSBCOW" means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes and Non-Organic Recyclables as defined in 14 CCR Section 18982(a)(43); or as otherwise defined by 14 CCR Section 17402(a)(26.7).

2.120 Source Separated Green Container Organic Waste (SSGCOW)

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

2.121 Source Separated Recyclable Materials

"Source Separated Recyclable Materials" means Source Separated Non-Organic Recyclables and SSBCOW.

2.122 State

"State" means the State of California.

2.123 Subcontractor

"Subcontractor" means any Person, firm, or entity hired by Contractor to carry out any of Contractor's duties under this Agreement.

2.124 Subsidiary

"Subsidiary" means an Affiliate with 50 percent (50%) or more of its ownership controlled by Contractor.

2.125 Term

"Term" means the duration of this Agreement, including extension periods if granted, as provided for in Section 3.1.

2.126 Tier One Commercial Edible Food Generators

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

- Supermarket.
- Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- Food Service Provider.

- Food Distributor.
- Wholesale Food Vendor.

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

2.127 Tier Two Commercial Edible Food Generators

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

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

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

2.128 Ton

“Ton” or “Tonnage” or “Tons” means a unit of weight equal to 2,000 pounds (907.18474 kg).

2.129 Transfer

“Transfer” means the act of transferring Discarded Materials Collected by Contractor from Contractor’s Collection vehicles into larger vehicles at a Transfer Facility for Transport to other Facilities for Processing or Disposing of such materials. Transfer allows for removal of materials excluded or prohibited from handling at the Transfer Facility (e.g., removal of Hazardous Waste).

2.130 Transportation or Transport

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

2.131 Universal Waste (or U-Waste)

“Universal Waste” or “U-Waste” means all wastes defined by 22 CCR Subsections 66273.1 through 66273.9. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and electronic waste.

2.132 Work Days

“Work Days” or “Working Days” means days on which the Contractor is required to provide regularly scheduled Collection services under this Agreement.

ARTICLE 3: TERMS OF AGREEMENT

3.1 TERM OF AGREEMENT

3.1.1 Effective Date and Commencement Date.

The Effective Date of this Agreement shall be the date the latter of the two Parties signs the Agreement.

The Commencement Date shall be July 1, 2022 and shall be the date on which Contractor initiates provision of Collection, Transportation, and Processing services required by this Agreement.

Between the Effective Date and the Commencement Date, Contractor shall perform all activities necessary to prepare itself to start Collection, Transportation, and Processing services required by this Agreement on the Commencement Date.

3.1.2 Term.

The Term of this Agreement shall continue in full force from 12:01 a.m. on July 1, 2022 (Commencement Date), to midnight December 31, 2029 unless the Agreement is extended by City pursuant to Section 3.1.3 or terminated in accordance with Article 11.

3.1.3 Option to Extend Term.

City shall, at the City’s sole discretion, have the option to extend this Agreement for a term up to ten (10) years. If the City extends the Agreement, it shall give written notice to Contractor 180 days prior to the extended expiration date of this Agreement. The City’s written notice shall specify the number of years by which it elects to extend the Term of this Agreement and the revised expiration date of the Agreement.

3.1.4 City’s Rights upon Expiration or Revocation.

At the revocation of this Agreement, the City may proceed with a competitive bidding or request for proposal process or exercise any other option available under Applicable Law.

3.2 LIMITATIONS TO SCOPE

The materials listed below in this Section may be Collected and Transported by other Persons. Such Persons shall do so in accordance with the City Code.

3.2.1 Industrial Recyclable Materials.

Recyclable Materials from a Generator of Industrial Solid Waste that are not disposed of and are recycled including, but not limited to, wood chips from the forest products industry used as boiler fuel, and agricultural waste used to produce compost. If Solid Waste residue in Recyclable Materials exceeds five percent (5%) by volume it shall be considered Solid Waste and not Industrial Recyclable Material and shall be collected by the Contractor.

3.1.2 Non-Discarded Recyclable Materials.

Provided the transporter is paid no direct or in-kind fee for the service and compensates the Generator for the Recyclable Materials.

3.1.3 Materials Hauled by Owner, occupant, or a Cooperative of Persons or its Contractor.

Solid Waste, Organic Waste, and/or Recyclable Materials that are removed from any Premises by the Owner, Occupant, or a Cooperative of persons and are transported, without compensation, to a Disposal Site or Processing Site by (i) the Owner, Occupant, or cooperative of persons of such Premises, (ii) by full-time employee(s) of Owner, Occupant, or cooperative of persons that uses the Owner's, Occupant's or cooperative of persons' equipment to Transport materials; or (iii) by a contractor whose removal of the Solid Waste and/or Recyclable Materials, and/or Demolition and Construction Debris incidental to the service being performed and such contractor removes materials as no additional or separate fee using contractor's own equipment and labor.

3.1.4 Containers Recycled.

Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, California Public Resources Code et. seq. as may be amended from time to time.

3.1.5 Animal, Grease Waste, and Used Cooking Oil.

Animal waste and remains from slaughterhouse or butcher shops, grease waste, or used cooking oil.

3.1.6 Sewage Treatment By-Product.

By-products of sewage treatment including sludge, sludge ash, grit, and screenings.

3.1.7 Hazardous Wastes.

Household Hazardous Waste, Hazardous Waste, and Designated Waste regardless of its source.

3.1.8 State and Federal Wastes.

Materials generated by state and federal agencies, special districts, school districts, State parks, State correction facilities, and Indian reservations.

3.1.9 Edible Food.

Edible Food that is collected from a Generator by other Person(s), such as a Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or that is transported by the Generator to another location(s), such as the location of a Food Recovery Organization, for the purposes of Food Recovery, regardless of whether the Generator donates, sells, or pays a fee to the other Person(s) to collect or receive the Edible Food from the Generator.

3.1.10 On-Site or Community Composting.

Organic Waste that is composted or otherwise legally managed at the site where it is generated or at a Community Composting site.

3.1.11 Other Materials.

Lead-acid batteries, waste oil, tires, and scrap metal not covered as Discarded Recyclable Materials.

3.3 SUBCONTRACTING

Contractor shall not engage any Sub-contractors for Collection, Transportation, Processing, or Disposal of Solid Waste, Organic Waste, or Recyclable Materials services without prior written consent of the City.

3.4 COMPLIANCE WITH LAWS AND REGULATIONS

Contractor warrants that it will comply with all applicable laws in effect during the term of this Agreement, including implementing regulations, as they may, from time to time, be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S .C. Section 6901, et seq., the California Public Resources Code Section 40000 et. seq., and all other applicable laws of the State of California, the County of Mendocino, ordinances of the City, the Mendocino Solid Waste Management Authority (MSWMA) County-wide Source Reduction and Recycling Element, the MSWMA County-wide Household Hazardous Waste Element, the requirements of Local Enforcement Agencies and other agencies with jurisdiction relating to the services provided by Contractor under this agreement. In the event of conflict between regulations or statutes, Contractor shall comply with the regulation or statute containing the most stringent applicable standards. Contractor shall comply with all final and binding judgments entered against Contractor regarding its services performed under this agreement.

3.5 FRANCHISE AREA DEFINED

This Agreement allows the Contractor to Collect, Transport, and Process Solid Waste, Organic Waste, and Recyclable Materials generated within the Franchise Area, which is the incorporated area of the City of Fort Bragg, including territory which may in the future be annexed to the City, subject to implementation delays which may be imposed by law, and shown on certain map entitled "Fort Bragg Collection Area" and included as Exhibit F. Franchise Area Limits

No Persons shall be granted a right to collect refuse in Contractor's Franchise Area unless approved by the City Council due to an emergency, a lack of service by the Contractor, or as allowed according to this Agreement herein.

ARTICLE 4: COLLECTION SERVICES

4.1 GENERAL

The nature of the Solid Waste, Organic Waste, and Recyclable Material services Contractor shall offer and provide to Customers residing or doing business in the Fort Bragg Solid Waste Franchise Area has determined by the Fort Bragg City Council.

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

The scope of services to be performed by Contractor pursuant to this Agreement shall be accomplished in a manner so that Customers are provided reliable, courteous, and high-quality Collection services and other services described in this Agreement at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner generally provided in this Article for the delivery of services, whether such other aspects are enumerated elsewhere in the Agreement or not.

Contractor shall not knowingly Collect Blue, Green, or Gray Containers that include Prohibited Container Contaminants.

4.2 OWNERSHIP OF DISCARDED MATERIALS

By operation of this Agreement, ownership and the right of possession of all Discarded Materials shall be transferred to Contractor from the Person discarding the materials (Customer and/or Generator) once such materials are placed in Contractor-provided Containers and properly placed for Collection.

If Prohibited Container Contaminants are found in Containers set out for Collection, the materials shall be considered not properly placed for Collection, and Contractor shall have the right to reject Collection of the contaminated Containers pursuant to Section 5.2, and the ownership of materials shall remain with the Person discarding the materials (Customer and/or Generator). In the event said Generator or producer of the Solid Waste is unknown, the Solid Waste shall become the property of the Owner of the parcel upon which said Solid Waste has been deposited.

Upon being legally deposited in a Disposal site approved by the City or transferred to an Approved Facility not owned by the Contractor, all Solid Waste, Organic Waste, and Recyclable Materials shall forthwith become the property of the permitted operator of the facility.

Except as required in the City's sole discretion for law enforcement purposes, at no time shall the City obtain any right of ownership or possession of Discarded Materials placed for collection and nothing in this Agreement shall be construed as giving rise to any inference that City has such rights.

4.3 THREE-CONTAINER SYSTEM

4.3.1 General.

No later than January 1, 2023, Contractor shall provide a three-Container Collection program for the separate collection of Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste as specified in this Section, using Containers that comply with the requirements of Section 6.9.

4.3.2 Source Separated Recyclable Materials Collection (Blue Container).

Contractor shall provide Blue Containers to Customers for Collection of Source Separated Recyclable Materials Collection Service, as described in Exhibits A, B, and C of this Agreement. Contractor shall Transport the Source Separated Recyclables Materials to the Approved Recycling Facility, as specified in Section 5.1.

Source Separated Recyclable Materials that are to be accepted for Collection shall include, but not be limited to the following: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper eggs cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes, chipboard; corrugated cardboard; paper milk cartons; glass containers of any color (including brown, clear, green, and blue glass bottles and jars); aluminum (including beverage containers, foil, food containers, small pieces of scrap metal); small pieces of scrap metal weighing 10 pounds and fitting into the Blue Container; steel, tin or bi-metal cans; plastic containers

(no. 1 to 7); and aseptic boxes. Prohibited Container Contaminants shall not be Collected in the Blue Containers. The Containers shall comply with the requirements of Section 6.9.

4.3.3 SSGCOW Collection (Green Container).

Contractor shall provide Green Containers to Customers for Collection of Green Waste and shall provide Green Waste Collection Service as described in Exhibits A, B, and C of this Agreement. Contractor shall transport the Green Waste to the Approved Facility as specified in Section 5.1.

Green Waste that is to be accepted for Collection in the SSGCOW Collection program include the following: green trimmings, grass, weeds, flowers, leaves, prunings, branches, dead plants, brush, tree trimmings, and dead trees. The parties agree that accepted types of Green Waste may be added or removed from the list from time to time by mutual consent or at the sole discretion of the City. Prohibited Container Contaminants shall not be Collected in the Green Containers. The Containers shall comply with the requirements of Section 6.9.

No later than January 1, 2023, Contractor shall implement a Food Waste Collection program that allows Generators to intentionally commingle Food Waste and Green Waste in the Green Containers. Contractor shall provide SSGCOW Collection service as described in Exhibits A, B, and C of this Agreement and Transport the SSGCOW to the Approved Facility as specified in Section 5.1.

4.3.4 Gray Container Waste (Gray Container).

Contractor shall provide Gray Containers to Customers for Collection of Gray Container Waste, and shall provide Gray Container Waste Collection service, as described in Exhibits A, B, and C of this Agreement. Contractor shall Transport the Gray Container Waste to the Approved Facility as specified in Section 5.1. Contractor may allow carpets and textiles to be placed in the Gray Containers. Prohibited Container Contaminants shall not be collected in the Gray Containers. The Containers shall comply with the requirements of Section 6.9.

4.4 PUBLIC LITTER AND RECYCLING CONTAINER SERVICES

Contractor shall provide service to an agreed-upon number of public litter and recycling containers in the City of Fort Bragg. Collection service shall be three-per-week (M-W-F).

Contractor will provide service to a total of 45 agreed-to locations in Fort Bragg. The existing receptacle locations will continue to be serviced. All new locations in Fort Bragg will be mutually agreed upon by the Parties. The recycling receptacles will receive mixed glass, aluminum, and plastic beverage containers. The Contractor will be responsible for servicing and cleaning up spilled refuse or recyclable materials due to overflow or upset. The Contractor shall perform an annual cleaning of these public litter and recycling containers. The City will be responsible for procurement and installation of receptable

housings and the Contractor will provide liner replacements as needed. The Contractor will exercise diligence and fully cooperate with the City in the implementation of this program in the aforementioned communities. The City reserves the right to demand a greater amount of servicing as needed to address community concerns. The City and Contractor will negotiate the additional fee for the additional container servicing.

4.5 DEBRIS BOX COLLECTION

Contractor shall provide Debris Box collection services at Customer's request for the collection of C&D and other Bulky Waste on an as needed basis. Debris Box Solid Waste shall be transported to the Approved or Designated Disposal Facility or Approved C&D Processing Facility that provides the lowest total cost to the Customer. Customers shall pay the Roll-off Pull Rates as specified in Exhibit B in addition to the actual disposal charge based on the weight of the Debris Box Solid Waste.

The collection frequency of Debris Boxes will be for a period of up to fourteen (14) calendar days. Contractor has the right to collect the Debris Box after fourteen (14) days, and if the Debris Box is not ready for collection upon arrival, Contractor may charge the approved Trip Charge, and inactivity fee as set forth in Exhibit B. If, prior to the pickup, the Customer requests an extension to the collection period of the initial fourteen (14) days, the Contractor may charge the inactivity fee set forth in Exhibit B.

4.6 BULKY ITEMS AND REUSABLE MATERIALS COLLECTION

Contractor shall provide on-call Bulky Item Collection services to Single-Family and Multi-Family Customers each year as described in Exhibits A and B. Pursuant to Exhibits A and B, Contractor shall Transport all Bulky Items and Reusable Materials Collected under this Agreement to the appropriate facility.

ARTICLE 5: OTHER SERVICES

5.1 TRANSFER, PROCESSING, AND DISPOSAL

5.1.1 Approved Facilities

Contractor shall Transport all Discarded Materials to the Designated or Approved Facility(ies) specified in Exhibit D and shall Transfer, Process, and Dispose of Discarded Materials in accordance with this Section and Exhibit D. The Designated or Approved Facilities shall comply with the following requirements.

