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3 AMENDED AND RESTATED EXCLUSIVE FRANCHISE  
4 AGREEMENT FOR

5  
6 SOLID WASTE AND RECYCLABLE SERVICES  
7 AND DISCARDED MATERIALS MANAGEMENT

8 Between

9  
10 THE CITY OF SAN MARCOS

11  
12 and

13  
14 EDCO WASTE RECYCLING SERVICES, INC.  
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16  
17  
18  
19  
20 October 12, 2021  
21

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23     **Amended and Restated Exclusive Franchise Agreement for Solid Waste and**  
24     **Recyclable Services and Discarded Materials Management Between the City**  
25                     **of San Marcos**  
26                     **and EDCO Waste & Recycling Services, Inc.**

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27

28             This Amended and Restated Exclusive Franchise Agreement for Solid Waste and  
29     Recyclable Services and Discarded Materials Management (“Agreement”) is entered into this  
30     12<sup>th</sup> day of October 2021 (“Effective Date”), by and between the City of San Marcos, a chartered  
31     municipal corporation (“City”), and EDCO Waste and Recycling Services, Inc., a California  
32     corporation (“Contractor”). City and Contractor may be referred to herein individually as a  
33     “Party” or collectively as the “Parties.”

34                     **RECITALS**

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35     WHEREAS, the Legislature of the State of California, by enactment of the California Integrated  
36     Waste Management Act of 1989, (“AB 939” or the “Act”) (codified at Public Resources Code §§  
37     4000 et seq.) established a solid waste management process which requires cities and other local  
38     jurisdictions to implement plans for source reduction, reuse and recycling for solid waste  
39     attributed to sources within their respective jurisdictions;

40

41     WHEREAS, the Act provides that aspects of solid waste handling of local concern include but  
42     are not limited to frequency of collection, means of collection and transportation, level of  
43     services, charges and fees, and nature, location and extent of providing solid waste services;

44

45     WHEREAS, the Act confers discretion on cities to provide for refuse services to its residents by  
46     the cities themselves or by the cities conferring the authority to do so on private profit-making  
47     entities; ;

48

49     WHEREAS, City is authorized, pursuant to San Marcos Municipal Code Section 8.68.250 and  
50     8.68.270, to enter into agreements for the removal, transportation, processing and/or disposal of  
51     refuse and recyclables within City’s jurisdictional boundaries with persons deemed best qualified  
52     to perform such service;

53

54     WHEREAS, on April 10, 1990, City and Mashburn Sanitization Company entered into a contract  
55     for the exclusive right to collect, process and/or dispose of garbage, rubbish, other refuse  
56     materials and recyclables within City (“Original Agreement”);

57

58     WHEREAS, the Original Agreement had an initial term of five (5) years, with an option for City  
59     to extend in increments of one (1) year each, pursuant to Section 3.2 of the Original Agreement;

60

61     WHEREAS, in 1998, upon Contractor’s acquisition of a 100% ownership interest in Mashburn  
62     Waste & Recycling Services, and pursuant to San Marcos City Council Resolution No. 98-5064

and San Marcos Municipal Code Section 8.68.290, City assigned to Contractor the Original Agreement;

WHEREAS, pursuant to the San Marcos City Council's authorization and Section 3.2 of the Original Agreement, the City has extended the Original Agreement with Contractor in successive one-year increments, up through and including the present;

WHEREAS, since the execution of the Original Agreement, the State of California has, through the enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote a reduction in Landfill Disposal and to maximize the use of feasible waste reduction, Re-use, Recycling and composting options in order to reduce the amount of material that must be Disposed;

WHEREAS, SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets;

WHEREAS, SB 1383 requires City to implement Collection programs, meet Processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, City has chosen to delegate certain responsibilities to the Contractor, acting as City's designee, through this Agreement;

WHEREAS, the Parties desire to enter into this Agreement to amend and restate the terms and conditions of the Original Agreement to comply with SB 1383 Regulations and other applicable State law concerning the disposal of Solid Waste;

WHEREAS, the City Council of the City of San Marcos determines and finds pursuant to California Public Resources Code § 40059(a)(2) that the public interest, health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles; the implementation of measures consistent with the City's Source Reduction and Recycling Component; and in an effort to reduce the City's potential CERCLA liability, would be served if Contractor continues to have an exclusive Franchise for collection, recycling, diversion and disposal of Solid Waste from Service Units within City's jurisdictional boundaries; and

WHEREAS, upon mutual execution of this Agreement, the Parties agree that the Original Agreement shall have no further legal force or effect, other than the indemnity and hold harmless provisions in favor of City, which shall remain in full force and effect until the expiration of all possible limitations periods for any potential action or proceeding arising therefrom, and this Agreement shall contain the entire understanding between the Parties with respect to the subject matter hereof.

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109

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## OPERATIVE PROVISIONS

111 NOW, THEREFORE, in consideration of the mutual covenants, agreements and other good and  
112 valuable consideration contained in this Agreement, the receipt of which is hereby  
113 acknowledged, City and Contractor agree as follows:

114

### ARTICLE 1: DEFINITIONS

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115 For purposes of this Agreement, the words and phrases in this Article shall have the following  
116 meanings when capitalized in this Agreement:

117 “**AB 341**” means the State of California Assembly Bill approved on October 5, 2011.  
118 AB 939.

119

120 “**AB 939**” means the State of California Assembly Bill No. 939 approved September 29, 1989  
121 enacting the California Integrated Waste Management Act of 1989, codified in part at Public  
122 Resources Code §§ 40000 et seq., as it may be amended and as implemented by regulations.

123 “**AB 1594**” means the State of California Assembly Bill approved by the Governor of the State of  
124 California on September 28, 2014.

125

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

130

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

137 “**Bin**” means a metal or plastic container, with a capacity of approximately one (1) cubic yard up  
138 to and including six (6) cubic yards, designed or intended to be mechanically dumped into a  
139 loader packer type truck, that City approves for Collection Services. Bins may also include  
140 Compactors that are owned by Commercial Service Units.

141

142 “**Biohazardous or Biomedical Waste**” means any waste which may cause disease or reasonably  
143 be suspected of harboring pathogenic organisms; included are waste resulting from the operation  
144 of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are

not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

**“Brown Goods”** means electronic equipment such as televisions, computers, DVD players, cellular phones and other similar items collected from SFD Service Units.

