

Attachment 3: Excerpt from RWS Agreement

The Contractor shall provide an annual contribution to the Jurisdiction to support the Jurisdiction's Food Recovery program efforts during the term of this Agreement. 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

9.1.1 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 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 additional or reduced service for an additional or reduced charge. These authorized reduced or additional charges must be approved by the City Council from time to time 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 includes pull fees and disposal fees as set forth in Exhibit B.

J. Charges for special services, contaminated Recyclables or Green Waste, extra solid waste, replacement of lost or stolen carts, off-day collection, etc. shall be as specified in Exhibits A, B, and C and as they may be modified in accordance with this Agreement.

9.3 RATE ADJUSTMENT PROCEDURES

9.3.1 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;
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 rests solely with the Contractor in accordance with the procedures outlined in this Agreement. If for any reason the City fails to respond within thirty (30) days 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. **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 have concluded that the requested rate adjustment is solely to offset the direct cost of the decreased or eliminated pass-through expense, the rates given in Exhibits A, B, and C shall be amended by the City Manager or designated City employee.

If for any reason the Contractor fails to respond within thirty (30) days to a pass-through rate adjustment request in accordance with the procedures in this Agreement, then the City shall implement such a pass-through rate adjustment unilaterally.

E. If a jurisdiction other than the City eliminates or decreases surcharges or fees that affect 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.

9.3.2 Cost-of-Living, Fuel Rate, and Commodity Price Adjustments

Every full year of this Agreement effective January 1, beginning on January 1, 2023, 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. **Under no circumstances will the Contractor ever be permitted to retroactively bill Customers for any rate adjustment increases not implemented in a timely manner for any reason.**

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 (%) = COFA + COLA + PTDRA + RCVA + OCVA, whereby

COFA is the cost-of-fuel adjustment

COLA is the cost-of-labor adjustment

PTDRA is the pass-through disposal rate adjustment

RCVA is the pass-through recycling commodity value adjustment

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

The pass-through recycling commodity value adjustment (RCVA) is calculated as the increase or decrease in monthly average annual (or pro-rated in the first year) tipping fee at the Designated Source Separated Recyclable Materials Processing Facility (as a percentage) multiplied by their relative cost component based on the Annual Financial Report and tonnage reports.

The pass-through organics commodity value adjustment (OCFA) is calculated as the increase or decrease in the monthly average annual (or pro-rated in the first year) tipping fee at the Designated Organic Waste Processing Facility (as a percentage) multiplied by their relative cost component based on the Annual Financial Report and tonnage reports.

9.3.3 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 9.3.2., 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;

- (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. **Under no circumstances will the Contractor ever be permitted to retroactively bill Customers for any rate adjustment increases not implemented in a timely manner for any reason.**

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 to the extent caused by Contractor's negligence or failure to comply with applicable laws and regulations, including but not limited to liabilities, costs, claims and damages described in Section 10.2 below except to the extent such liabilities, costs, claims or damages are due to the negligence or willful acts of the City, its officers, employees, agents or contractors.

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 reasonable attorney's fees), to the extent arising out of or resulting in any way from Contractor's negligence, willful misconduct or breach of the provision of this Agreement, except to the extent such claim is due to the 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 XIIC and Article XIID 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 Contractor for providing service under this Agreement, including but not limited to Franchise and governmental fees and charges.