- A. **Designated Disposal Facility (Gray Containers in Coastal Rate Zone and Inland Rate Zone).** Contractor shall utilize the Designated Disposal Facility for the Disposal of Greg Container Waste in the Coastal Rate Zone and Inland Rate Zone.
- B. **Approved Disposal Facility (Gray Containers).** Contractor's Approved Disposal Facility shall be a facility that is permitted and approved to accept Solid Waste for Disposal.
- C. **Approved Source Separated Recyclable Materials Processing Facility (Blue Containers).** Contractor's Approved Recyclables Processing Facility shall be a Facility or operation that Processes Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials to recover materials designated for Collection in the Blue Container.
- D. **Approved Organic Waste Processing Facility (Green Containers).** Contractor's Approved Organic Waste Processing Facility shall be a Facility that Processes Single-Family, Multi-Family, and Commercial SSGCOW to recover Source Separated Organic Waste.
- E. **Approved C&D Processing Facility.** Contractor's Approved C&D Processing Facility shall be a facility that Processes C&D Materials to recover materials that can either be recycled or composted.

5.1.2 Allowable Organic Waste Facilities

If Contractor is interested in transporting Discarded Materials to a type of Facility that is not described above, Contractor shall obtain written approval from the City and such Facilities or activities shall constitute a reduction in Landfill Disposal pursuant to 14 CCR Section 18983.1(b). If Contractor is interested in using a Facility, operation, or activity not listed above and not specifically identified in 14 CCR Section 18983.1(b), Contractor shall be responsible for securing the necessary approvals from CalRecycle, pursuant to 14 CCR Section 18983.2, that the Facility's process or technology constitutes a reduction in Landfill Disposal prior to the City's final approval of such Facility or activity.

5.1.3 Guaranteed Capacity and Facility Standards

Contractor shall guarantee Transfer, Processing, and Disposal capacity at the Approved Facility(ies) to receive all Discarded Materials Collected by the Contractor throughout the Term of the Agreement and shall comply with Facility standards specified in Exhibit D.

5.1.4 Other Facility Provisions

Exhibit D describes other Facility provisions including, but not limited to, use of Alternative Facilities, contamination monitoring of Discarded Materials received at the Approved Facilities, emergency conditions, and more.

5.1.5 Transportation and Facility Costs

Contractor shall pay all costs for the Transport, Transfer, Processing, and/or Disposal of Discarded Materials Collected in accordance with this Agreement. Contractor's compensation for such services is included in the Rates charged to Customers.

5.1.6 Transportation to Non-Approved Facilities Prohibited

If Contractor Transports Discarded Materials to a Facility other than the Approved Facility(ies) or an Alternative Facility without prior City approval, Contractor's failure to comply may result in assessment of Liquidated Damages pursuant to Section 11.8 and Exhibit G.

5.2 CONTAMINATION MONITORING

5.3.1 General

In order to promote public education, Contractor shall create all public education materials and conduct education programs and activities described in this Section at its expense.

5.2.1 Contamination Monitoring Procedures

- A. **General.** This Section presents inspection methods for Prohibited Container Contaminants to be used by the Contractor in conducting contamination monitoring required by Sections 5.2.2 and 5.2.3.
- B. **Container Inspection Methods.**
 1. **Option 1: Physical Container Inspections.** When Contractor's Hauler Route personnel dismounts from Collection vehicles to empty a Container, such personnel shall lift the Container lid and observe the contents. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.2.1.C
 2. **Option 2: Visual Inspections via On-Board Monitoring System.** For Collection vehicles with automated Collection service, the Collection vehicle hopper shall be equipped with a video camera and monitoring system. The Contractor's Hauler Route personnel shall observe, via the hopper video camera and monitoring system, the contents of the Containers as the materials are emptied into the vehicle. Upon finding Prohibited Container

Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.2.1.C.

The next day on which that Customer is to receive service, the Contractor's Hauler Route personnel shall dismount the Collection vehicle, lift the lid of the Container, and visually inspect the contents of the Container. If the Contractor's Hauler Route personnel determines that the Container again contains Prohibited Container Contaminants, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.2.1.C.

3. **Option 3: Visual Inspection via Remote Monitoring.**

- a. Contractor shall install camera equipment in Containers and use a cloud-based software that will enable Contractor, City, and/or other applicable enforcement personnel to monitor and examine the contents of Single-Family, Multi-Family, and/or Commercial Containers using digital photographic images obtained from the cameras installed in the Containers. The digital images shall be maintained and accessible for examination through the Contractor's cloud-based software platform. Contractor will perform regular and frequent remote monitoring of each Container, automatically, manually, or in combination using the remote monitoring system.
- b. The Container monitoring system will capture digital pictures multiple times each week of the contents of the Container to document and visualize various layers of material in the Container. Capturing multiple digital pictures is necessary to detect Prohibited Container Contaminants throughout the Container. Contractor shall capture no less than one (1) digital picture per Container per week.

C. Actions Upon Identification of Prohibited Container Contaminants.

1. **Record Keeping.** The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including date, time, Customer's address, type of Container (Blue, Green, or Gray Container); and maintain photographic evidence, if captured. Contractor shall submit this record to the Contractor's Customer service department, and Contractor's Customer service department shall update the Customer's account record to note the event, if the documentation if the on-board

computer system did not automatically update the Customer's account record.

2. **Identification of Excluded Waste.** If Contractor's personnel observe Excluded Waste in an uncollected Container, the Contractor's personnel shall issue a non-Collection notice for this Container in accordance with Section 5.2.1.C.5 and shall not Collect the Discarded Materials that contain Excluded Waste. Contractor's personnel shall record that observation in accordance with Section 5.2.1.C.1 and immediately inform their route supervisor. Contractor shall follow protocols specified in Sections 5.2.1.C.5 and 5.2.1.C.6. The route supervisor shall investigate and initiate applicable action within one (1) Business Day or sooner if the Hazardous Waste may cause immediate danger.
3. **Courtesy Pick-Up Notices.** Upon identification of Prohibited Container Contaminants in a Customer's Container, Contractor shall provide the Customer a courtesy pick-up notice. The courtesy pick-up notification shall:
 - (i) inform the Customer of the observed presence of Prohibited Container Contaminants;
 - (ii) include the date and time the Prohibited Container Contaminants were observed;
 - (iii) include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in the Blue Container, Green Container, and/or Gray Container;
 - (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with information that following three (3) instances Contractor may assess contamination Processing fees or issue a non-Collection notice; and,
 - (v) shall include photographic evidence. Contractor shall leave the courtesy pick-up notice attached to or adhered to the Generators' contaminated Containers; at the Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail, text message, or other electronic message.

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

4. **Notice of Assessment of Contamination Processing Fees.** If the Contractor observes Prohibited Container Contaminants in a Generator's Container on more than three (3) consecutive occasions and issued

courtesy pick-up notices on each of those occasions, the Contractor may impose a contamination Processing fee of \$____ (which will be adjusted annually pursuant to Section 10). Contractor shall notify the City in its monthly report of Customers for which contamination Processing fees were assessed. Contractor shall leave a contamination Processing fee notice attached to or adhered to the Generators' contaminated Containers; at the Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail, text message, or other electronic message. The contamination Processing fee notice shall describe the specific material(s) of issue, explain how to correct future set outs, and indicate that the Customer will be charged a contamination Processing fee on its next bill. The format of the contamination Processing fee notice shall be approved by the City.

Contractor shall Collect the contaminated Source Separated Recyclable Materials or SSGCOW and Transport the material to the appropriate Approved Facility for Processing.

5. **Non-Collection Notices.** Upon identification of Prohibited Container Contaminants in a Container in excess of standards agreed upon by the Parties or Excluded Waste, Contractor shall provide a non-Collection notice to the Generator. The non-Collection notice shall, at a minimum: (i) inform the Customer of the reason(s) for non-Collection; (ii) include the date and time the notice was left or issued; (iii) describe the premium charge to Customer for Contractor to return and Collect the Container after Customer removes the Contamination; and, (iv) provide a warning statement that a contamination Processing fee may be assessed if Prohibited Container Contaminants are observed on more than three (3) consecutive occasions. The non-Collection notice may include photographic evidence of the violation(s).

The Contractor's notice of non-Collection may be left attached to or adhered to the Generator's Container, or at the Premises' door or gate at the time the violation occurs, or subject to City's approval, may be delivered by mail, e-mail, text message, or other electronic message.

Contractor shall submit a sample of its non-Collection notice to the City for approval prior to implementing use of it with Customers.

6. **Communications with Customer.** Whenever a Container at the Premises of a Commercial or a Multi-Family Customer is not Collected, Contractor shall contact the Customer on the scheduled Collection day or within eight

(8) hours of the scheduled Collection day by telephone, email, text message, or other verbal or electronic message to explain why the Container was not Collected. Whenever a Container is not Collected because of Prohibited Container Contaminants, a Customer service representative shall contact the Customer to discuss and encourage the Customer to adopt proper Discarded Materials preparation and separation procedures.

7. **Contractor Return for Collection.** Upon request from Customer, Contractor shall Collect Containers that received non-Collection notices within one (1) Working Day of Customer's request if the request is made at least two (2) Working Days prior to the regularly scheduled Collection Day. Contractor shall bill Customer for the extra Collection service event ("extra pick-up") at the applicable City-approved Rates only if Contractor notifies Customer of the premium Rate for this service at the time the request is made by Customer.

5.2.2 Contamination Monitoring – Hauler Route Review Option Methodology and Frequency

Commencing on or before January 1, 2023, the Contractor shall, at its sole expense, conduct Hauler Route reviews for Prohibited Container Contaminants in Collection Containers in a manner that is deemed safe by the Contractor; is approved by the City; and, is conducted in a manner that results in all Hauler Routes being reviewed annually.

The Contractor shall conduct Hauler Route reviews that include inspection of the contents of Customers' Collection Containers for Prohibited Container Contaminants in a manner such that a minimum of 10 percent (10%) of Containers on each and every Hauler Route are inspected annually. The Containers shall be randomly selected.

Contractor shall develop a Hauler Route review methodology to accomplish the above Container inspection requirements and such methodology shall comply with the requirements of 14 CCR Section 18984.5(b). Contractor shall submit its proposed Hauler Route review methodology for the coming year to the City no later than January 15 of each year describing its proposed methodology for the calendar year and schedule for performance of each Hauler Route's annual review. City and/or CalRecycle will review and approve the proposed methodology. Contractor may commence with the proposed methodology upon approval.

If the City and/or CalRecycle notifies the Contractor that the methodology is inadequate to meet the requirements of 14 CCR Section 18984.5(b), Contractor shall, at its sole expense, revise the methodology and, after obtaining City or CalRecycle approval, conduct additional Hauler Route reviews, increased Container inspections, or implement

other changes using the revised procedure. If the Contractor's proposed methodology meets the requirements of 14 CCR Section 18984.5(b), but has been deemed inadequate by the City, the Contractor shall, at the expense of the City, revise the methodology and implement the necessary changes using the revised procedure.

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

A. Noticing of Generators with Contamination, Non-Collection, and Disposal of Materials.

Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Sections 5.2.1.C.

B. Monthly Reporting Requirements.

Contractor shall maintain records and report to the City monthly on contamination monitoring activities and actions taken, in accordance with Exhibit H.

5.2.3 Contamination Monitoring – Waste Evaluation Option

A. General.

Contractor shall, at its sole expense, conduct waste evaluations that comply with the requirements of this Section and meet the requirements of 14 CCR Section 18984.5(c). The City maintains the right to observe, or hire a third party to observe, the waste evaluations. Contractor shall, no later than January 15 of each calendar year, provide the City with a proposed waste evaluation methodology and a schedule of waste evaluations for the calendar year for review and approval by City. The City may request, and Contractor shall accept modifications to the schedule to permit observation by the City. In addition, Contractor shall provide an email notice to the City no less than ten (10) Working Days prior to each scheduled waste evaluation that includes the specific time(s), which shall be within the City's normal business hours, and location(s) for the waste evaluation.

B. Sampling Method, Study Protocols.

The Contractor shall conduct waste evaluations for Prohibited Container Contaminants by sampling the contents of Containers on Hauler Routes in the following manner:

1. The Contractor shall conduct waste evaluations at least twice per year and the studies shall occur in two distinct seasons of the year.
2. The Contractor's waste evaluations shall include samples of Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste.
3. The waste evaluations shall include samples from each Container type served by the Contractor and shall include samples taken from different areas in the City that are representative of the City's waste stream.
4. The waste evaluations shall include at least the following minimum number of samples from all the Hauler Routes included in the studies:
 - a. For Hauler Routes with less than 1,500 Generators, the study shall include a minimum of 25 samples;
 - b. For Hauler Routes with 1,500-3,999 Generators, the study shall include a minimum of 30 samples;
 - c. For Hauler Routes with 4,000-6,999 Generators, the study shall include a minimum of 35 samples; and,
 - d. For Hauler Routes with 7,000 or more Generators, the study shall include a minimum of 40 samples.
5. The Contractor shall Transport all of the material Collected for sampling to a sorting area at an Approved or Designated Facility, where the presence of Prohibited Container Contaminants for each Container type shall be measured to determine the ratio of Prohibited Container Contaminants present in each material stream by weight. To determine the ratio of Prohibited Container Contaminants, the Contractor shall use the following protocol:
 - a. The Contractor shall take one sample of at least a 200 pounds from the material Collected from each material stream for sampling. For example, Contractor shall take a 200-pound sample taken from the combined contents of the SSGCOW Container samples.

- b. The 200-pound sample shall be randomly selected from different areas of the pile of Collected material for that material stream.
- c. For each 200-pound sample, the Contractor shall remove any Prohibited Container Contaminants and determine the weight of Prohibited Container Contaminants.
- d. The Contractor shall determine the ratio of Prohibited Container Contaminants in the sample by dividing the total weight of Prohibited Container Contaminants by the total weight of the sample.
- e. All weights shall be recorded in pounds.

C. **Contamination Response.** If the sampled weight of Prohibited Container Contaminants exceeds twenty-five percent (25%) of the measured sample for any material stream, the Contractor shall:

- 1. Notify the City within fifteen (15) Working Days of the waste evaluation.
- 2. Option 1: Within fifteen (15) Working Days of the waste evaluation, notify all Generators on the sampled Hauler Route of their requirement to properly separate materials into the appropriate Containers. The Contractor may provide this information by placing a written notice on the Generators' Containers or the gate or door of the Premises; and/or by mail, email, or electronic message to the Generators. The format of the warning notice shall be approved by the City.