**“Bulky Items”** means solid Waste generated by residential Customers in San Marcos which is too large to fit in a standard container or cart or in excess of 50 lbs. Items include household appliances (stoves, refrigerators, washing machines, dryers, dishwashers) commonly referred to as white goods, water tanks, mattresses, furniture and similar large items. Bulky Items do not include debris from construction, demolition, renovation or remodeling or abandoned automobiles, trucks, motorcycles or parts thereof.

**“Business”** means all retail, professional, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.

**“California Code of Regulations” or “CCR”** means the State of California Code of Regulations.

**“CalRecycle”** means California’s Department of Resources Recycling and Recovery, which has responsibility for developing, implementing, and enforcing SB 1383 Regulations.

**“Cart”** means a heavy plastic receptacle with a rated capacity of at least thirty-two (32) and not more than one hundred (100) gallons, having a hinged tight-fitting lid and wheels, that is approved by the City Manager or his or her designee for use by Service Recipients for Collection Services under this Agreement.

**“CEQA”** means the California Environmental Quality Act, codified at Cal. Pub. Res. Code Sections 21000 et seq. as amended or superseded, and the regulations promulgated thereunder and as set forth in the CCR.

**“CERCLA”** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq., as may be amended, and regulations promulgated thereunder.

**“City”** means City of San Marcos, a charter city and municipal corporation organized under the laws of the State of California, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement.

**“City Collection Service”** means City Solid Waste Collection Service, City Organic Waste Collection Service, and City Recycling Service.

**“City Facility(ies)”** means City Hall and any building or other site owned, leased or used regularly and significantly (i.e., more than seventy-five percent (75%)) by employees or contractors of City, and excludes those portions of such facilities used by others.

**“City Manager”** means the City Manager of the City of San Marcos, or his or her designated representative, or any employee of City who succeeds to the duties and responsibilities of the

City Manager.

**“City’s Waste Stream”** means Solid Waste generated within City’s jurisdictional boundaries and collected by Contractor in accordance with the terms and conditions of this Agreement.

**“Code”** means City of San Marcos Municipal Code.

**“Collect/Collection”** means SFD Collection Service, MFD Collection Service, Commercial Collection Service, City Collection Service, and Construction and Demolition Debris and Other Temporary Collection Service.

**“Commercial Account”** Commercial Service Unit subscribed to Commercial Collection Service including Commercial Service Units that subscribe to Commercial Collection Service with a shared bin.

**“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.

**“Commercial Collection Service”** means Commercial Solid Waste Collection Service, Commercial Organic Waste Collection Service, and Commercial Recycling Service. Commercial Collection Service shall also include Collection from MFD Service Units and City Service Units. Commercial Collection Service specifically includes the following:

A. **Commercial Garbage Collection Service.** The Collection of Commercial Garbage by Contractor, from Commercial Service Units in the Service Area and the delivery of that Commercial Solid Waste to a Disposal Facility.

B. **Commercial Organic Waste Collection Service.** The Collection of Organic Waste, by Contractor, from Commercial Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing and marketing of those Organic Waste materials, and the disposal of all Commercial Organic Waste Processing Residue.

C. **Commercial Recycling Collection Service.** The Collection of Recyclable Materials, by Contractor, from Commercial Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all Commercial Recyclable Materials Processing Residue.

229 **“Compactor”** means any Bin or Roll-Off Container which has a compaction mechanism,  
230 whether stationary or mobile.

231  
232 **“Compostable Plastics” or “Compostable Plastic”** means plastic materials that meet the  
233 ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section  
234 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

235  
236 **“Compost”** has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the  
237 Effective Date of this Agreement, that “Compost” means the product resulting from the  
238 controlled biological decomposition of organic Solid Wastes that are Source Separated from the  
239 municipal Solid Waste stream, or which are separated at a centralized Facility.

240  
241 **“Contamination Violation Notice”** means a notice provided to Generator by Contractor in the  
242 event of a Contaminated container.

243  
244 **“Contractor Representative”** means the person, or designee, designated by the Contractor to  
245 manage the provisions of this Amended Agreement.

246  
247 **“Construction and Demolition Debris and Other Temporary Collection Service” means**  
248 temporary Collection and processing of Construction and Demolition Debris and other Solid  
249 Waste, and which is placed in a Bin or Roll-Off Container.

250  
251 **“Contaminants, Contamination, or Contaminated”** means the commingling of Organic Waste  
252 or Recyclable Waste with other types of Solid Waste.

253  
254 **“Contractor”** means EDCO, a California corporation, organized and operating under the laws of  
255 the State of California and its officers, directors, employees, agents and companies.

256  
257 **“County”** means County of San Diego, a political subdivision of the State of California, and all  
258 the unincorporated area within the boundaries of the County as presently existing, or as such  
259 unincorporated area may be modified during the Term of this Agreement.

260 **“Consumer Price Index (CPI-U)”** means the Consumer Price Index, All Urban Consumers, all  
261 items, not seasonally adjusted San Diego Metropolitan Area compiled and published by the U.S.  
262 Department of Labor, Bureau of Labor Statistics.

263  
264 **“Discarded Materials”** means a form of Solid Waste. For purposes of this Agreement, material  
265 is deemed to have been discarded, without regard to whether it is destined for Recycling or  
266 Disposal, and whether or not it has been separated from other Solid Wastes, in all cases where a  
267 fee or other compensation, in any form or amount, is directly or indirectly solicited from, or,  
268 levied, charged, or otherwise imposed on, or paid by, the Generator or Customer in exchange for  
269 handling services. As used herein, handling services include, without limitation, the Collection,  
270 removal, Transportation, delivery, and Processing and/or Disposal of the material. Discarded  
271 Materials do not include Edible Food that is recovered for human consumption and is not  
272 discarded.

273  
274 **“Disposal” or “Dispose”** means the final disposition of Garbage collected at a site designated by

the Contractor.

**“Disposal Facility”** means the facility(ies) designated by the Contractor for the disposal, or processing as appropriate, of Garbage and other materials as appropriate and acceptable.

**“Diversion Plan”** means a summary of Contractor’s programmatic implementations made in effort to comply with SB 1383 diversion requirements.

**“Dwelling Unit”** means any individual living unit in a single-family dwelling, condominium, or town home (SFD) or MFD Units, or building intended for, or capable of being utilized for, residential living.

**“Exempt Waste”** means biohazardous or Biomedical Waste, Edible Food, Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, dead animals, and those wastes under the control of the Nuclear Regulatory Commission.

**“Franchise Fee”** means the fee provided in Section 3.04.1 of this Agreement.

**“Franchised Diversion”** means the rate of diversion for which Contractor is responsible to achieve as defined and calculated to achieve in Article 5 of this agreement.