OR

Option 2: Within fifteen (15) Working Days of the waste evaluation, perform a targeted Hauler Route review of Containers on the Hauler Route sampled for waste evaluations to determine the sources of contamination and notify those Generators of their obligation to properly separate materials. The Contractor may provide this information to these Generators by placing a written notice on the Generators' Containers or the gate or door of the Premises; and/or by mail, e-mail, or electronic message to the applicable Generators. The format of the warning notice shall be approved by the City.

D. **Noticing of Generators with Contamination, Non-Collection, and Disposal of Materials.**

Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container

handling protocols set forth in Section 5.2.1.C, which include protocols for non-Collection and Disposal of contaminated materials.

5.3 EDUCATION AND OUTREACH

5.3.2 Program Objectives

Contractor's public education and outreach strategy shall focus on improving Generators' understanding of the benefits of and opportunities for source reduction, Reuse, and Landfill Disposal reduction. In general, Contractor-provided public education and outreach, which shall include all content required by this Section 5.3, should: (i) inform Generators about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, Reuse, and reduction of Solid Waste Disposal; (ii) instruct Generators on the proper method for placing materials in Containers for Collection and setting Containers out for Collection with specific focus on minimizing contamination of Source Separated Recyclable Materials and SSGCOW; (iii) clearly define Excluded Waste and educate Generators about the hazards of such materials and their opportunities for proper handling; (iv) discourage Generators from buying products if the product and its packaging are not readily reusable, recyclable, or compostable; (v) inform Generators subject to Food Recovery requirements under SB 1383 Regulations of their obligation to recover Edible Food and actions they can take to prevent the creation of Food Waste; (vi) encourage the use of Compost; and, (vii) encourage Generators to purchase products/packaging made with Recycled-content materials. The cumulative intended effect of these efforts is to reduce each Generator's reliance on Contractor-provided Gray Container Waste service and, ultimately, Disposal, and Contractor agrees to support and not undermine or interfere with such efforts.

5.3.3 Contractor Cooperation.

Contractor acknowledges that they are part of a multi-party effort to operate and educate the public about the integrated waste management system. Contractor shall cooperate and coordinate with the City on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns.

Contractor shall obtain approval from the City on all Contractor-provided public education materials including, but not limited to print, radio, television, or internet media before publication, distribution, and/or release. City shall have the right to request that Contractor include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld. The City reserves the right to direct the Contractor to modify the education and outreach program at any time.

5.3.4 Annual Education Plan

Annually, Contractor shall develop and submit an annual public education plan to promote the programs performed by Contractor under this Agreement. The annual public

education plan shall present the education activities for the upcoming calendar year and shall be submitted with the Contractor's annual report in accordance with Exhibit H. Each public education plan shall specify the target audience for services provided, include upcoming promotions for ongoing and known special events, identify program objectives, individual tasks, public education materials to be developed or updated, opportunities for expanded partnerships, a timeline for implementation, and an itemized description of how Contractor's annual public education budget (described in Section 5.3.4) will be spent. The City shall be permitted to provide input on each annual public education plan, and the plan shall not be finalized or implemented without approval of the City. Each plan's implementation success shall be measured according to the deadlines identified and products developed. Contractor shall meet with the City to present and discuss the plan. City shall be allowed up to thirty (30) days after receipt to review and request modifications. The City may request, and Contractor shall not unreasonably deny, modifications to be completed prior to approving the plan. Contractor shall have up to fifteen (15) Business Days to revise the plan in response to any requested changes by the City. Any further delays may result in Liquidated Damages for failure to perform education and outreach activities as identified in Exhibit G. Each Business Day that the plan is late shall count as a single event/activity.

5.3.5 Annual Budget.

In addition to staffing expenses, Contractor shall spend, for the public education and outreach services described in this Section 5.3, no less than ten thousand (\$10,000) in Rate Period One. The Rate Period One budget shall be adjusted annually thereafter by the same percentage used to adjust Rates pursuant to Article 9. Annually, Contractor shall provide to the City, for review and approval, a detailed description of how such budget will be spent as part of the annual public education plan to be developed in accordance with Section 5.3.4. At the conclusion of each Rate Period, any unused funds shall be transferred to the City. Contractor shall be prohibited from expending such funds without the prior written approval of the City. Any expenditures not approved by the City in advance shall neither be counted in Contractor's annual public education and outreach budget, nor be recovered through Rates.

5.3.6 Education Requirements during Program Implementation/Roll-Out.

Beginning on the Effective Date of this Agreement and through Rate Period One, Contractor shall conduct an education campaign focused on informing Customers of the Collection program changes that will commence on July 1, 2022. At a minimum, Contractor shall perform the activities listed below and shall perform these services in a manner that complies with requirements of this Section 5.3 and 14 CCR, Division 7, Chapter 12, Article 4.

- A. Prepare and distribute an initial mailer to all Customers explaining the change

from the existing hauler to the new Contractor (if applicable), changes from the existing Collection programs to new programs, Hauler Route changes, dates of program implementation, Recycling and Landfill Disposal reduction programs available, special services available, holiday Collection schedules, proper handling and disposal of Household Hazardous Waste, Contractor's contact information, and any additional education and outreach information specified in 14 CCR, Division 7, Chapter 12, Article 4. The initial mailer shall be printed and mailed or hand delivered to Customers and shall also be made available in an electronic format through the Contractor's website. Contractor may provide a Customer with an electronic version of the initial mailer, rather than a printed version, if specifically requested by the Customer.

- B. Prepare a "how-to" flyer describing how to prepare Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste for Collection and describe the acceptable materials that can be included in the Blue and Green Containers, as well as non-allowable materials. The flyer should emphasize any new types of Source Separated Recyclable Materials to be included in Blue Containers and the new Food Waste Collection program. Prepare separate flyers for Single-Family, Multi-Family, and Commercial Customers addressing their unique service conditions. The flyers shall be printed and distributed to each Customer, as well as made available in an electronic format through the Contractor's website. The Contractor shall provide a sufficient number of flyers to each Multi-Family property manager for their distribution to each tenant unit. Contractor may provide a Customer with an electronic version of the flyer rather than a printed version, if specifically requested by the Customer.
- C. Prepare printed signage and posters describing Collection programs and distribute to Multi-Family property managers and Commercial Customers for on-site use.
- D. Prepare an instructional packet identifying key transition dates and verifying the Customer's specific current Service Level, which shall be printed and distributed to each Customer and made available in an electronic format on the Contractor's website. Contractor may provide an electronic version of the instructional packet rather than a printed version, if requested by the Customer.
- E. Prepare and distribute public service announcements (PSA) for local newspapers.
- F. Meet with up to four (4) business associations (such as the Chamber of Commerce, Rotary Club, and other similar organizations) in separate venues to: educate Commercial Businesses on the Collection programs, State

requirements (including SB 1383 and SB 1383 Regulatory requirements) for the Jurisdiction and Generators; answer questions; and, provide service and Rate information.

- G. All education material designed and/or distributed by the Contractor shall be submitted to the City for approval prior to distribution or posting on the Contractor's website.

5.3.7 Annual and/or Ongoing Education Requirements.

A. Specific Annual Educational Activities

1. Annual Notice of Requirements. Not less than once per year during each Rate Year, Contractor shall prepare and distribute to each Generator in the City a mailer that includes information specified in 14 CCR Section 18985.1(a). Such mailer shall be distributed by Contractor to all residential and commercial mailing addresses including individual Multi-Family Dwelling Units. Contractor shall also make this notice available in an electronic format through the Contractor's website.
2. Billing Inserts. Upon City request. Contractor agrees to insert and distribute brochures, newsletters, or other information developed by the City as inserts in Contractor's Customer invoices at no additional charge to the City. Upon City request, Contractor shall be responsible for printing the bill inserts. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the City as attachments to Customer invoices at no additional charge to the City. Contractor shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City request for such inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group. Contractor shall perform this service with no additional requirement for compensation.
3. Multi-Family and Commercial Customer Signage. Contractor shall provide all Multi-Family and Commercial Customers with Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste program guidelines, including posters to be placed in Collection areas and enclosures and other community areas at each Premises or building where Discarded Materials are stored.
4. Minimum Website Requirements. Contractor shall develop and maintain a

website (with a unique URL specific to the City) that is specifically dedicated to the City to provide Generators with detailed service information. The website or webpage shall be accessible by the public and shall include all education and outreach materials being provided, without requirement for login. Contractor shall update the website regularly so that information provided is current.

5. Instructional Service Guide. On or before January 1, 2023, Contractor shall prepare a service guide that describes available services, including how to place Containers for Collection, which materials should be placed in each Container and prohibited materials, and provides Collection holidays and a Customer service phone number. On or before January 1, 2023, the service guide shall be printed and delivered with each set of Containers distributed to a Generator and shall be delivered annually to all Generators. Contractor shall prepare different service guides for Single-Family, Multi-Family, Commercial Generators, and Commercial Edible Food Generators. Contractor shall, at its sole expense, revise, re-print, and redistribute service guides once every two (2) years or at least sixty (60) days prior to a change in the accepted or prohibited materials for any program. Contractor shall make the service guide available in an electronic format through the Contractor's website. Contractor may provide an electronic version of the instructional service guide rather than a printed version, if requested by the Customer.
6. Annual Multi-Family Dwelling Unit Notices. Prior to the Commencement Date of this Agreement, Contractor shall obtain and track in its Customer information system(s) the number and addresses of dwelling units at each Multi-Family Premises serviced by Contractor. Contractor shall maintain this database by auditing the data at least once every two (2) years. At least annually, commencing no later than January 1, 2023, Contractor shall prepare and distribute notices to each Multi-Family Dwelling Unit at Multi-Family Premises serviced by Contractor. The annual notices shall be a minimum of one page which may include the front and back of a single printed sheet), and shall include information on regulations governing Discarded Materials, Hazardous Waste, and toxic waste; City, County and State requirements to properly separate Discarded Materials (such as requirements of the City Code and of State statutes and corresponding regulations, including, but not limited to, AB 341, AB 1826, and SB 1383); instructions on properly separating materials; waste prevention; services available; and any other information required by the County, City or by State regulations (including SB 1383 Regulatory requirements for education,

pursuant to 14 CCR, Division 7, Chapter 12, Article 4). As an alternative, Contractor may comply with these requirements through preparation and distribution of an annual newsletter distributed to each Multi-Family Dwelling Unit that provides the same information. Contractor shall make notices and newsletters available in an electronic format through the Contractor's website. Contractor may provide an electronic version of the notices rather than a printed version, if requested by the Customer.

7. Provision of Educational Materials to Non-Compliant Entities. Contractor shall provide educational materials to non-compliant entities under this Agreement, as further described in Section 5.8.2.
8. Education Materials for Property and Business Owners and Tenants. Contractor shall annually provide Property Owners and Commercial Business owners with public education materials for their distribution to all employees, contractors, tenants, and Customers of the properties and businesses. The Contractor's public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials and shall reflect content requirements described in Section 5.3.8 below. Contractor shall provide the following materials for this purpose: insert materials (such as, but not limited to, welcome packets, flyers, and signs). A Commercial Business or Multi-Family Property Owner may request these materials more frequently than the standard annual provision if needed to comply with the requirement of 14 CCR Section 18984.10 for Commercial Businesses and Multi-Family Property Owners to provide educational information to new tenants and employees before or within fourteen (14) days of occupation of the Premises. In this case, the Commercial Business or Multi-Family Property Owner may request delivery of materials by contacting the Contractor's customer service department not later than two (2) weeks in advance of the date that the materials are needed.
9. Education Requirements for Commercial Edible Food Generators
 - a. On or before February 1, 2023, the Contractor shall develop a list of Food Recovery Organizations and Food Recovery Services operating within the City, maintain the list on the Contractor's City-specific website, share the list with the City if the City wants to post the list on additional City websites, and update the list annually. The list shall include, at a minimum, the following information about each Food Recovery Organization and each Food Recovery Service:

- i. Name and physical address;
 - ii. Contact information;
 - iii. Collection service area; and,
 - iv. An indication of types of Edible Food the Food Recovery Service or Food Recovery Organization can accept for Food Recovery.
- b. At least annually, the Contractor shall provide Commercial Edible Food Generators with the following information:
 - i. Information about the City's Edible Food Recovery program;
 - ii. Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;
 - iii. Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
 - iv. Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.
- c. The Contractor may provide the information required by subsection b above by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Commercial Businesses.

5.3.8 Minimum Content Requirements.

Prior to February 1, 2023; and annually thereafter, the Contractor shall include the following education and outreach content to Customers by incorporation of this content into the public education materials described in Section 5.3.7.

- A. Collection system description: Information on the Generator's requirements to properly separate Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste and place such materials in appropriate Containers pursuant to this Agreement, SB 1383 Regulations, and all other Applicable Law.
- B. Information on methods for the prevention of Source Separated Recyclable Materials and SSGCOW generation; managing SSGCOW on Generator's Premises through composting or other Landfill Disposal reduction activities allowed under 14 CCR Sections 18983.1 and 18983.2; sending SSGCOW to Community Composting operations; and any other local requirements regarding Discarded Materials.
- C. Information regarding the methane reduction benefits of reducing the Disposal

- of SSGCOW, and the method(s) that the Contractor uses to recover SSGCOW.
- D. Information regarding how to recover Source Separated Recyclable Materials, SSBCOW, and SSGCOW, and a list of haulers approved by the City.
 - E. Information related to the public health and safety and environmental impacts associated with the Disposal of SSGCOW and SSBCOW.
 - F. Information regarding programs for donation of Edible Food;
 - G. For Commercial Customers, information about the City's Edible Food Recovery Collection program; Tier One Commercial Edible Food Generators and Tier Two Edible Food Generators requirements specified in 14 CCR, Division 7, Chapter 12, Article 10; Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and, information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.
 - H. Information regarding Self-Hauling requirements.
 - I. Any other federal, State, or local requirements to properly separate Discarded Materials or other necessary actions by Generators, including applicable requirements of the City Code, AB 341, AB 1826, and SB 1383 and corresponding regulations.

5.3.9 Material Distribution Methods

Contractor shall use the following methods to provide education information to Customers.

- A. **Printed materials.** Contractor shall provide printed education. The Contractor shall be responsible for the design, printing, and distribution of these materials. All Contractor-printed public education materials shall, at a minimum, use recycled paper and/or be made of recycled material. The Contractor will use one hundred percent (100%) post-consumer paper and procure printed materials from local businesses.
- B. **Electronic materials and website content.** Contractor shall provide electronic and website content for education and outreach materials, which may include, but are not limited to digital graphics, digital versions of print materials, social media posts, and blog posts. The Contractor shall be responsible for the design, posting, and electronic distribution of these materials.

5.3.10 Non-English Language Requirements

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

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

5.3.11 Record Keeping and Reporting Requirements

Contractor shall comply with the public education and outreach record keeping and reporting requirements of Exhibit H.

5.4 FOOD RECOVERY PROGRAM SUPPORT

Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of Food Recovery efforts in the City.

5.5 BILLING

A. General Billing Requirements

- 1. Contractor Responsible.** Contractor shall bill all Customers and be solely responsible for collecting payment from Customers. Billing shall be performed on the basis of services rendered and this Agreement shall create no obligation on the part of any Person on the sole basis of the Ownership of property. Individual contracts between Contractor and a Customer for services provided under this Agreement shall be prohibited unless otherwise approved in writing by the City on a case-by-case basis.
- 2. Frequency.** Contractor shall bill all Single-Family Customers monthly in advance of services provided. Contractor shall bill all Commercial and Multi-Family Customers for scheduled and regularly recurring services on a monthly basis in arrears of services provided. Contractor shall bill Customers for any on-call and/or non-recurring services no more frequently than monthly and shall only bill for services provided during the previous billing period. Contractor shall remit invoices to Customers no earlier than the twentieth (20th) day of each month for which service is being billed.
- 3. Bill Format.** Contractor shall bill Customers electronically using paperless invoices; however, Contractor shall bill Customers who decline or are otherwise unable to provide email contact information by standard mail, using standard (paper) invoices. Contractor shall permit Customers the ability to pay their bills through an electronic check or credit card and include

the ability for Customer billings to be automatically charged on a recurring basis. Contractor shall prepare and mail bills and collect payments from Customers who decline to use such internet-based billing system. Contractor shall make arrangements to allow such Customers to pay bills by cash, check, electronic check, money order, and credit card.

4. **Bill Inserts.** Contractor shall include bill inserts in accordance with Section 5.3.
 5. **Records.** Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of this Agreement, for inspection and verification by the City at any reasonable time, but in no case more than ten (10) calendar days after receiving a request to do so.
- B. **Rates and Waivers.** Contractor shall bill Customers and collect Customer payments at Rates not to exceed the City-approved maximum Rates. Note that maximum Rates are established for Multi-Family and Commercial Customers that have been granted de minimis, space constraint, Collection frequency, low population, disaster, and/or emergency waivers pursuant to Sections 5.6 and 5.7. Contractor shall ensure that accurate records are maintained for such waivers and Customers are billed properly.
- C. **Application of Contamination Surcharges.** In accordance with Section 5.2.1.C.4, the Contractor shall assess contamination Processing fees on Customers with repeated occurrences of excess Prohibited Container Contaminants. Any contamination Processing fees to be assessed for a Customer shall be included and itemized on the Customer's invoice for the billing period in which the Contractor notified the Customer of the assessment of the contamination Processing fee.

5.6 GENERATOR WAIVER PROGRAM COORDINATION

5.6.1 Types of Generator Waivers

- (1) **General.** City may grant waivers described in this Section to Generators that impact the scope of Contractor's provision of service for those Customers. Waivers issued shall be subject to compliance with SB 1383 Regulatory requirements, pursuant to 14 CCR Section 18984.11, or other requirements specified by the City.
- (2) **De Minimis Waivers.** The City may waive a Multi-Family's, Commercial Business', or its Property Owner's obligation to comply with some or all of the Source Separated Recyclable Materials and SSGCOW requirements set forth in this Agreement and SB 1383 Regulations if the Multi-Family, Commercial

Business, or its Property Owner provides documentation or the City has evidence demonstrating one of the following de minimis conditions:

- a) The Multi-Family's or Commercial Business' total Solid Waste Collection service is two (2) cubic yards or more per week, and SSGCOW or SSBCOW subject to Collection in a Blue Container or Green Container comprises less than twenty (20) gallons per week, per applicable Container, of the Multi-Family's or Commercial Business' total waste; or,
 - b) The Multi-Family's or Commercial Business' total Solid Waste Collection service is less than two (2) cubic yards per week, and SSGCOW or SSBCOW subject to Collection in a Blue Container or Green Container comprises less than ten (10) gallons per week, per applicable Container, of the Multi-Family's or Commercial Business' total waste.
- (3) **Physical Space Waivers.** The City may waive a Multi-Family's, Commercial Business', or its Property Owner's obligation to comply with some or all of the Source Separated Recyclable Materials or SSGCOW Collection service requirements set forth in this Agreement and SB 1383 Regulations if the Multi-Family, Commercial Business, or its Property Owner provides documentation, or the City has evidence from its staff, the Contractor, licensed architect, or licensed engineer demonstrating that the Premises lacks adequate space for Blue Containers and/or Green Containers.

5.6.2 Contractor Waiver Request on Behalf of Generator

Upon reasonable belief that a Generator may qualify for a de minimis or physical space waiver, the Contractor may submit a request to the City to grant a waiver to the Generator, provided that adequate evidence of the de minimis, physical space, or Collection frequency waiver requirements specified in 14 CCR Section 18984.11 is included with the request. City shall review and approve or deny the waiver request. Contractor's request for consideration of a waiver shall include the Generator's name and address, type of Commercial Business or number of Multi-Family units if Customer is a Multi-Family premises, reasons Generator may be eligible for the waiver, and evidence such as, but not limited to: Service Level data, photo documentation, weight records, and technical assistance assessment results.

5.6.3 Contractor Review of Generator Waiver Requests

Generators may submit requests for de minimis waivers, and physical space waivers to the Contractor. Contractor shall within ten (10) days review the Generator's waiver application and inspect the Generator's Premises to verify the accuracy of the application. Contractor shall provide documentation of the inspection, including the Contractor's recommendation to approve or deny the waiver request, and send this information to the

City within thirty (30) days of receipt of the Generator's waiver application for the City's review and approval. The City ultimately retains the right to approve or deny any application, regardless of the Contractor's recommendation. Contractor shall report information regarding waivers reviewed on a monthly basis, in accordance with Exhibit H.

5.6.4 Contractor Change in Customers' Service Levels

When the City grants a waiver to a Generator, the City shall notify the Contractor within ten (10) days of the waiver approval with information on the Customer and any changes to the Service Level or Collection service requirements for the Customer. Contractor shall have thirty (30) days to modify the Customer's Service Level and billing statement, as needed.

5.6.5 Waiver Reverification

It shall be the responsibility of the Contractor to verify that the Generators with de minimis or physical space constraint waivers continue to meet the waiver requirements set forth in this Section. Contractor shall conduct such reverifications of waivers through inspection of each Generator's Premises and review of applicable records at least once every five (5) years for de minimis and physical space constraint waivers. Pursuant to Exhibit H, Contractor shall maintain a record of each waiver verification and provide a monthly report to the City documenting the waiver reverifications performed and recommendations to the City on those waivers that Contractor concludes are no longer warranted. The City shall make a final determination of the waiver eligibility of Generators.

5.6.6 Contractor Recordkeeping of Generators Granted Waivers

Upon Contractor request, no more the one (1) time per year, the City shall provide Contractor an updated listing of waivers approved by the City, including the Generators' names, mailing address, service address, and type of waiver. Contractor shall maintain waiver-related records and report on waiver verifications pursuant to Exhibit H.

5.7 SERVICE WAIVER PROGRAM COORDINATION

5.7.1 Low Population Area Waivers

Certain census tracts of the City may qualify as Low-Population Areas. Some Collection service requirements may be waived for the Low-Population Areas. Low-population waivers are granted by CalRecycle and are only valid for a period of up to five (5) years. If, during the Term of this Agreement, the City is granted a waiver for Low-Population Areas, any resulting Collection service changes shall be addressed as a change in scope in accordance with Section 4.4.

5.7.2 Processing Facility Temporary Equipment or Operational Failure Waiver

(1) **Notification to the City.** The Contractor, or their Subcontractor (such as a Facility operator), shall notify the City of any unforeseen operational restrictions

that have been imposed upon an Approved Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent an Approved Facility from Processing and recovering Source Separated Recyclable Materials or SSGCOW. The Contractor or Subcontractor shall notify the City as soon as possible and no later than twenty-four (24) hours from the time of the incident. The notification shall include the following: (i) name of Approved Facility; (ii) the Recycling and Disposal Reporting System Number of the Approved Facility; (iii) date the Approved Facility became unable to Process Source Separated Recyclable Materials or SSGCOW; (iv) description of the operational restrictions that have been imposed upon the Approved Facility by a regulatory agency or unforeseen equipment failure or operational restriction that occurred; (v) the period of time the Contractor anticipates the temporary inability of the Approved Facility to Process Source Separated Recyclable Materials, or SSGCOW; (vi) Contractor's proposed action plan to deliver materials to an Alternative Facility for Processing (refer to Exhibit D) or Contractor's request for waiver to deliver Source Separated Recyclable Materials or SSGCOW to the Approved or Designated Disposal Facility.

(2) **Use of Alternative Facility or Waiver for Disposal of Materials.** Upon notification by Contractor or Subcontractor of an Approved Facility's inability to Process materials, City shall evaluate the notification and determine if City shall require Contractor to use an Alternative Facility or allow the Contractor to Transport the Source Separated Recyclable Materials, SSGCOW, or Mixed Waste to the Approved or Designated Disposal Facility for Disposal on a temporary basis for a time period specified by the City. Upon City's decision, the City shall notify the Contractor of its requirement to use an Alternative Facility for Processing or to use the Designed Disposal Facility for Disposal, and the period of time that the City will allow the Source Separated Recyclable Materials and SSGCOW to be redirected to the Alternative Facility or Approved/Designated Disposal Facility. Pursuant to 14 CCR Section 18984.13, the approved Disposal period shall not exceed ninety (90) days from the date the Approved Facility's Processing restriction or failure commenced. In such case, the Contractor must receive permission from the City prior to depositing any Discarded Material in a Landfill.

(3) **Record Keeping and Reporting.** Contractor shall maintain a record of any Facility incidents and report this information to the City in accordance with Exhibit H.

5.7.3 Disaster Waivers

In the event of a disaster, the City may grant Contractor a waiver of some or all Discarded Materials Collection requirements under this Agreement and 14 CCR, Division 7, Chapter

12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting changes in Collection requirements shall be addressed as a change in scope in accordance with this Agreement.

5.7.4 Removal of Material from Homeless Encampments and Illegal Disposal Sites

The Contractor may, but is not required to, separate or recover Organic Waste that Contractor removes from homeless encampments and illegal disposal sites as part of an abatement activity to protect public health and safety. Contractor shall report the amount of Discarded Materials removed for Disposal from homeless encampments and illegal disposal sites, in accordance with Exhibit H.

5.7.5 Quarantined Waste

If approved by the City, the Contractor may Dispose of specific types of SSGCOW that are subject to quarantine and meet the requirements described in 14 CCR Section 18984.13(d) for a period of time specified by the City or until City provides notice that the quarantine has been removed and directs Contractor to Transport the SSGCOW to the Approved Facility(ies) for such material.

In accordance with Exhibit H, the Contractor shall maintain records and submit reports regarding compliance agreements for quarantined SSGCOW that are Disposed of pursuant to this subsection.

5.8 INSPECTION AND ENFORCEMENT

5.8.1 Annual Compliance Reviews

- A. **General.** Contractor shall perform compliance reviews described in this Section commencing January 1, 2023, and at least annually thereafter, unless otherwise noted.
- B. **Commercial Generator Compliance Reviews.** The Contractor shall complete a compliance review of all Multi-Family and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste, to determine their compliance with: (i) Generator requirements under the City's Discarded Materials Collection program; and, (ii) if applicable for the Generator, Self-Hauling requirements pursuant to 14 CCR Section 18988.3, including whether a Multi-Family or Commercial Business is complying through Back-Hauling SSGCOW and/or Source Separated Recyclable Materials and/or SSBCOW. The compliance review shall mean a "desk" review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however, the City may request that the Contractor perform an on-site

observation of service in addition to or in lieu of the desk review if needed to obtain the required information.

- C. **Annual Hauler Route Review.** Beginning April 1, 2023 and annually thereafter, the Contractor shall conduct annual Hauler Route reviews of Commercial, Multi-Family, and Single-Family Generators for compliance with the City's Discarded Materials Collection program and Container contamination monitoring. These Hauler Route reviews may be performed concurrently with the contamination monitoring Hauler Route reviews, provided that Contractor documents a reasonable sampling of Generators for which compliance with the City's Discarded Materials Collection program during the Hauler Route review was assessed.
- D. **Generator Waiver Inspections.** In accordance with Section 5.7, Contractor shall verify Multi-Family and Commercial Generator de minimis and physical space constraint waivers, if applicable, at least once every five (5) years from the date of issuance of the waiver and verify Collection frequency waivers at least once every five (5) years from the date of issuance of the waiver.

5.8.2 Compliance Review Process

- A. **Number of Reviews.** The Contractor shall conduct a sufficient number of compliance reviews, Hauler Route reviews, and inspections of Generators, to adequately determine the Generators' overall compliance with SB 1383 Regulations, AB 1826, and AB 341. The number of reviews shall be no less than once per year. City reserves the right to require additional inspections, if the City determines that the amount of inspections conducted by the Contractor is insufficient. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.
- B. **Non-Compliant Entities.** From January 1, 2023 through December 31, 2024, when compliance reviews are performed by Contractor, Contractor shall provide educational materials in response to violations. Contractor shall provide these educational materials to the non-compliant Customers and Generators within fourteen (14) days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or Hauler Route review. Contractor shall document the non-compliant Customers and Generators and the date and type of education materials provided, and shall report such information to the City in accordance with Exhibit H. Beginning January 1, 2024, the Contractor shall, in addition to providing the education materials described in this subsection, document non-compliant Customers and Generators determined through

Contractor's compliance reviews, and shall report all Customers and Generators with violations of SB 1383 Regulations to the City in accordance with Exhibit H. The City shall be responsible for subsequent enforcement action against the Generators.

- C. **Documentation of Inspection Actions.** The Contractor shall generate a written and/or electronic record and maintain documentation for each inspection, Hauler Route review, and compliance review conducted, including the information described in Exhibit H.

5.9 SERVICE COMPLAINTS

5.9.1 Documentation of Complaints.

- A. **General.** The Contractor agrees to maintain a computer database log of all oral and written complaints received by Contractor from Customers or other Persons. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. Contractor agrees to document and maintain for a period of at least five (5) years on a form or log all Complaints registered by Customers and Persons, in accordance with this Section and Exhibit H. Contractor shall record complaints received related to SB 1383 Regulatory non-compliance in its log in a manner further described in subsection B below.
- B. **SB 1383 Regulatory Non-Compliance Complaints.** For complaints received in which the Person alleges that an entity is in violation of SB 1383 Regulations, Contractor shall document the information listed in Exhibit H. Contractor shall provide this information in a brief complaint report to the City for each SB 1383 Regulatory non-compliance complaint within fourteen (14) days of receipt of such complaint, and a monthly summary report of SB 1383 Regulatory non-compliance complaints in accordance with Exhibit H.