**“Garbage Collection Service”** means the Collection and disposal of Garbage from City Service Units, Commercial Service Units, MFD Service Units, SFD Service Units.

**“Generators”** means SFD, MFD, and Commercial service recipients of Contractor for Collection services.

**“Gross Receipts”** all revenue amounts received by Contractor for the provision of Collection Services pursuant to this Agreement, calculated in accordance with Generally Accepted Accounting Procedures (“GAAP”). The term Gross Receipts, for purposes of this Restated Agreement, does not include any revenues generated from the sale of Recyclable Material, compost product or energy, or other receipts from state and local government accounts (e.g., grants, cash awards and rebates).

**“Household Hazardous Waste”** means household products that can catch fire, react, or explode under certain circumstances, or that are corrosive or toxic as household hazardous waste. Products, such as paints, cleaners, oils, batteries, and pesticides can contain hazardous ingredients and require special care in their disposal.

**“Hazardous Waste”** means any material which is defined as a hazardous waste under California or United States laws or any regulations promulgated pursuant to such laws, as such laws or regulations may be amended from time to time.

**“Maximum Service Rate”** means the maximum amount that Contractor may charge Service Recipients for Collection Services, as listed in Exhibit 1, and as may be adjusted in accordance with the provisions of this Agreement.



321  
322 **“Mixed Use Dwelling”** means a building or structure which contains at least one (1) Business  
323 Service Unit and at least one (1) Dwelling Unit and utilizes a common Garbage Bin or Garbage  
324 Cart for the accumulation and Collection of Commercial Solid Waste.

325  
326 **“MFD Collection Service”** means MFD Solid Waste Collection Service, MFD Recycling  
327 Service, MFD Organic Waste Collection Service, and MFD Bulky Item Collection Service.  
328 MFD Collection Service specifically includes the following:

329  
330 A. MFD Garbage Collection Service. The Collection of Residential Garbage, by Contractor,  
331 from MFD Service Units in the Service Area and the delivery of that Residential Garbage to a  
332 Disposal Facility.

333  
334 B. MFD Bulky Item Collection Service. The periodic on-call Collection of Bulky Items, by  
335 Contractor, from MFD Service Units in the Service Area and the delivery of those Bulky Items  
336 to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate  
337 under the terms of this Agreement. MFD Bulky Item Collection Service may include the  
338 Collection of Bulky Items through the use of Roll-Off Containers.

339  
340 C. MFD Organic Waste Collection Service. The Collection of Organic Waste, by  
341 Contractor, from MFD Service Units in the Service Area, the delivery of those Organic Waste  
342 materials to an Organic Waste Processing Facility and the processing and marketing of those  
343 Organic Waste materials, and the disposal of all MFD Organic Waste Processing Residue.

344  
345 D. MFD Recycling Service. The Collection of Recyclable Materials by the Contractor from  
346 MFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials  
347 Recycling Facility and the processing and marketing of those Recyclable Materials, and the  
348 disposal of all MFD Recyclable Materials Processing Residue.

349  
350 **“MFD Unit”** means a building, or a portion thereof, designed for occupancy by three (3) or  
351 more families living independently of each other, and containing three (3) or more dwelling  
352 units.

353  
354 **“Mulch”** means ground organic material that has not gone through the decomposition process.

355  
356 **“Non-Collection Notice”** means a form developed and used by Contractor, as approved by City,  
357 to notify Service Recipients of the reason for non-collection of materials set out by the Service  
358 Recipient for Collection by Contractor pursuant to this Restated Agreement.

359  
360 **“Non-Organic Recyclables”** means non-putrescible and non-hazardous recyclable wastes  
361 including, but not limited to, bottles, cans, metals, plastics, and glass, or as otherwise defined in  
362 14 CCR Section 18982(a)(43). Non-Organic Recyclables are a subset of Source Separated  
363 Recyclable Materials.

364  
365 **“Organic Waste”** means Solid Wastes containing material originated from living organisms and  
366 their metabolic waste products including, but not limited to, food scraps, food-soiled paper, yard

367 trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing  
368 paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section  
369 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR  
370 Section 18982(a)(16.5), respectively.

371  
372 **“Organic Waste Collection Service”** means the collection, processing and marketing of  
373 Organic Waste from City Service Units, Commercial Service Units, MFD Service Units, SFD  
374 Service Units (in the Service Area and the disposal of all Organic Waste Processing Residual.

375  
376 **“Organic Waste Processing Facility”** means any facility designed, operated and legally  
377 permitted for the purpose of receiving, and processing Food Waste, Green Waste, Bulky Green  
378 Waste, and Other Organics as permitted by state law, at such facilities as designated by Contractor.

379  
380 **“Organic Waste Processing Residual”** materials Collected pursuant to this Agreement,  
381 including both Organic Waste, and Contaminants, that are delivered to an Organic Waste  
382 Processing Facility but are Residual as defined in this Article.

383  
384 **“Overage”** means excess Garbage, Organic Waste and Recyclable Materials (i) placed  
385 inside a Container that prevents the lid on the Container from being completely closed (i.e., lid  
386 remains open greater 45-degrees) or (ii) that could potentially result in excess materials  
387 spilling/dislodging during collection activity by Contractor’s vehicles or require cleanup of the  
388 area around the Container.

389  
390 **“Person”** has the same meaning as in Public Resources Code Section 40170, which states, as of  
391 the Effective Date of this Agreement, that a Person includes an individual, firm, limited liability  
392 company, association, partnership, political subdivision, government agency, municipality,  
393 industry, public or private corporation, or any other entity whatsoever.

394  
395 **“Process, Processed, or Processing”** means the controlled separation, recovery, volume  
396 reduction, conversion, or Recycling of Solid Waste including, but not limited to, organized,  
397 manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the  
398 purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction  
399 equipment, or as otherwise defined in 14 CCR Section 17402(a)(20) at a facility or facilities  
400 designated by the Contractor.

401  
402 **“Recyclable Materials Collection Service”** means the collection, processing and marketing of  
403 Recyclable Material from City Service Units, Commercial Service Units, MFD Service Units,  
404 SFD Service Units and the disposal of all Recyclable Materials Processing Residual.

405  
406 **“Residual or Residuals”** means Garbage that is not diverted from landfill disposal after it has  
407 been delivered to an Organic Waste Processing Facility or a Recyclables Processing Facility for  
408 processing for diversion from landfill disposal. For determining the amount of Residuals in  
409 Recyclable Materials, Contractor shall conduct a characterization study of inbound Recyclable  
410 Materials by service line by December 31<sup>st</sup> of each year to be used for the subsequent twelve  
411 (12) month period.

413 **“Roll-Off Collection Service”** means the collection of Roll-Off Containers containing Solid  
414 Waste from SFD Service Units, MFD service Units, City Service Units, or Commercial Service  
415 Units on a permanent or temporary basis.

416  
417 **“Roll-Off Container”** means a metal container with a capacity of ten (10) or more cubic yards  
418 that is normally loaded onto a motor vehicle and transported to an appropriate facility.

419  
420 **“SB 1016”** means State of California Senate Bill 1016, approved September 16, 2008.

421  
422 **“SB 1383”** means State of California Senate Bill 1383, approved September 19, 2016.

423  
424 **“Service Area”** means that area within the jurisdictional boundaries of City designated by City  
425 as the Service Area as those limits may be adjusted from time to time as allowed under  
426 California law.

427  
428 **“Service Recipient”** means an individual, Business, City of San Marcos, or a component of  
429 City, receiving Collection Services.

430  
431 **“Service Unit”** means SFD Service Units, MFD Service Units, City Service Units, or  
432 Commercial Service Units. Service Unit specifically includes the following:

433  
434       A. City Service Unit. City Facility(ies) that utilize a Bin, Cart, or Roll-Off Container(s) for  
435 the accumulation and set-out of Solid Waste.

436  
437       B. Commercial Service Unit. Business Service Units, City Service Units and Mixed-Use  
438 Dwellings that utilize a Garbage Bin, Cart, Compactor, Roll-Off Container for the accumulation  
439 and set-out of Commercial Solid Waste.

440  
441       C. Multi-Family Dwelling Service Unit (MFD). Five (5) or greater Dwelling Units in the  
442 Service Area sharing a Cart or Bin and set out of Commercial Solid Waste.

443  
444       D. Single Family Dwelling Service Unit (SFD). Any Single-Family Dwelling Unit (SFD)  
445 in the Service Area utilizing a Cart, or any combination of 1 – 4 Dwelling Units sharing Carts,  
446 for the accumulation and set out of Residential Solid Waste.

447  
448 SFD Garbage Collection Service, SFD Recycling Service, SFD Organic Waste Collection  
449 Service, SFD Bulky Item Collection Service, and SFD Used Oil Collection Service. SFD  
450 Collection Service specifically includes the following:

451  
452       A. SFD Garbage Collection Service. The Collection of Residential Garbage, by  
453 Contractor, from SFD Service Units in the Service Area and the delivery of that Residential  
454 Garbage to a Disposal Facility.

455  
456       B. SFD Bulky Item Collection Service. The periodic on-call Collection of Bulky Items,  
457 by Contractor, from SFD Service Units in the Service Area and the delivery of those Bulky Items  
458 to a Disposal Facility, Materials Recycling Facility or other facility. SFD Bulky Item Collection

Service does not include the Collection of Bulky Items through the use of Roll-Off Containers.

C. SFD Organic Waste Collection Service. The Collection of Organic Waste, by Contractor, from SFD Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing and marketing of those Organic Waste materials, and the disposal of all SFD Organic Waste Processing Residual.

D. SFD Recycling Service. The Collection of Recyclable Materials by the Contractor from SFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all SFD Recyclable Materials Processing Residual.

**“Solid Waste”** means the materials described in Public Resources Code Section 40191, including Garbage, Recyclable Materials, Organic Waste, Construction and Demolition Debris, and Bulky Items. Solid Waste does not include Exempt Waste. Solid Waste specifically includes the following:

A. Construction and Demolition Debris. Used or discarded materials resulting from construction, remodeling, repair or demolition operations on any type of structure.

B. Food Waste. Food scraps and trimmings and other putrescible waste that results from food production, preparation, storage, consumption or handling. Food Waste includes but is not limited to meat, fish and dairy waste, fruit and vegetable waste, grain waste, and compostable food contaminated paper products. It does not include Exempt Waste.

C. Garbage. All putrescible and non-putrescible solid, semi-solid, and associated liquid waste, as defined in California Public Resources Code Section 40191, attributed to normal activities of a Service Unit. Garbage must be generated by and at the Service Unit wherein the Garbage is collected. Garbage does not include those items defined as Exempt Waste.

D. Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than five (5) feet in its longest dimension or six (6) inches in diameter or weighs more than fifty (50) pounds. Green Waste includes plant debris, such as grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other forms of organic waste and must be generated by and at the SFD Service Unit where the Green Waste is collected. Green Waste does not include items defined as Exempt Waste.

E. Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than five (5) feet in its longest dimension, which are attributed to the normal activities of an SFD Service Unit. Large Green Waste must be generated by and at the SFD Service Unit where the Large Green Waste is collected by means of Large Item Collection.

F. Organic Waste. Food Waste, Green Waste, and Other Organics, either separately or commingled with each other, that has been separated at the source of generation from Garbage and Recyclable Materials.

G. Other Organics. Other Organics includes compostable food-soiled paper and paper products, compostable food wares and compostable food packaging, stable materials, manure, and natural fiber textiles, and other compostable materials as may be required by City or CalRecycle.

H. Recyclable Materials. Those discarded materials which are capable of being recycled using available processes and markets and which would otherwise be processed or disposed of as Residential Garbage or Commercial Garbage. These materials will be as defined by City. City and Contractor agree to meet from time to time as needed to discuss additions or deletions from the list of Recyclable Materials. Contractor may request removal of Recyclable Materials due to market limitations, which request will be decided by City Manager.

I. White Goods. Inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

**“Work Day”** means any day, Monday through Saturday, that is not a holiday as set forth in Section 3.07 of this Agreement.

## **ARTICLE 2: TERMS OF AGREEMENT**

---

2.01 **Term of Agreement.** The term of this Agreement shall be amended to commence on January 1, 2022 and expire December 31, 2027, provided however, that commencing January 1, 2023 and every year thereafter, automatic one year extensions shall be applied to say Agreement so that the term of the Agreement shall remain between five years and six years.

Should either party desire that said automatic one year renewal and extension provision be terminated, such party may give the other written notice of such termination at any time within the forty-five (45) days prior to January 1 of any year of the Agreement. Such notice will terminate the automatic one year renewal and extension provision, and the Agreement shall remain in effect for the balance of the term then outstanding.

2.02 **Annual Performance Review.** City shall annually conduct a contract year-end review to evaluate the level and quality of Contractor’s service in general, and determine compliance, by Contractor, with the specific terms of this Agreement and applicable State and local laws.

2.03 **Amendment to Agreement.** This Agreement may be amended from time to time in the same manner as its approval, by resolution by the San Marcos City Council and execution by the parties hereto.