5.9.2 Investigation of SB 1383 Regulatory Non-Compliance Complaints.

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

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

1. Reviewing the Service Level of the entity that may not be compliant with SB 1383 Regulations;
2. Reviewing the waiver list to determine if the entity has a valid de minimis, physical space constraint, or Collection frequency waiver;
3. Reviewing the Self-Haul registration list, if applicable, to determine if the entity has registered and reviewing the entity's reported Self-Haul information;
4. Determining if the entity is located in a Low-Population Area;
5. Inspecting Premises of the entity identified by the complainant, if warranted; or,
6. Contacting the entity to gather more information, if warranted.

- B. **Reporting.** Within fourteen (14) days of completing an investigation of an SB 1383 Regulatory non-compliance complaint, Contractor shall submit an investigation complaint report that documents the investigation performed and recommends to City on whether or not the entity investigated is in violation of SB 1383 Regulations based on the Contractor's investigation. The City shall make a final determination of the allegations against the entity.

5.10 CONTRACTOR'S RESPONSIBILITY IN LIEU OF DIRECTION BY CITY

Throughout the term of this Agreement, unless the City gives notice as provided for herein and subject to the terms of this Agreement, it shall be the Contractor's sole responsibility and duty to Dispose of the Solid Waste Collected and Process the Recyclable Materials and Green Waste Collected in a safe manner and in compliance with all federal, state, and local laws and regulations. Contractor agrees that it shall Dispose of all Solid Waste Collected and Process all Recyclable Materials and Green Waste Collected in the Franchise Area at a Solid Waste facility or Processing facility that is fully licensed and appropriately permitted and, to Contractor's knowledge, is not in material violation of any health, safety or Hazardous Materials laws, rules, regulations or orders.

5.11 INVALIDATION OF CITY FLOW CONTROL VOIDS FRANCHISE

Should a court of competent County rule any provision in this Franchise Agreement unlawful or unconstitutional, then the entire Franchise Agreement shall become null and void upon the election of the City. However, this Agreement shall not become null and void, and shall remain in full force and effect, as long as the Contractor continues to direct Solid Waste, Recyclable Materials, and Green Waste as instructed by the City and abides by all other terms of this section. City deems control of the waste stream a vital component of its waste Disposal program which inures to the general benefit and welfare of the public. This provision will preserve the City's ability to pursue any legal methods whereby flow control of waste stream can be achieved.

5.12 OTHER SPECIAL SERVICES

Contractor can provide other special services as related to this Agreement at their discretion provided said services and charges for such services are approved by the City.

5.13 EMERGENCY SERVICES

Contractor shall provide emergency services at the City's request in the event of major accidents, disruptions, or natural calamities. Emergency services may include, but are not limited to, assistance handling salvaged materials, Processing, Disposing of Solid Waste or Recyclable Materials following a major accident, disruption, or natural calamity. Contractor shall be capable of providing emergency services within 24 hours of notification by the City or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services, which exceed the Contractor's obligations, shall be compensated in accordance with Exhibit C. If Contractor cannot provide the requested emergency services, the City shall have the right to take possession of the Contractor's equipment for the purposes of providing emergency services.

5.14 FREE ENVIRONMENTAL SERVICES

The Contractor will provide the following free environmental services to the City throughout the term of the Contract consistent with the City's obligations in accordance with applicable regulations.

5.15 CRV REDEMPTION CENTER

Contractor shall provide a certified California Redemption Value buy back center (CRV Center) located at the address:

The CRV Center shall be maintained and operated by the Contractor. The CRV Redemption Center shall be open to the public a minimum of thirty (30) hours per week between the hours of 8:00 am and 5:00 pm and shall be open at least five (5) days per week. Included in the minimum hours, the CRV Redemption Center shall be open at least seven (7) hours on either Saturday or Sunday between the hours of 8:00 am and 5:00 pm.

ARTICLE 6: STANDARDS OF PERFORMANCE

6.1 NAME AND OFFICE HOURS

Contractor shall not use a firm name containing the words "City" or "Fort Bragg" or other words implying City ownership. The Contractor shall establish and maintain a Customer service office where service may be applied for and complaints made within the Franchise

Area. Contractor's Customer service office shall be open to the public from 8:00 a.m. to 4:30 p.m. Monday through Friday. The office may be closed on Saturdays, Sundays, and Holidays. Such office shall be equipped with a listed telephone to which calls from Contractor's Customers may be placed without payment of a toll charge and shall have a responsible Person in charge or an answering machine in service during normal business hours.

6.2 OPERATING HOURS AND SCHEDULES

No Collections shall be made in residential areas prior to 5:00 a.m. or after 6:00 p.m. No Collections shall be made at schools, churches, hospitals, offices, or commercial establishments within 200 feet of said residential districts prior to 5:00 a.m. or after 9:00 p.m. Special arrangements may be made pursuant to the Solid Waste Ordinance for all categories of Collections provided by the Contractor.

If the day of Collection on any given route falls on a Holiday, Contractor shall provide Collection service for such route on the work day either before or following such Holiday and shall not provide Collection service on such Holiday, and all subsequent Collection days during that Holiday week shall be adjusted at the discretion of Contractor. Contractor shall be responsible for Customer notification of Holiday Collection arrangements.

6.3 SERVICE COMPLAINTS

Customer service complaints may be made directly to the Contractor by telephone or in writing. Contractor is responsible for rectifying the complaints and for maintaining a log of complaints received, date received, actions taken, and date of actions, as specified in Section 5.9.

6.4 OVERCHARGE

All charges or fees for service by a Contractor shall be approved by the City Council, except a lower charge than approved by the City Council may be negotiated (to provide for consideration of the weight of the material collected and/or the distance from the operations yard or transfer station) for Industrial Solid Waste Service as provided in Section 9.2.2.F. Any Customer contending they have been required to pay a charge not approved by the City Council, or has in any manner been subject to an overcharge, may file a written complaint with the City setting forth the facts of such alleged mis-charge, and the City shall notify the Contractor of the complaint, shall investigate the matter of the complaint, and shall determine the appropriate charge.

6.5 COLLECTION STANDARDS

All Collection equipment shall be designed and operated such that no Solid Waste, Recyclable Material, or Organic Waste is allowed to blow or drop from vehicles during Transport. Adequacy of load covers or control measures shall be determined by the City.

All Collections shall be made as quietly as possible, and the use of any unnecessarily noisy trucks or equipment is declared unlawful.

6.6 COLLECTION VEHICLE AND EQUIPMENT STANDARDS

6.6.1 General

All Collections shall be made with a vehicle and equipment of design approved by the City according to industry standards. Contractor shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean, and operable condition at all time.

6.6.2 Cleaning

Collection vehicles shall be thoroughly washed and thoroughly steam cleaned as necessary, to present a clean appearance of the exterior and interior compartment of the vehicle.

6.6.3 Maintenance

Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards, whichever are more stringent. All vehicles shall be painted in a uniform manner that does not create a resemblance between Contractor's vehicles and City utility vehicles. Contractor shall keep accurate records of all vehicle maintenance, recorded according to vehicle, date, and mileage, and shall make such records available to the City upon request to the extent necessary to perform the inspections described in Section 6.8.

6.6.4 Repairs

Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

6.6.5 Shovel, Broom, and Fire Extinguisher

The Contractor shall equip each Collection vehicle with a shovel, broom, and fire extinguisher of a type approved by the City.

6.7 COLLECTION VEHICLES – IDENTIFICATION

The Contractor shall have printed or stenciled in a prominent place on the exterior of each vehicle used in the Collection of Solid Waste and Recyclable Materials the following information in at least four-inch letters:

Truck# _____
Contractor (name) _____ (Telephone number)

6.8 COLLECTION VEHICLES AND EQUIPMENT INSPECTION

All vehicles and equipment of Contractor shall be inspected at Contractor's place of business or another location within the Franchise Area as designated by the City on an annual basis. Vehicles and equipment shall conform to the requirements of the California Vehicle Code, this Agreement, and rules or regulations of the City Council. City shall give Contractor twenty-four (24) hours verbal notification of inspection.

6.9 CONTAINER REQUIREMENTS

6.9.1 Provision of Containers by Contractor and Color Standards

- A. **General.** Contractor shall use the Contractor-provided Collection Containers that are currently located at Customers' Premises or provide Customers with Collection Containers from Contractor's current inventory.

No later than January 1, 2022, Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. If an existing Container breaks or is otherwise rendered non-functional on or after January 1, 2023, the Contractor shall replace the non-functional Container with a Container that complies with the color requirements of this Section. Notwithstanding this Section, the Contractor is not required to replace functional Containers, including Containers purchased prior to January 1, 2023, that do not comply with the color requirements of this Section prior to the end of the useful life of those Containers, or prior to January 1, 2037, whichever comes first.

- B. **Blue Containers (Source Separated Recyclable Materials)**

Option 1: Blue Containers must have a lid that is blue in color. Hardware such as hinges and wheels on the Blue Containers may be a different color.

Option 2: Blue Containers must have a body that is blue in color, and a lid that is blue, gray, or black in color. Hardware such as hinges and wheels on the Blue Containers may be a different color.

Option 3: Blue Containers must have a lid and body that is blue in color. Hardware such as hinges and wheels on the Blue Containers may be a different color.

C. **Green Containers (SSGCOW)**

Option 1: Green Containers must have a lid that is green in color. Hardware such as hinges and wheels on the Green Containers may be a different color.

Option 2: Green Containers must have a body that is green in color, and a lid that is green, gray, or black in color. Hardware such as hinges and wheels on the Green Containers may be a different color.

Option 3: Green Containers must have a lid and body that are green in color. Hardware such as hinges and wheels on the Green Containers may be a different color.

D. **Gray Containers (Gray Container Waste)**

Option 1: Gray Containers must have a lid that is gray or black in color. Hardware such as hinges and wheels on the Gray Container may be a different color.

Option 2: Gray Containers must have a lid and body that are gray or black in color. Hardware such as hinges and wheels on the Gray Container may be a different color.

E. **C&D Bins and Roll-Off Boxes.** Bins and Roll-Off Boxes for Collection of C&D may be in any color, provided that the colors do not conflict with the Container color requirements of this Section and provided that the C&D Container colors are consistent for all C&D Containers. The C&D Container color shall be reviewed and approved by the City.

6.9.2 Labeling Requirements

Option 1: Labels on New Containers or New Lids

Commencing on or before January 1, 2023, Contractor shall place a label on each new Container body or lid that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering labels for Containers, Contractor shall submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City for approval.

Option 2: Imprinted or In-Mold Labels for New Containers or New Lids

On or before January 1, 2023, Contractor shall imprint new Container bodies or lids with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City for approval.

Option 3: Labels for Existing Containers

On or before January 1, 2023, Contractor shall place a label on the body or lid of each Container that has been provided to a Customer that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering labels for Containers, Contractor shall submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City for approval.

Option 4: Imprinted or In-Mold Labels for Existing Containers

On or before January 1, 2023, Contractor shall imprint the bodies or lids of Containers that have been provided to Customers with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City for approval.

6.9.3 Container Standards

Contractor shall provide all Carts, Bins, and Debris Boxes to all Customers as part of its services. Contractor-provided Containers shall be designed and constructed to be watertight and prevent the leakage of liquids. All Containers with a capacity of one cubic yard or more shall meet applicable federal, state, and local regulations for Bin safety and be covered with attached lids. Contractor shall obtain City's written approval of Cart colors before acquisition. The useful life of Carts, Bins, and Debris Boxes provided to Customers shall be equal to or longer than the Term of the Agreement. All Containers, except Carts, shall be painted the Contractor's standard color.

6.9.4 Wildlife Resistant Containers

Garbage must be in suitable containers with tight-fitting, secure lids to reduce litter and odors that attract wildlife.

6.9.5 Repair and Replacement of Containers; Inventory

Contractor shall repair and, if the repair must be performed off of the Premises, replace all Containers damaged by collection operations within a one-week period. If the repair or replacement cannot be completed within one week, the Contractor shall notify Customer and a Container of the same size or larger shall be made available until the proper Container can be replaced.

At no additional cost, Contractor shall replace Customer Carts that have been stolen or damaged once per year. Contractor shall allow Customer to exchange Containers for a Container of a different size at no additional cost once per year. Contractor shall charge Customers for additional Cart replacements at City-approved rates.

6.9.6 Container Maintenance, Cleaning, Painting

All Containers shall be maintained in a safe, serviceable, and functional condition. Contractor shall steam clean and repaint all Containers, except Carts, as necessary, to present a clean appearance. Customers using Carts shall be responsible for cleaning such Carts. If any Cart is impacted by graffiti, Contractor shall replace the cart within 48 hours. If any Containers, except Carts, are impacted by graffiti, Contractor shall either replace the Container with a Container which is free of graffiti or repaint the entire Container with the Contractor's standard color for such Container. Repainting of the Container shall restore the Container's aesthetic values to its condition before it sustained the graffiti damage.

6.9.7 City Ownership of Containers at End of Term

Upon expiration or early termination of this Agreement, (providing said earlier termination is for cause and not by mutual consent or by reason of City's failure to perform) all Containers (for permanent Customers) acquired by or leased by Contractor and put into service at Customer's Premises before the first (1st) anniversary of the Commencement Date shall, at no cost to the City, become property of the City. All Containers (for permanent Customers) purchased or leased and put into service at Customers' Premises on or after the first (1st) anniversary of the Commencement Date shall be available to the City, at the City's option, at their net book value. Contractor and City shall agree on the depreciation method and period of depreciation to be used for Containers (for permanent Customers) purchased or leased and put into service on or after the first (1st) anniversary of the Commencement Date and such agreement shall occur on or before the date new Containers are purchased or leased.

At its sole discretion, the City may elect not to exercise its rights with regards to this Section and, in such case, the Containers shall remain the property of the Contractor upon the expiration date of this Agreement or date of earlier termination of this Agreement. In such case, Contractor shall be responsible for removing all Containers in service from Premises and reusing or Recycling such Containers.

6.9.8 City Purchase Option for Equipment and Trucks at End of Term

Upon expiration or early termination of this Agreement, (providing said earlier termination is for cause and not by mutual consent or by reason of City's failure to perform) all trucks and equipment purchased or leased and put into service by Contractor shall be available to the City, at the City's option, at their net book value. Contractor and City shall agree on the depreciation method and period of depreciation to be used for such equipment.

At its sole discretion, the City may elect not to exercise its rights with regards to this Section and, in such case, all trucks and equipment purchased shall remain the property of the Contractor upon the expiration date of this Agreement or date of earlier termination of this Agreement.