## **ARTICLE 3: SERVICES PROVIDED BY CONTRACTOR**

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3.01 **Grant of Exclusive Agreement.** Subject to the exceptions stated in Section 3.02, City hereby grants to Contractor, on the terms and conditions set forth herein, the exclusive franchise, right and privilege to collect, remove and dispose of, in a lawful manner, Solid Waste accumulating in City’s Service Area, as may be adjusted from time to time by approved annexations, that are required to be accumulated and offered for collection to the Contractor in

accordance with the Code, for the Term of and within the scope set forth in this Agreement.

**3.02 Recyclable Materials, Organic Waste, and Bulky Item Disposal by Service**

**Recipients.** Nothing in this Agreement will be construed as requiring Service Recipients to set out Recyclable Materials, Organic Waste, or Bulky Items for Collection by Contractor. Service Recipients may dispose of Recyclable Materials, Organic Waste, and Bulky Items by other appropriate means provided they do not involve regularized pickup at the Service location by a third party and that there is no net payment made by the service recipient to such other Person, including taking Recyclable Materials or Organic Waste to drop-off facilities and donating or selling such items to private or public entities.

**3.03 Responsibility for Service Billing and Collection.** Contractor is responsible for the billing and collection of payments for Collection Services within the Service Area and will assume those services as of the Effective Date. Contractor shall be eligible for reimbursement from City in the event of non-payment after written notice has been provided to the account holder in accordance with Section 8.68.410 of the Code. To recover its costs, City shall initiate proceedings to make delinquent collection service fees and charge a special assessment against the properties involved, as specified in Code Section 8.68.420.

**3.04 Payments to City.** Contractor agrees to make the following payments to City:

3.04.01 Franchise Fee. In consideration of the granting of the exclusive franchise to Contractor as provided herein, Contractor agrees to pay City, during the term of this Agreement, the following sum: a sum equivalent to 18.6 (eighteen and six-tenth) percent of gross monies collected for residential and commercial services pursuant to this Agreement within the jurisdictional boundaries limits of City, provided, however, Contractor shall pay to City a minimum of \$100.00 (one hundred dollars) per annum. The aforementioned sum shall be paid quarterly, by the tenth of the month following the quarterly billing. Contractor shall further provide City within three (3) months after the end of the calendar year a verified statement showing the gross monies collected for services within the jurisdictional boundaries of City. City shall have the right to inspect Contractor's books of account at reasonable times and hours.

3.04.02 Contract Services Costs. In addition to the Franchise Fee described in Section 3.04.01, above, Contractor also agrees that it will pay City 3% of gross monies collected from residential services per year for costs related to City's integrated waste management program, household hazardous waste disposal, and recycling programs.

**3.05 Service Standards.** Contractor must perform all Collection Services under this Agreement in a thorough and professional manner.

**3.06 Labor and Equipment.** Contractor must provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of Contractor's obligations under this Agreement. Contractor must at all times have sufficient backup equipment and labor to fulfill Contractor's obligations under this Agreement. No compensation for Contractor's services or for Contractor's supply of labor, equipment, tools, facilities or supervision will be provided except as expressly set forth in this Agreement.

**3.07 Holiday Service.** City observes New Year's Day, Memorial Day, Independence Day,

Labor Day, Thanksgiving Day, and Christmas Day as legal holidays. Contractor is not required to provide Collection Services or maintain office hours on the designated holidays. In any week in which one of these holidays falls on a Work Day, SFD Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday SFD Collection Services being performed on Saturday. Commercial Collection Services will be adjusted as set forth in Article 8 but must meet the minimum frequency requirements of one (1) time per week.

**3.08 Inspections.** City has the right to inspect Contractor's facilities or Collection vehicles and their contents at any reasonable time while operating inside or outside City.

### **3.09 Commingling of Materials.**

**3.09.1 Non-City Solid Waste.** Contractor may not at any time commingle any materials Collected pursuant to this Agreement with any other material Collected by Contractor from any non-City Solid Waste, whether inside or outside City's jurisdictional boundaries, without the express prior written authorization of City Manager. If commingling is approved and takes place, Contractor agrees to indemnify, defend and hold City harmless from any claims, demands, fines or penalties arising from Contractor's commingling.

**3.09.2 Recyclable Materials.** Subject to Section 3.10, Contractor must not at any time commingle SFD or Commercial Recyclable Materials Collected pursuant to this Agreement with any other material type Collected by Contractor without the express prior written authorization of City Manager.

**3.09.3 Organic Waste.** Subject to Section 3.10, Contractor must not at any time commingle SFD or Commercial Organic Waste Collected pursuant to this Agreement with any other material type Collected by Contractor, without the express prior written authorization of City Manager.

**3.10 Recyclable Materials and Organic Waste Contamination.** Contractor must offer the Service Recipients the correct combination of Cart, Bin and Roll-Off Container sizes and collection frequency that matches their unique service needs to reduce Contamination of Recyclable Materials and Organic Waste. To support City's diversion goals and Contractor's Diversion Requirements as set forth in Section 5.01, Contractor is only required to collect Recyclable Materials if they have been separated by the Service Recipient from Garbage and Organic Waste, and is only required to collect Organic Waste if it has been separated by the Service Recipient from Garbage and Recyclable Materials.

As part of Contractor's Public Education Services under Section 13.01, Contractor agrees to provide outreach and support to SFD Service Recipients. Additionally, Contractor's route collection personnel will report to Contractor's supervisors if they observe potential Contamination problems, and/or insufficient collection capacity. For purposes of determining if Recyclable Materials or Organic Waste are deemed to be Contaminated, if, by visual or digital inspection, Recyclable Materials are commingled with ten percent (10%) by weight or volume of Garbage or Organic Waste, or if, by visual inspection, Organic Waste is commingled with three percent (3%) by volume of Garbage or Recyclable Materials, then Recyclable Materials and/or

Organic Waste will be deemed to be Contaminated and Contractor may take the following steps:

**3.10.1 SFD Service Recipients.**

**3.10.1.1 First Occurrence.** For the first occurrence of Contamination for a particular container (i.e., Recyclable Materials or Organic Waste), Contractor must collect the Contaminated container (as Solid Waste) and must affix a Contamination Violation Notice to the Contaminated container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste, and must notify the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the second and subsequent incidents of excess Contamination, the Service Recipient may be charged a contamination fee for the Contaminated container, and for the third or subsequent occurrence of Contamination, Contractor may increase the Cart size, or require an additional Cart, if necessary to provide the Service Recipient with adequate capacity to timely dispose of Recyclable Materials and Organic Waste without commingling. Prior to requiring an additional Cart, Contractor's representative must first attempt to contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Waste. Contractor must also provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going Contamination problems.