6.9.9 City Purchase Option for Facilities and Associated Equipment at End of Term

Upon expiration or early termination of this Agreement, (providing said earlier termination is for cause and not by mutual consent or by reason of City's failure to perform) all facilities and associated equipment located within the Fort Bragg City limits operated as a Transfer Station, California Redemption Value Center, and Customer Service Center shall be available to the City, at the City's option, at their net book value. Contractor and City shall agree on the depreciation method and period of depreciation to be used for such facilities.

At its sole discretion, the City may elect not to exercise its rights with regards to this Section and, in such case, all facilities and associated equipment purchased shall remain the property of the Contractor upon the expiration date of this Agreement or date of earlier termination of this Agreement.

6.10 PERSONNEL

6.10.1 General

Contractor shall furnish such qualified drivers, mechanical, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.

6.10.2 Approval of Management

Contractor recognizes the importance of establishing a successful relationship between its management and City staff. The City shall have the right to request the Contractor to replace its facility manager, if Liquidated Damages levied for events listed in Exhibit G, with the exception of damages levied for Collection reliability and Collection quality events items 1, 3, and 9 of Exhibit G, in any three month period exceed \$5,000 or if Liquidated Damages levied for Collection reliability and Collection quality events items 1, 3, and 9 of Exhibit G in any three month period exceed \$45,000. If replacement of the facility manager is requested by the City, the Contractor shall provide an interim manager and have 90 calendar days to replace the manager and shall seek the City's approval of the

replacement manager prior to hiring such person and such approval shall not be unreasonably withheld.

6.10.3 Provision of Field Supervision

Contractor shall designate at least one qualified employee as supervisor of field operations. The field supervisor will devote at least fifty percent (50%) of his or her time in the field checking on Collection operations, including responding to complaints.

6.10.4 Driver Qualifications

All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

6.10.5 Customer Service Representative Training

Customer service representatives shall be trained on specific City service requirements, a minimum of once per quarter. A City information sheet shall be provided to each Customer service representative for easy reference of City requirements and general Customer needs. The information sheet, training agenda, and associated documentation shall be forwarded to the City each quarter after the training.

6.10.6 Safety Training

Contractor shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection, Disposal, or Processing. Contractor shall train its employees involved in Collection to identify, and not to collect, Hazardous Waste or Infectious Waste. Upon the City's request, Contractor shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

6.10.7 No Gratuities

Contractor shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation, or gratuity from members of the public for Collection services.

6.10.8 Employee Conduct and Courtesy

Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures. The City may require Contractor to reassign an employee, if the employee has conducted himself or herself inconsistently with the terms of this Agreement.

6.10.8 Uniforms

While performing services under this Agreement, all of the Contractor's employees performing field service shall be dressed in clean uniforms and shall wear City-approved badges that include the employee's name and/or employee number, and Contractor's name. No portion of this uniform may be removed while working.

6.11 DIVERSION STANDARD

The Contractor acknowledges the City seeks to achieve the State's seventy-five percent (75 percent) diversion goal. The Contractor will be responsible for diverting from Disposal a percentage of materials the Contractor collects from all services under this Agreement. The Contractor shall provide a Diversion rate calculation in their monthly Diversion Report as defined in Exhibit H.

ARTICLE 7: RECORD KEEPING AND REPORTING

Contractor shall maintain records and reports in accordance with Exhibit H and shall allow the City to audit and inspect records as described in the Exhibit H.

ARTICLE 8: CITY FEES

8.1 FRANCHISE FEE

8.1.1 FRANCHISE FEE – AMOUNT

In consideration of the exclusive rights provided herein, Contractor shall pay an Administrative Franchise Fee to the City calculated as ten percent (10%) of the Gross Revenues collected for service. Contractor shall also pay a Caspar Landfill Closing Franchise Fee of ten point nine six percent (10.96%). Contractor shall not make a claim nor be entitled to compensation for the overpayment of Franchise Fees due to the inclusion of other governmental agency's revenues in the Franchise Fee calculations and payments made before the Effective Date.

8.1.2 FRANCHISE FEE – QUARTERLY PAYMENTS AND REVENUE STATEMENTS

Contractor shall pay the Franchise Fee in quarterly payments due within thirty (30) days after the close of each calendar quarter. Along with the quarterly payment, Contractor shall include a quarterly revenue statement, certified by an officer of the Contractor that shows the basis for the calculation thereof.

8.1.3 FRANCHISE FEE – DEPOSIT

Franchise fees shall be paid to the City which shall deposit them to the City General Fund and Landfill Closure Fund, respectively.

8.1.4 FRANCHISE FEE – DELINQUENCY PENALTY

Payments are delinquent if not received by the City within thirty (30) days as provided above. All fees are subject to a delinquency penalty of ten percent (10%), which attaches on the first day of delinquency, plus an additional ten percent (10%) for each additional month the payment remains delinquent. These penalties are in addition to the franchise termination provisions of Article 11.

8.1.5 REFUND OF FRANCHISE FEES

Once Franchise Fee payments are made to the City, Contractor may not ask for refund of all or part of Franchise Fees unless such request is based on a mathematical error in its calculation or an inadvertent overpayment.

8.2 PROPOSAL DEVELOPMENT FEE

The Contractor shall pay a one-time Proposal Development Fee of fifty thousand dollars (\$50,000). This fee is due within thirty (30) days after the Agreement is executed.

8.3 SB 1383 REGULATORY REIMBURSEMENT

The Contractor shall pay an SB 1383 Regulatory Reimbursement to City each month. The amount of the SB 1383 Regulatory Reimbursement shall be one thousand dollars (\$5,000) per month in Rate Period One. City shall use the SB 1383 Regulatory Reimbursement to offset expenses, including but not limited to, staffing costs related to City programs, pilot studies, education and outreach campaigns, technical assistance to Customers, reporting, compliance, enforcement, or other activities involved in compliance with SB 1383 Regulations. The City shall retain the sole right to set priorities for the use of its SB 1383 Regulatory Reimbursement. The SB 1383 Regulatory Reimbursement shall be considered an allowable cost of business not subject to profit mark-up and included in the Contractor's Compensation pursuant to Article 9.

The amounts of the SB 1383 Regulatory Reimbursement for subsequent Rate Periods shall be adjusted annually by the same Annual Percentage Change in the CPI-U, calculated in accordance with the adjustment method described in Article 9, or shall be the amount specified by the Jurisdiction.

8.4 FOOD RECOVERY PROGRAM CONTRIBUTION

The Contractor shall provide an annual contribution to the Jurisdiction to support the Jurisdiction's Food Recovery program efforts. The amount of the contribution shall be six thousand dollars (\$6,000) per year in Rate Period One and shall be submitted to the City on a monthly basis in an amount equal to \$500 dollars (\$500). Jurisdiction shall use the Food Recovery contribution to offset expenses, including, but not limited to, staffing costs related to Jurisdiction Food Recovery programs, pilot studies, education and outreach campaigns, technical assistance to Generators, reporting, compliance, enforcement, or other activities involved in Food Recovery efforts to support compliance with SB 1383

Regulations. The Jurisdiction shall retain the sole right to set priorities for the use of the Contractor's Food Recovery program contribution.

The amounts of the Food Recovery program contribution for subsequent Rate Periods shall be adjusted annually by the same Annual Percentage Change in the CPI-U, calculated in accordance with the adjustment method described in Article 9, or shall be the amount specified by the Jurisdiction.

ARTICLE 9: COMPENSATION AND RATE REGULATION

9.1 CONTRACTORS RATES

9.2.1 CITY'S POWERS

The Fort Bragg City Council shall set and regulate all rates and charges assessed by Contractor for any and all services and activities it performs or engages in the Franchise Area, which are covered under this Agreement.

9.2.2 RATE REQUIREMENTS

- A. Contractor shall provide the services described in this Agreement and be compensated by its Customers at the rates specified in Exhibits A B, and C..
- B. The rates specified in Exhibits A, B, and C shall be effective as of July 1, 2022.
- C. The rates specified in Exhibits A, B, and C may be modified in accordance with the Rate Adjustments as described in this Agreement.
- D. The rates in Exhibits A and B are divided into specific residential, commercial, and industrial rates shall be charged by the Contractor.
- E. All charges or fees for service by a Contractor shall be fixed and approved by the City Council.
- F. Charges for Industrial Solid Waste removal service may be negotiated between the collector and the Customer. If the negotiated charges are less than the rates specified in Exhibits A and B, Contractor shall notify the City in writing of each Customer that is offered and charged a lower rate. In no event shall the Contractor charge a rate in excess of those specified in Exhibit B without prior written approval by the City, except for weight overages as provided for in this section.
- G. Contractor may not charge residential and commercial Customers at rates other than those specified in Exhibits A and B except that the City may authorize a Customer to receive reduced service for a reduced charge and may approve an agreement between the Customer and the Contractor to provide

additional service for an additional charge. These authorized reduced or additional charges may be revised by the City Council from time to time after a public hearing thereon and a determination by the City Council that a change is in the public interest and is mutually agreed upon by both parties.

- H. All compensation paid to the Contractor shall be paid by its Customers and the City is in no way obligated to provide the Contractor any compensation for services described in this Agreement.
- I. Charges for Industrial Solid Waste Debris Box service include disposal fees based on the following conversion of cubic yards to tons:
 - 40 cubic yards = 6 tons
 - 30 cubic yards = 4.5 tons
 - 20 cubic yards = 3 tons
- J. Any overages greater than the above-assumed weights may be charged to the Customer at the approved Disposal fee. No Disposal fee markup is permitted. The Disposal fee shall be added to the rate set forth in Exhibits A, B, and C.
- K. Charges for special services, such as back yard collection, contaminated Recyclables or Green Waste, extra solid waste, replacement of lost or stolen carts, off-day collection, etc. shall be as specified in Exhibit B and as they may be modified in accordance with this Agreement.

9.2 RATE ADJUSTMENT PROCEDURES

9.2.1 PASS-THROUGH RATE ADJUSTMENT

- A. At any time that the City Council either establishes a City surcharge on Contractor's Customers, increases an existing City surcharge on Contractor's Customers, increases the Franchise Fee rate, increases the Disposal charge at City or City-owned facility, Contractor may apply to the City for a pass-through rate adjustment to offset the new or increased fees. In applying for a pass-through rate adjustment, the Contractor must:
 - 1. Submit a request for the increase, in writing, to the City; and
 - 2. Specify the amount of the requested increase for each rate given in Exhibits A and B; and
 - 3. Provide documentation that the specified rate increase calculation is reasonable and appropriate and does not include rate increases for any

other reason than to recover direct cost of the additional pass-through expense.

Provided that the City staff have received and considered the request and documentation described above, and have concluded that the requested rate adjustment calculation is reasonable and appropriate and is solely to recover the direct cost of the additional pass-through expense, the rates given in Exhibits A and B shall be amended by the City Council.

- B. If a jurisdiction other than the City establishes or increases surcharges or fees that affect Contractor's expenses, the same procedures as described above apply.
- C. The timely application and request for a pass-through rate adjustment increase rests solely with the Contractor. There shall be no retroactive increase billing to Customers. The responsibility to implement timely pass-through rate adjustments rest solely with the Contractor in accordance with the procedures outlined in this Agreement. If for any reason the City fails to respond to a pass-through rate adjustment request in accordance with the procedures in this Agreement, then the Contractor shall implement such a pass-through rate adjustment unilaterally. However, Contractor shall be required to retroactively reduce Customers bills from the date of unilateral pass-through rate adjustment upon City approval to the end of the billing cycle in the next billing period to reflect any overages to Customers. **Under no circumstances will the Contractor ever be permitted to retroactively bill Customers for pass-through rate adjustment increases not implemented in a timely manner for any reason.**
- D. At any time that the Board either eliminates a City surcharge on Contractor's Customers, decreases an existing County surcharge on Contractor's Customers, decreases the Franchise Fee rate, decreases the Disposal charge at the City or County-owned facilities, City may apply to the Contractor for a pass-through rate adjustment to offset the eliminated or decreased fees. In applying for a pass-through rate adjustment, the City must:
 - 1. Submit a request for the decrease in writing to the Contractor;
 - 2. Specify the amount of the requested decrease for each rate given in Exhibits A, B, and C.
 - 3. Provide documentation that the specified rate decrease is reasonable and appropriate and does not include rate decrease for any other reason than

to recover the direct cost of the decreased or eliminated pass-through expense.

Provided that the Contractor has received and considered the request and documentation described above, and concluded that the requested rate adjustment is solely to recover the direct cost of the decreased or eliminated pass-through expense, the rates given in Exhibit A, B, and C shall be amended by the City Manager or designated City employee.

- E. If a jurisdiction other than the City eliminates or decreases surcharges or fees that effect Contractor's expenses, the same procedures as described in (D) above, apply.
- F. In the case of a jurisdiction other than the City eliminating or decreasing surcharge or fees that affect Contractor's expenses, Contractor shall be responsible for notifying the City in writing. If Contractor fails to notify the City of eliminated or decreased surcharges or fees per this section, then the City may apply for and request a retroactive pass through rate adjustment decrease; but never a retroactive increase for any reason.

9.2.2 COST-OF-LIVING, FUEL RATE, AND COMMODITY PRICE ADJUSTMENTS

Every full year of the Agreement effective January 1, beginning on January 1, 2024, the Contractor may apply for a rate adjustment to offset adjustments in the cost of providing services (Cost-of-Living), fuel, recycling market pricing, and organics market pricing. The Contractor shall submit the rate adjustment request no later than November 15 for rates effective the following January 1. The Contractor shall notify the City of the adjustments to take place and shall provide the City with its computations and documentation.

For calculation of adjustments, the rates would be divided into three components- fuel, pass-through and all other. The rate adjustment calculation shall be calculated as follows:

Rate Adjustment (%) = COLA + COFA + PTR A + RCVA + OCVA, whereby

COFA is the cost-of-fuel adjustment

COLA is the cost-of-labor adjustment

PTRA is the pass-through rate adjustment

RCVA is the recycling commodity value adjustment

OCVA is the organics commodity value adjustment

The cost-of-fuel adjustment (COFA) component is calculated from the fuel component multiplied by one hundred percent (100%) of the change in the average monthly value over the last twelve (12) months, compared to the average monthly value for the preceding twelve (12) month period, of the most recently published California index for

#2 diesel fuel, compiled and published by the U.S. Energy Information Administration or its successor. The fuel component is derived from the most recent Annual Financial Report and is calculated as the total fuel costs divided by the total operating expenses.

The cost-of-living adjustment (COLA) component is calculated from all other component multiplied by ninety percent (90%) of the change in the value of the most recently published All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982-1984 = 100, not seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor and its value twelve months before. The all other component is derived from the most recent Annual Financial Report and is calculated as the (total operating expenses less disposal costs and fuel costs) divided by total operating expenses.

The pass-through rate adjustment (PTRA) is calculated as the increase or decrease in surcharges, fees, or disposal tipping fees from the City, other jurisdictions, and Designated Disposal Facilities (as a percentage) multiplied by their relative cost component based on the Annual Financial Report and tonnage reports.

The recycling commodity value adjustment (RCVA) is calculated (to be determined).

The organics commodity value adjustment (OCFA) is calculated (to be determined).

9.2.3 LARGER RATE INCREASES

No sooner than one year after this Agreement becomes effective, and no more frequently than annually thereafter, Contractor may apply for a rate adjustment in excess of the cost-of-living limitation described in Section 9.2.2., above. In applying for such a rate increase the Contractor must:

- (1) Notify the City, in writing, of Contractor's intent to seek a rate increase in excess of the cost-of-living limitation; and
- (2) Obtain and submit to the City an independent financial audit report of Contractor's operations. The City shall select or approve the auditor to perform the audit. The cost of the audit shall be paid by the Contractor. The audit must, at a minimum, determine the profitability of Contractor's operations specific to services provided under this Agreement.

Using information provided in the financial audit, as well as records required to be maintained by Guarantee under Article 7 of this Agreement, the City shall perform a rate setting study to determine appropriate rates based on projected profitability of the Contractor. The appropriate profit margin, and the means of determining profitability, shall be included as part of the rate setting study. The rate setting study shall be conducted by

the City, or by a qualified contractor selected by the City. The cost of the rate study shall be paid by the Contractor.

City shall then hold at least one public meeting, at a convenient time and place within the Contractor's Franchise Area, to solicit public comment on the proposed rate increases, as determined by the rate setting study. This public meeting shall be duly noticed and shall be held no less than 14 days before the City Council considers adoption of the rate increases.

Provided that the City has received the required information, as described in (1) and (2), above, has completed the rate setting study, and has held at least one public meeting and considered public input, the City Council may adopt the new rates by amending Exhibits A, B, and C..

9.2.4 RATE DECREASES

The City may request a rate decrease provided that a decrease of at least twice the current annual CPI has occurred in a specific cost category. Such a rate decrease will require a full disclosure audit and formal rate structuring. In requesting such a rate decrease, the City must:

- (1) Notify the Contractor, in writing, of City's intent to seek a rate decrease.
- (2) Demonstrate the decrease in the CPI as required above.
- (3) Obtain a financial audit of Contractor's operations. The Contractor shall comply with a full disclosure audit. The City shall select the auditor to perform the audit. The cost of the audit shall be paid by the City. The audit must, at a minimum, determine the profitability of Contractor's operations specific to services provided under this Agreement.

Using information provided in the financial audit, as well as records required to be maintained by Contractor as outlined in this Agreement, the City shall perform a rate setting study to determine appropriate rates based on projected profitability of the Contractor. The appropriate profit margin, and the means of determining profitability, shall be included as part of the rate setting study. The rate setting study shall be conducted by the City, or by a qualified contractor selected by the City. The cost of the rate study shall be paid by the City.

City shall then hold at least one public meeting, at a convenient time and place within the Contractor's Franchise Area, to solicit public comment on the proposed rate decrease, as determined by the rate setting study. This public meeting shall be duly noticed and shall be held no less than 14 days before the City Council considers adoption of the rate decrease.

Provided that the City has received the required information, as described in (1) and (2) above, has completed the rate setting study, and has held at least one public meeting and considered public input, the City Council may adopt the new rates by amending Exhibit A.

ARTICLE 10: INDEMNITY, INSURANCE, AND PERFORMANCE BOND

10.1 INDEMNIFICATION

10.1.1 Indemnification of City

- A. Contractor shall defend the City with counsel reasonably acceptable to the City and indemnify the City from and against any and all liabilities, costs, claims and damages which are caused by Contractor's negligence or failure to comply with applicable laws and regulations, including but not limited to liabilities, costs, claims and damages.
- B. Contractor agrees that it shall protect and defend the City with counsel reasonably acceptable to City, indemnify and hold harmless City, its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments (including attorney's fees), arising out of or resulting in any way from Contractor's performance of this Agreement, unless such claim is due to the sole negligence or willful acts of the City, its officers, employees, agents or contractors, or from City's grant of this Agreement to Contractor.
- C. In addition, Contractor shall defend the City with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all litigation and claims, damages and liabilities arising therefrom, brought to enforce or to challenge this Agreement and/or Contractor's exclusive rights granted thereunder with respect to the services provided hereunder; provided, however, that Contractor's obligations hereunder extend only to actions brought against or by Persons not parties to this Agreement.
- D. Providing City complies with all applicable laws concerning the setting of rates under this Agreement as such laws are reasonably interpreted to apply to City, Contractor shall defend the City with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all litigation and claims, damages and liabilities arising from the City's setting of rates for service under this Agreement or in connection with the application of California Constitution, Article XIII C and Article XIII D to the imposition, payment or collection of rates and fees directly related to services provided by Contractor under this

Agreement. Notwithstanding the above, this indemnity shall not extend to any rates that are not associated with the charges by the Company for providing service under this Agreement, including but not limited to Franchise and governmental fees and charges.

- E. Providing City has complied with all applicable laws, the City shall not be in default of this Agreement, if it is determined by a court of competent jurisdiction that it lacks the authority to set rates and/or increase rates for charges related to providing service pursuant to this Agreement. If the City is unable to set rates as provided for herein, the City agrees that Contractor shall be allowed to set said rates and all other provisions of this Agreement shall remain in full force and effect. Should a court of competent jurisdiction determine that the City lacks authority to set and/or increase rates for charges related to Franchise and governmental fees and charges then Contractor shall reduce the rates it charges customers a corresponding amount, providing said fees, rates and/or charges disallowed by the court are not related to the cost of providing service hereunder and had already been incorporated in the rates charged by Contractor to its customers.

Nothing herein is intended to imply that California Constitution, Articles XIII C or XIII D, apply to the setting of rates for the services provided under this Agreement; rather this section is provided merely to allocate risk of loss as between the parties.

10.1.2 Indemnification of Contractor

- A. Except as provided by Section 10.1.3, the City shall defend, with counsel reasonably acceptable to Contractor, indemnify and hold Contractor harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City and/or Contractor for the City's failure to meet the requirements of AB 939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder if said failure is due solely to the negligence or misconduct of the City, including but not limited to the City's failure to adopt Source Reduction and Recycling Elements mandated under AB 939.
- B. In the event that the City directs the Contractor to Dispose of or Transport Solid Waste, Recyclable Materials, and/or Green Waste to a specific facility, the Contractor shall not be held liable for damages at that facility, unless the damages are caused by the willful or negligent acts of the Contractor.

10.1.3 AB 939 Indemnification

Contractor shall defend with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City for the City's failure to meet the requirements

of AB 939, with respect to the Waste Stream under Contractor's control, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder if said failure results from Contractor's failure to comply with this Agreement and/or Contractor's failure to comply with said laws, rules or regulations, including but not limited to failing to timely supply to the City the reports and information required by the City in order to comply with AB 939.

10.2 INSURANCE REQUIREMENTS

Insurance policies are to be secured by the Contractor and remain in full force and effect at all times to provide protection against liability for damages which may be imposed for the negligence of the Contractor or that Persons employees or agents, including, but not limited to, general liability and automobile liability insurance. Contractor shall also provide liability coverage under California Workers' Compensation laws. The amounts of insurance required are to be established herein. Said amounts shall not be construed to limit the Contractor's liability.

The insurance requirements provided herein may be modified or waived in writing by the City Council, provided the City Council determines that such waiver or modification does not unreasonably increase the risk of exposure to the City, including the fact that the parent of Contractor may be self-insured up to a certain acceptable amount.

- (1) Workers' Compensation Insurance. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement full Workers' Compensation Insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the City throughout the term of this Agreement.
- (2) Comprehensive General Liability. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage, with any self-insured retention not exceeding TWO HUNDRED THOUSAND (\$200,000.00) per occurrence. Said insurance shall protect Contractor and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Agreement, whether such operations be by Contractor itself, or by its agents, employees and/or Sub Contractors. Copies of the policies or endorsements evidencing the above- required insurance coverage shall be filed with the City. Endorsements are required to be made a part of all of the following insurance policies required by this Section:

- a. "The City, its employees, agents, and officers, are hereby added as insureds as respects liability arising out of activities performed by or on behalf of Contractor."
- b. "This policy shall be considered primary insurance as respects any other valid collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."
- c. "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
- d. "Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the City in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the City."

(3) Vehicle Liability. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement a vehicle liability policy with a minimum limit of ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence for property damage. Said insurance shall protect Contractor and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operation of owned and non-owned vehicles. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with the City.

The limits of such insurance coverage, and companies, shall be subject to review and approval by the City every year and may be increased at that time and match the coverage provided by the City's own liability insurance policy. The City shall be included as a named insured on each of the policies, or policy endorsements.

10.3 PERFORMANCE BOND

A performance bond or letter of credit is required from the Contractor within thirty (30) calendar days from the date the City Council approves the Franchise Agreement. The performance bond shall be in an amount of Five Hundred Thousand Dollars (\$500,000) or twenty-five percent (25 percent) of the contract value, whichever is greater. The City may waive this bond based on vendor prior performance.

The performance bond shall be executed by a surety company licensed to do business in the State of California; having a rating of, or equivalent to "A: VII" by A.M. Best &

Company, approved by the City; and included on the list of admitted surety companies approved by the Treasurer of the State of California.

After July 1, 2025, and annually thereafter, Vendor may request in writing that the City allow the performance bond to be reduced to fifteen percent (15 percent) of the Vendor's prior annual Gross Revenues. The City shall, at the sole option of the City, respond to the request in writing within forty-five (45) days of receipt of the written request. Nothing in the Franchise Agreement shall require that the City approve the request of the Vendor nor shall the City have any obligation to provide Vendor with its reasoning for approving or denying the request.

The performance bond is included in Exhibit I.

ARTICLE 11: DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

Each of the following shall constitute an event of default ("Event of Default") hereunder:

- (1) Contractor has demonstrated an inability to properly perform the franchised activity, failed to comply with one or more of the terms or conditions of this Agreement, or future amendment(s) to this Agreement, failed to comply with any material federal, state or local laws, ordinances, rules or regulations pertaining to the franchised activity, or when the franchised activity has become a nuisance or is detrimental to the public health, safety or welfare. If Contractor does not perform franchise services for a period in excess of 15 days, this Agreement may be terminated by the City. Contractor shall not be in default of this Agreement if Contractor commences such action required to cure the particular breach within 7 calendar days after such notice, and it continues such performance diligently until completed.
- (2) Any representation, warranty, or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation, warranty, or disclosure appears as part of this Agreement;
- (3) There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within 48 hours excluding weekends and Holidays;

- (4) Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;
- (5) A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor;
- (6) If Contractor (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal judgment or order entered by a federal, state, regional or local agency for violation of an Applicable Law, and the City believes in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default.
- (7) Failure to Comply with Other Requirements of SB 1383 Regulations. Contractor fails to comply with other requirements of the Agreement include public education, reporting, contamination monitoring, recordkeeping, or other obligations of this Agreement that delegate City's responsibility and/or authority under SB 1383 Regulations to Contractor.

11.2 RIGHT TO TERMINATE UPON DEFAULT

Upon an "Event of Default" by Contractor, the City may suspend, amend, or terminate this Agreement.

11.3 SUSPENSION OR REVOCATION – EQUIPMENT USE BY CITY

In the event of suspension or revocation of this Agreement, the City shall have the right forthwith to take possession of all trucks and other equipment of the Contractor for the purpose of Collecting and Disposing of the Solid Waste and performing all other duties, which the Contractor is obligated to perform. The City shall have the right to retain possession of such trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by the City for such purpose. The City shall pay the Contractor a reasonable rental for the use of such trucks and equipment.

11.4 FRANCHISE REVOCATION – EMERGENCY ACTIONS

Notwithstanding provisions of this Agreement to the contrary, the City may temporarily suspend this Agreement, without prior notice and a hearing, whenever an emergency exists which poses an immediate threat to the public health, safety, or welfare. In such a case, the City shall attempt to notify the Contractor at least twenty-four (24) hours prior to the proposed action. A hearing shall be held within seventy-two (72) hours of the action taken to suspend the franchise.

11.5 LABOR DISPUTE – CITY ASSUMPTION OF DUTIES – AUTHORIZED

In the event the refuse Collection of Contractor is interrupted by a labor dispute and scheduled Collections are discontinued for more than seventy-two (72) hours, the City shall have the right to forthwith take temporary possession of all facilities and equipment of the Contractor for the purpose of continuing the service which the Contractor has agreed to provide in order to preserve and protect the public health and safety. The City shall have the right to retain possession of such facilities and equipment and to render the required service, until the Contractor can demonstrate to the satisfaction of the City that required services can be resumed by the Contractor; provided, however, that such temporary assumption of the Contractor's obligations under this Agreement shall not be continued by the City for more than one hundred twenty (120) days from the date such operations were undertaken. Should the Contractor fail to demonstrate to the satisfaction of the City that required services can be resumed by the Contractor prior to the expiration of the aforementioned one hundred twenty (120) days, the rights and privileges granted to the Contractor may be forfeited and the franchise granted herein may be terminated.

Should the City exercise its right to take temporary possession of Contractor's facilities used in providing service under this Agreement, City shall recognize Contractor's obligations to provide service in accordance with other agreements and shall cooperate with Contractor in its efforts to provide such other service using the Contractors facilities in the City's temporary possession.

11.6 LABOR DISPUTE – CITY ASSUMPTION OF DUTIES – USE OF REVENUE

During any period in which the City has temporarily assumed the obligations of the Contractor under this Agreement, the City shall be entitled to the Gross Revenues attributable to operations during such period and shall pay therefrom only those costs and expenses, including a reasonable rental for use of trucks and equipment, applicable or allocable to the period. The excess, if any, of revenue over applicable or allocable costs and expenses during such period shall be deposited in the treasury to the City to the credit of the General Fund. Final adjustment and allocation of Gross Revenues, costs and expenses to the period during which the City temporarily assumed the obligations of the Contractor shall be determined by an audit, by a certified public accountant or licensed public accountant, and prepared in report form with that persons unqualified opinion annexed thereto.

11.7 LABOR DISPUTE – CITY ASSUMPTION OF DUTIES – EMPLOYEES

Employees of the Contractor may be employed (providing employee consents) by the City during any period in which the City temporarily assumes the obligations of the Contractor under this Agreement; provided, however, that the rate of compensation to be paid the employees, or any other employees, shall be the rate or rates in effect at the time the Contractor's service was interrupted by the labor dispute, and the terms and conditions of employment shall be the same as provided by the Contractor.