**3.10.1.2 Second Occurrence.** For the second occurrence within any twelve-month period of Contamination for a particular container (i.e., Recyclable Materials or Organic Waste), Contractor will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste, and Contractor must collect the Contaminated container (as Solid Waste) and, pursuant to City approval, may charge the Service Recipient a contamination fee as set forth in Exhibit 1. For any contamination fee charge being assessed, Contractor must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going Contamination problems.

**3.10.1.3 Third and Subsequent Occurrence.** For the third or subsequent occurrence within any twelve-month period of Contamination for a particular container (i.e., Recyclable Materials or Organic Waste), Contractor must collect the Contaminated Container (as Solid Waste) and pursuant to City approval, must charge the Service Recipient a Contamination fee as set forth in Exhibit 1. Contractor must continue providing the Recyclable Materials or Organic Waste Collection Services. Contractor must provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going Contamination problems and written Notices of Contamination as described above. Contractor must notify City within five (5) Business Days if Contractor increases in the Cart size or requires an additional Cart for excessive Contamination or imposes a Contamination surcharge to the



account for a period of six months or until the Service Recipient has demonstrated no Contamination for a period of three consecutive months. City will consult with Contractor and consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the Contamination. All City costs of such action shall be recoverable from the offending Service Recipients.

3.10.1.4 Notification of Generators of Contamination Violations. Contractor must notify generators of Contamination Violations upon the discovery by Contractor of Contaminants according to the requirements as described in 14 CCR 18984.5.

3.10.2 **Commercial and MFD Service Recipients.** The following provisions will apply to all Commercial and MDF Service Recipients, except those eligible for Temporary Collection Service:

3.10.2.1 First Occurrence. For the first occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), Contractor must collect the contaminated container (as Solid Waste) and must affix a Contamination Violation Notice to the contaminated container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste, and must notify the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the second and subsequent incidents of contamination, the Service Recipient will be charged a contamination fee for the contaminated container, and for the third or subsequent occurrence of excess contamination, Contractor may increase the Cart or Bin size, if necessary to provide the Service Recipient with adequate capacity to timely dispose of Recyclable Materials and Organic Waste without commingling, or collection frequency or impose a contamination surcharge on the account for a period of six months or until the Service Recipient has demonstrated no contamination for a period of three consecutive months. Prior to increasing the Cart or Bin size Contractor's representative must first attempt to contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Waste. Contractor must also provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's contamination problem.

3.10.2.2 Second Occurrence. For the second occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), Contractor will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste, and Contractor must collect the contaminated Container (as Solid Waste) and will charge the Service Recipient a contamination fee as set forth in Exhibit 1. For any contamination fee charge being assessed, Contractor must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems.

3.10.2.3 Third and Subsequent Occurrence. For the third and subsequent occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), Contractor must collect the contaminated Container (as Solid Waste) and must charge the Service Recipient a contamination fee as set forth in Exhibit 1. Contractor must continue providing the Recyclable Materials or Organic Waste Collection Services. Contractor must provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems and written Notices of contamination as described above. Contractor must notify City within five (5) business days if Contractor increases in the Cart or Bin or size or collection frequency for excessive contamination or imposes the contamination surcharge to the account. City will consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the contamination. All City costs of such action shall be recoverable from the offending Service Recipients.

3.11 **Spillage and Litter.** Contractor shall not litter premises in the process of providing Collection Services or while its vehicles are on the road. Contractor must transport all materials Collected under the terms of this Agreement in such a manner as to minimize the spilling or blowing of such materials from Contractor's vehicles. Contractor must exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Solid Waste and must immediately, at the time of occurrence, clean up such spilled or dropped Solid Waste. Notwithstanding the foregoing, Contractor must clean up any spillage or litter caused by Contractor within the same Work Day.

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

3.13 **Three-container Organic Waste Collection Service.** Contractor must comply with the requirements of 14 CCR 18984.1 by implementing a three-container organic waste collection service and providing a green container, a blue container, and a gray container to each generator pursuant to a schedule approved by City. Allowable items in each container are as follows:

Blue Container: Shall be provided for the collection of source separated recyclable materials, including non-organic recyclables such as aluminum, glass bottles and jars, rigid plastics (marked #1-#7), and tin and bi-metal cans. Also including non-organic recyclables and some organic wastes, such paper products, printing and writing paper, wood and dry lumber or textiles. Hazardous wood waste is not allowed. Items must be transported to a facility that recovers materials designated for collection.

Green Container: Shall be provided for the collection of organic waste. Yard trimmings, including plants, trees, branches, and grass. Trimmings must be reduced in size to fit in the green container; no uncontainerized yard trimmings will be collected. Carpets, non-compostable paper, and hazardous wood shall not be collected in the green container. Shall be transported to a facility that recovers source separated organic waste. Plastic bags and compostable plastics,

including compostable plastic bags, will not be allowed for organic waste and yard trimmings.

Gray Container: Shall be provided for the collection of non-organic waste only. Carpets are not allowed in the grey container.

**3.14 Bulky Items Collection.** The Contractor will provide collection of Bulky Items as an ongoing service available to residents, including both SFD and MFD customers. The service requires pickup of Bulky Items from residents on an on-call basis for a service fee. The Contractor shall deliver the collected Bulky Items to the Designated Recyclables Processing Facility for recovery, or to the Designated Disposal Site, as reasonable determined by the Contractor depending on the type of materials collected. Contractor may not landfill such Bulky Items unless the Bulky Items cannot be reused or recycled. Collection of Bulky Items must comply with SB 1383.

**3.15 Construction and Demolition Debris Collection.** The Contractor shall provide for the collection and processing of Construction and Demolition Debris. The service requires pickup of construction and demolition debris from all customers in City on an on-call basis for a service fee. Upon request, Contractor shall supply Customers with appropriately sized containers. Contractor shall use best efforts to recycle construction and demolition debris by processing collected materials at state permitted processing facilities.

**3.16 E-Waste and Shred Events.** The Contractor shall sponsor two (2) e-waste and shred events per calendar year during which San Marcos residents will be allowed to dispose of an unlimited amount of residential electronic waste and two (2) bankers' boxes of documents for on-site destruction. The events shall take place at locations in the City designated by the Contractor and approved by City, which consent shall not be unreasonably withheld. The Contractor shall provide advertising for the events using one or more outreach options, including billing inserts, direct-mail postcards, Contractor's newsletters, or social media platforms as approved by City.

**3.17 Route Reviews.** Contractor must conduct route reviews pursuant to 18984.5(b) in such a manner that results in all hauler routes being reviewed annually. Containers may be randomly selected for review along a hauler route. Compliance monitoring must comply with 14 CCR 18995.1.

**3.18 Self-Hauled Materials.** A Commercial Business owner or resident may dispose of Recyclable Materials, and Organic Materials, generated in or on their own premises with their own vehicle.

## **ARTICLE 4: CHARGES AND RATES**

**4.01 Collection Services.** Contractor is responsible for the billing and collection of payments for all Collection Services. Contractor must not charge Service Recipients more than the service rates schedule it has provided in advance to City and City Council included here as Exhibit 1. Contractor will not charge for Collection Services provided to City Service Units.

**4.02 Service Charges.** Contractor agrees, during the term of this Agreement to abide by its

then-current schedule of charges for all Collection Services established by Contractor, as provided in Exhibit 1 and as amended from time to time pursuant to this agreement.

**4.03 Report of Delinquencies.** In addition to, and to facilitate the foregoing, but not in lieu of any requirement stated above, Contractor shall report to City in its Annual Report pursuant to Article 15 of this agreement, all Service Recipients who have received Collection Service and whose account is over ninety (90) days past due. After a minimum of ninety (90) days of non-payment, City may initiate proceedings in the event of non-payment for Collection Services after written notice has been provided to the account holder in accordance with Code Section 8.68.410, including without limitation its remedies set forth in Code Section 8.68.420.

**4.04 CPI-U Adjustment.** The Parties recognize that, due to conditions generally prevailing, general rises in the cost of living are reasonably foreseeable and it is therefore agreed that the schedule of charges as established pursuant to this Article 4 of this Agreement shall be subject to an adjustment either up or down as follows:

The CPI-U adjustment will be calculated using the change in the most recent twelve (12) month annual average of CPI-U index values between for the twelve (12) months prior (the prior year). The average CPI-I for the twelve (12) months prior to the date of this Agreement shall be accepted as the base index.

4.04.1. If, during the term of the Agreement, the cost of living as determined by said index shall increase or decrease, the Contractor may adjust the schedule of charges as set forth in Section 4.02 in accordance with the following method:

4.04.2 In order to affect such adjustment, the percentage by which such index, so determined, exceeds or is less than the base index shall be determined, and the schedule of charges to be paid thereafter shall be established by applying the percentage of increase or decrease to the service rates in effect at the time the adjustment is calculated.

4.04.3 Adjustments for each subsequent increase or decrease of the index shall be computed in like manner.

4.04.4 If neither party shall, within sixty (60) days after said index is available for the month for which an adjustment in the schedule of charges would be in order, make demand in writing for the determination of the adjustment for the following period, the schedule of charges shall continue at the same prices for the preceding month. Failure to make a demand at any time shall not prejudice the right of a party to an adjustment upon proper demand at a subsequent time.

**4.05 Disposal Fee Offset Adjustment.** Nothing in Section 4.04 shall be construed as preventing Contractor from seeking an adjustment in rates as compensation for increased operating costs associated with an increase in disposal site tipping fees charged to them. Such request for adjustment may be considered by City Manager or City Manager's designee in addition to those allowances for adjustment specified in Section 4.04 hereof.

**4.06 Performance Standards for Adjustments to Rates.** In order to be eligible for a CPI-U adjustment under Section 4.04, Contractor must not then be in default of the Agreement.

## ARTICLE 5: DIVERSION REQUIREMENTS

**5.01 Minimum Requirements.** City requires Contractor to assist City in complying with CalRecycle diversion standards as described in Sections 5.02 and 5.03 below.

5.01.1 Contractor shall assist in the development and implementation of a City Diversion Plan. City Diversion Plan shall describe programs and activities to be taken by Contractor that will achieve a minimum annual Franchised Diversion Rate as described in Section 5.03. Contractor's Diversion Plan is subject to approval by City Manager or City Manager's designee, and to be approved, must constitute a good faith Diversion Plan to allow City to comply with Public Resources Code Section 41780, SB 1383, and other Applicable Laws. Implementation of the Diversion Plan will be at Contractor's sole cost and expense. Provided that Contractor has implemented all required Contractor diversion and public education programs required under this Agreement, Contractor's obligation to meet the Franchised Diversion requirements under Section 5.03 shall be met.

5.01.2 If the annual report shows that City has not met its diversion standard or goals, and Contractor has implemented all required Contractor diversion programs, City may direct Contractor to modify its programs, or implement new diversion programs. Any such modification of Contractor's existing diversion programs or addition of new diversion programs done at City's request must be in accordance with Section 21.01. If CalRecycle or any state agency finds that City is not in compliance with diversion requirements and issues a Corrective Action Plan, Contractor must take action in conjunction with City, if necessary, to come into compliance with state requirements.

5.01.3 Notwithstanding any other provision of this Agreement to the contrary, where CalRecycle has determined that there are no commercially viable markets for a specific type of Recyclable Materials, or with written notice to City, Contractor is unable to identify a market for one or more Recyclable Materials despite the exercise of commercially reasonable efforts to process and market the material, and determines, in the interest of safeguarding public health, to dispose of the Recyclable Material(s), such a determination shall not constitute a failure to implement service, a failure to implement a program, or an event of default under this Agreement.

**5.02 Diversion Rate Calculation.** For purpose of determining whether diversion requirements have been met for materials collected under this Agreement, City and Contractor agree the diversion rate will be calculated using the following formula: "City's Pounds Per Person Per Day disposal allowance divided by the Pounds Per Day generated in each Calendar Year."

**5.03 Contractor's Diversion Requirements.** For purposes of this Article 5, City's diversion rate is calculated by CalRecycle and must meet or exceed the diversion requirements of the Applicable Laws (including AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, and all amendments and related subsequent legislation including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements), and that it will do so without imposing any costs or fees other than those set forth on Exhibit 1, except as provided in Section 21.01.1. If diversion rate does not meet CalRecycle diversion requirements, Contractor must work with City to modify approach in effort to achieve diversion requirements

and/or any CalRecycle Corrective Action Plan, if issued by agency pursuant to 14 CCR 18996.2. Contractor warrants that it is aware of and familiar with City's Waste Stream, and that it has the ability to and must provide sufficient programs and services designed to ensure City will meet or exceed the diversion requirements as set forth in this Article 5, as well as the diversion requirements of the Applicable Laws.