11.8 LIQUIDATED DAMAGES

11.8.1 General

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

11.8.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards

The Parties further acknowledge that consistent, reliable Solid Waste and Recyclable Materials Collection service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding this Agreement to it. The City and Contractor recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The City and Contractor further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Section, the City and Contractor agree that the Liquidated Damages amounts established in Exhibit G of this Agreement and the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Schedule of Liquidated Damages, Exhibit G.

City may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of complaints by Customers, Owners, and Generators.

Liquidated Damages will only be assessed after Contractor has been given the opportunity but failed to rectify the damages as described in this Agreement. City shall give Contractor notice of its intention to assess Liquidated Damages. The notice will include a brief description of the incident(s) and non-performance. The City may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and non-performance. City may, within 10 calendar days after issuing the notice, request a meeting with Contractor. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City will provide Contractor with a written explanation of its determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages. The decision of City shall be final, and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.

11.8.3 Amount

City may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit G subject to annual adjustment described below. If the

amount of Liquidated Damages for any three-month period exceeds the thresholds established in Section 6.10, the City shall have the right to request replacement of the Contractor's facility manager as described in Section 6.10.

The amount of Liquidated Damages specified in Exhibit G shall be adjusted annually on the first day of the Rate Period. The adjustment shall be rounded to the nearest cent. Liquidated Damage amounts shall be adjusted to reflect seventy-five percent (75%) of the changes in the All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982 - 1984 = 100, not seasonally adjusted, compiled and published by the U. S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the method following:

Adjusted Liquidated Damage Amount = Then-current Liquidated Damage Amount x most current CPI-U/previous 12-month CPI-U

For example:

Current Liquidated Damage Amount= \$150.00

Most recently published index (May 2004) = 193.5

Index published twelve months prior to most recently published index (May 2003) = 191.0

Adjusted Liquidated Damage Amount= \$150.00 x (193.5/191.0) = \$151.96

If the CPI-U is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

11.8.3 Timing of Payment

Contractor shall pay any Liquidated Damages assessed by City within 10 calendar days of the date the Liquidated Damages are assessed. If they are not paid within the 10-day period, and providing Contractor has exhausted its right to administrative review in accordance with this Section, City may proceed against the performance bond required by the Agreement, request replacement of Contractor' s general manager, order the termination of the exclusive Collection rights granted by this Agreement, or all of the above.

ARTICLE 12: OTHER AGREEMENTS OF THE PARTIES

12.1 RELATIONSHIP OF PARTIES

It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing a partnership relationship between the parties hereto, or as constituting the Contractor as the agent, representative, or employee of the City for any purpose whatsoever. The Contractor is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

12.2 COMPLIANCE WITH CITY CODE

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

12.3 GOVERNING LAW

The laws of the State of California and Code and Ordinances of the City shall govern the validity, construction, and effect of this Contract. The venue for any claims, litigation, or causes of action between parties shall be in the Superior Court of the State of California for Mendocino County.

12.4 BINDING ON SUCCESSORS

This Agreement shall inure to the benefit of and shall be binding upon the Contractor, the City, and their respective successors and assigns, subject, however, to the limitations contained in this Agreement.

12.5 REPRESENTATIONS

The persons signing this Agreement on behalf of the City warrant that they have been authorized to do so by the City Council. The Contractor shall provide to the City written authorization by the appropriate officer that the Contractor is authorized by the governing body of the corporation to enter into this contract and be bound by its terms and obligations. In addition, the City represents, warrants to Contractor and covenants and agrees as follows:

- (1) The City validly exists as a political subdivision under the laws of the State of California. The City has full power and authority to enter into this Contract and to fully perform all of its duties and obligations hereunder. The Fort Bragg City Council has duly authorized the execution and delivery of this Contract and the City's performance of all its duties and obligations contained herein, and this Contract constitutes a valid and legally binding obligation of the City, enforceable in accordance with its terms. Notwithstanding the foregoing, the City may take any further actions it deems necessary to approve, adopt, enter, and perform this Agreement.

- (2) The City is not aware of any additional consents of approvals required to enter or perform this Agreement by the City. Furthermore, the City is not aware of any statute, rule, regulation, ordinance, agreement, instrument, judgment, decree, or order to which the City is a party or by which the City or its assets is bound that conflicts with entering into or performance of this Agreement.
- (3) To the best of the City's knowledge and belief, there is no action, suit, judgment, consent order or investigation or proceeding pending or threatened, relating to this Agreement. The City will notify the Contractor promptly if any such action, suit, investigation or proceeding is instituted or threatened. The City will notify the Contractor promptly upon receipt of any complaint or notice of non-compliance with all applicable federal, state and local laws, rules, regulations, orders, ordinances, judgments, permits, licenses, approvals, and variances.

12.6 EMERGENCIES, DISASTERS – MAJOR SERVICE DISRUPTION

This section applies in the event of an emergency or disaster causes a major disruption to the Contractor's ability to maintain standard levels of service in the performance of its obligations under the Contract. Such events may include, but are not limited to, a severe storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such an event:

- (1) The City shall notify the Contractor of the emergency or disaster, describing the relevant circumstances arising from the event, and request emergency and priority services from the Contractor.
- (2) Upon such notice from the City, the Contractor shall consult and work with the City to develop strategies and tactics to manage the emergency and provide services to restore the City to normal operating conditions as soon as reasonably possible. Certain disaster scenarios will be modeled and planned for in advance, to the extent possible. The Contractor shall exercise its best efforts in providing the emergency and priority services as requested by the City in as timely a manner as possible.
- (3) The Contractor shall use commercially reasonable efforts to make the City's customers its first priority, and its efforts to provide City's customers with emergency and priority services shall, to the extent commercially reasonable, not be diminished as a result of the Contractor providing service to other customers.
- (4) If the Contractor is unable to respond in the time requested by the City, the Contractor shall respond as soon as practical. The Contractor shall immediately assist the City to the extent reasonable in providing services, which may include

offering the City substitutions, provided that the Contractor obtains prior approval from the City for the substitutions.

- (5) The City shall compensate the Contractor for performing emergency and priority services under this section in a manner consistent with the compensation provisions of this Agreement, and any additional collections performed by Contractor shall be paid at the Special Collection Rate or as otherwise specified in the Contingency Plan.

The City and Contractor shall work in good faith to develop a mutually acceptable Contingency Plan addressing the above.

12.7 NOTICE PROCEDURES

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

A. If to City:

City of Fort Bragg
City Manager
416 N. Franklin Street
Fort Bragg, CA 95437

B. If to Contractor:

Company Name
Address
Address

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

All notices required or given pursuant to this title shall be deemed properly served on the day it is personally delivered or three business days after deposited, postage prepaid, in the United States mail, addressed to the address provided to the City.

12.8 APPEALS

Any Person who is dissatisfied with any decision or ruling of the City on or with the directives or decisions of the City, may appeal to the City Council, which shall have the power to hear and determine such appeal. Said appeal shall be taken by filing with the City Clerk a Notice of Appeal within ten (10) days after the date of such decision or ruling. The notice shall be signed by the appellant or his/her attorney and shall be sufficient if it

states in substance that the appellant appeals from a specified decision or ruling. A Notice of Appeal shall be liberally construed in favor of its sufficiency. No later than thirty (30) days after receipt of said Notice of Appeal, the City Council shall set the matter for public hearing and shall cause public notice of such public hearing to be published once in a newspaper of general circulation in the City at least ten (10) days before the date of said hearing stating the time and place of hearing, the decision or ruling appealed from and the name of the appellant or appellants. At said hearing, the appellant shall present a statement of the grounds for appeal and evidence in support of the appeal in such form as the City may require. Appeals filed pursuant to this section shall be accompanied by a fee in the amount set by resolution of the City Council.

12.9 COURT COSTS AND ATTORNEY FEES

In the event legal action is instituted by either party to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees and actual costs in connection with such action.

12.10 CITY OPTION TO PURCHASE EQUIPMENT AND FACILITIES

12.10.1 City Ownership of Containers at End of Term

Upon expiration or early termination of this Agreement, (providing said earlier termination is for cause and not by mutual consent or by reason of City's failure to perform) all Containers (for permanent Customers) acquired by or leased by Contractor and put into service at Customer's Premises before the first (1st) anniversary of the Commencement Date shall, at no cost to the City, become property of the City. All Containers (for permanent Customers) purchased or leased and put into service at Customers' Premises on or after the first (1st) anniversary of the Commencement Date shall be available to the City, at the City's option, at their net book value. Contractor and City shall agree on the depreciation method and period of depreciation to be used for Containers (for permanent Customers) purchased or leased and put into service on or after the first (1st) anniversary of the Commencement Date and such agreement shall occur on or before the date new Containers are purchased or leased.

At its sole discretion, the City may elect not to exercise its rights with regards to this Section and, in such case, the Containers shall remain the property of the Contractor upon the expiration date of this Agreement or date of earlier termination of this Agreement. In such case, Contractor shall be responsible for removing all Containers in service from Premises and reusing or Recycling such Containers.

12.10.2 City Purchase Option for Equipment and Trucks at End of Term

Upon expiration or early termination of this Agreement, (providing said earlier termination is for cause and not by mutual consent or by reason of City's failure to perform) all trucks and equipment purchased or leased and put into service by Contractor shall be available

to the City, at the City's option, at their net book value. Contractor and City shall agree on the depreciation method and period of depreciation to be used for such equipment.

At its sole discretion, the City may elect not to exercise its rights with regards to this Section and, in such case, all trucks and equipment purchased shall remain the property of the Contractor upon the expiration date of this Agreement or date of earlier termination of this Agreement.

12.10.3 City Purchase Option for Facilities and Associated Equipment at End of Term

Upon expiration or early termination of this Agreement, (providing said earlier termination is for cause and not by mutual consent or by reason of City's failure to perform) all facilities and associated equipment located within the Fort Bragg City limits operated as a Transfer Station, California Redemption Value Center, and Customer Service Center shall be available to the City, at the City's option, at their net book value. Contractor and City shall agree on the depreciation method and period of depreciation to be used for such facilities.

At its sole discretion, the City may elect not to exercise its rights with regards to this Section and, in such case, all facilities and associated equipment purchased shall remain the property of the Contractor upon the expiration date of this Agreement or date of earlier termination of this Agreement.

ARTICLE 13: MISCELLANEOUS AGREEMENTS

13.1 PRIVACY

Contractor shall use its best efforts to observe and protect the rights of privacy of Customers. Information identifying individual Customers, or the composition of a particular Customer's Solid Waste, Recyclable Materials, or Green Waste materials shall not be revealed to any Person, private agency or company, unless upon request of federal, state, or local law enforcement personnel, the authority of a court of law, a statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or Waste Stream analysis which may be reasonably necessary to comply with AB 939 or any other reports requested by the City under the Agreement or required or requested by any governmental agency.

Contractor shall not market or distribute outside the normal course of its business, mailing lists with the names and addresses of Customers.

13.2 PUBLIC RECORDS ACT

The Contractor understands that any records (including but not limited to proposal submittals, the Agreement, and any other agreement materials) it submits to the City, or that are used by the City even if the Contractor possesses the records, are public records under California State law. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. The Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

The contractor must separate and clearly mark as “proprietary” information all records related to this Contract or the performance of this Agreement that the Contractor believes are exempt from disclosure. The Contractor is to be familiar with potentially applicable public disclosure exemptions and the limits of those exemptions and will mark as “proprietary” only information that the Contractor believes legitimately fits within an exemption and will state the statutory exception upon which it is relying.

The City will provide the Contractor notice of a public records request relating to the Contractor and/or this Agreement. It is the Contractor’s responsibility to make a determination if any responsive records are exempt from disclosure. If the Contractor desires to enjoin disclosure, the Contractor must promptly initiate litigation, specifically naming the requesting party as a real party in interest. It is the Contractor’s discretionary decision whether to file the lawsuit. If the Contractor does not timely obtain and serve an injunction, the Contractor is deemed to have authorized releasing the record.

Notwithstanding the above, the Contractor must not take any action that would affect (a) the City’s ability to use goods and services provided under this Agreement or (b) the Contractor’s obligations under this Agreement.

The Contractor will fully cooperate with the City in identifying and assembling records in case of any public records request.

13.3 ENTIRE AGREEMENT

This Agreement, including the exhibits, represents the full and entire Agreement between the City and Contractor with respect to the matters covered herein.

13.4 FORCE MAJEURE

Neither party shall not be in default under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, fires, and volcanic eruptions, strikes, lockouts and other labor disturbances or other catastrophic events which are beyond the reasonable control of Contractor. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action

conducted by Contractor's employees or directed at Contractor is not an excuse from performance and Contractor shall be obligated to continue to Collect and Dispose of Solid Waste, notwithstanding the occurrence of any or all of such events; provided, however, that labor unrest or job action directed at a third party over whom Contractor has no control, shall excuse performance.

A party claiming excuse under this Section must (i) have taken reasonable precautions to avoid being affected by the cause, and (ii) notify the other party in writing within five (5) days after the occurrence of the event specifying the nature of the event, the expected length of time that the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform.

13.5 INDEPENDENT CONTRACTOR

Contractor is an independent contractor and not an officer, agent, servant or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, Contractors and Sub Contractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents or Sub Contractors shall obtain any rights to retirement or other benefits which accrue to City employees.

13.6 ROADWAY DAMAGE

Contractor shall be responsible for any extraordinary damage (not including normal wear) caused by Contractor's negligence to City's driving surfaces, whether or not paved, resulting from the weight of vehicles providing Collection services at the location of Bins and Containers on public property. This Agreement does not purport to affect, in any way, Contractor's civil liability to any third parties.

13.7 PROPERTY DAMAGE

Any physical damage caused by the negligent or willful acts or omissions of employees, Contractors or Sub Contractors of the Contractor to private or public property shall be repaired or replaced by Contractor, at Contractor's sole expense.

13.8 INTERPRETATION

This Agreement shall be interpreted as a whole to carry out its purposes. This Agreement is an integrated document and contains all the promises of the parties; no earlier oral understandings modify its provisions.

In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.

13.9 AMENDMENT

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.

13.10 SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Agreement or any part thereof is, for any reason, held to be illegal, such decision shall not affect the validity of the remaining portions of this Agreement or any part thereof.

13.11 INCORPORATION OF CONTRACTOR'S PROPOSAL

The Contractor's proposal, dated _____, submitted in response to the City's Request for Proposals, is fully incorporated by this reference, including but not limited to collection vehicles, containers, performance systems and approach, outreach and assistance staffing and approach, customer service approach and response, and other commitments made in the Contractor's proposal and all associated clarifications and supplemental proposal materials or attachments. In the case of conflict between the Contractor's proposal and this Agreement, the provisions of this Agreement shall prevail.

13.12 EXHIBITS