**5.04 Mutual Cooperation.** City and Contractor will reasonably cooperate in good faith with all efforts by each other to meet City's diversion and other compliance requirements imposed by the Applicable Laws, including without limitation, AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, and to meet Contractor's obligations under this Article 5.

**5.04.1** Assist City with meeting compliance needs of 14 CCR 19882.1 and 18992.2(c) as required by the County of San Diego.

**5.05 Guarantee.** Contractor shall develop and, upon City Manager's approval, implement within a timely manner, programs to meet new requirements of the Applicable Laws, including but not limited to, AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383 as well as City's Climate Action Plan adopted December 8, 2020, or as amended from time to time. Except for programs currently required by Applicable Law but not set forth in this Agreement, or programs Contractor is expressly instructed by City not to implement, or services which a Service Recipient refuses to accept, Contractor guarantees that it will implement the diversion programs set forth in this Agreement such that: (i) Contractor and City will at all times be in compliance with the requirements of the Applicable Laws, including but not limited to, AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383; and (ii) City will meet or exceed the program requirements (including, without limitation, time frames for diversion, and any other requirements) set forth in this Article 5 and the Applicable Laws, including but not limited to, AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, and all amendments thereto (subject to Section 21.01.1). Contractor agrees that it will, in addition to any other Agreement requirement, at its sole cost and expense: (1) assist City in responding to inquiries from CalRecycle or any other regulatory agency; (2) assist City in preparing for, and participating in, CalRecycle's biannual review of City's SRRE pursuant to Public Resources Code Section 41825; (3) assist City in applying for any extension, including under Public Resources Code Section 41820.5, if so directed by City; (4) assist City in any hearing conducted by CalRecycle, or any other regulatory agency, relating to City's compliance with the Applicable Laws including without limitation AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383; (5) assist City with the development of and implement a public awareness and education program that is consistent with City's SRRE and Household Hazardous Waste Element, as well as any related requirements of the Applicable Laws; and (6) provide City with Recycling, source reduction, and other technical assistance as may be needed to comply with the Applicable Laws including, but not limited to, AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383.

## **ARTICLE 6: SERVICE UNITS**

**6.01 Service Units.** Service Units include all the following categories of premises which are in the Service Area and all such premises which may be added to the Service Area by means of annexation, new construction, or as otherwise set forth in this Agreement during the term of this Agreement: (1) SFD Service Units; (2) Commercial Service Units (includes MFD Service

Units); and (3) City Service Units.

6.02 Any question as to whether a premise falls within one of these categories will be determined by City Manager and the determination of City Manager will be final.

6.03 **Service Unit Changes.** City and Contractor acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete Service Units.

6.04 **Annexation.** If during the term of the Agreement, additional territory within or adjacent to the Contractor's Service Area is acquired by City through annexation, subject to the requirements of Public Resources Code Section 49520, Contractor agrees to provide Collection Services in such annexed area in accordance with the provisions and service rates set forth in this Agreement. Contractor may not begin Collection Service without written authorization from City.

6.05 **Route Map Update.** Contractor must revise the Service Unit route maps to show the addition of Service Units added due to annexation and must provide such revised maps to City Manager as requested.

## **ARTICLE 7: COLLECTION SERVICES**

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7.01 **SFD Collection Services.** The SFD Collection Services are governed by the following terms and conditions:

7.01.1 Conditions of Service. Contractor must provide SFD Collection Service to all SFD Service Units in the Service Area whose SFD Garbage is properly containerized in Garbage Carts, Recyclable Materials properly containerized in Recycling Carts, and Organic Wastes properly containerized in Organic Waste Carts, where the Solid Waste carts have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by Contractor and Service Recipient, that will provide safe and efficient accessibility to Contractor's Collection crew and vehicle.

7.02 **On-Premises Service.** Notwithstanding any term or definition set forth in this Agreement, Contractor must provide on-premises Collection of SFD Solid Waste to an SFD Service Unit as follows:

7.02.1 At no additional cost to the SFD Service Unit. SFD Service Units where all adult Service Recipients residing therein have disabilities that prevent them from setting their Solid Waste Cart at the curb for Collection, and if a request for on-premises service has been made.

7.02.2 Collection Day. Contractor must provide On-Premises Service Collection on the same Work Day that curbside Collection would otherwise be provided to the SFD Service Unit.

7.03 **Frequency and Scheduling of Service.** SFD Collection Service must be provided one (1) time per week on a scheduled route basis. SFD Collection Service must be scheduled so that all SFD Service Units receive SFD Garbage Collection Service, SFD Recyclable Material Collection Service, and SFD Organic Waste Collection Service on the same Work Day.

961  
962 **7.04 Hour and Days of Collection.** SFD Collection Service must be provided Monday  
963 through Friday, commencing no earlier than 6:00 a.m. and terminating no later than 7:00 p.m.  
964 The hours, days, or both of Collection may be extended due to extraordinary circumstances or  
965 conditions with the prior verbal or written consent of City Manager.  
966

967 **7.05 Manner of Collection.** The Contractor must provide SFD Collection Service with as  
968 little disturbance as possible and must leave any Solid Waste Cart(s) in an upright position at the  
969 point of collection without obstructing alleys, roadways, driveways, sidewalks or mail boxes.  
970

971 7.05.1 Handling/Replacement of Carts. Contractor shall use reasonable care in the  
972 handling of all Carts. In the event of damage or destruction of any such Cart, by reason of  
973 negligence or recklessness on the part of the Contractor or its employees, Contractor shall, upon  
974 demand, repair or replace said Carts.  
975

976 7.05.2. CalRecycle Requirements. Contractor must comply with CalRecycle container  
977 requirements, including but not limited to, color requirements pursuant to 14 CCR 1894.1, and  
978 labeling requirements pursuant to 14 CCR 18984.8, as they may apply during the term of this  
979 Agreement.  
980

981 7.05.3 Repair of Garbage, Recycling and Organic Waste Carts. Contractor is responsible  
982 for the repair of Carts. Within five (5) Work Days of notification by City or a Service Recipient  
983 of the need for such repairs, Contractor must repair the Cart or if necessary, remove the Cart for  
984 repairs and deliver a replacement Cart to the Service Recipient.  
985

986 7.05.4 Maintenance, Cleaning, Painting. All Containers shall be maintained in a safe,  
987 serviceable, and functional condition, and present a clean appearance. Contractor shall repair or  
988 replace all Containers damaged by Collection operations in accordance with standards specified  
989 in Section 7.05.3, unless damage is caused by a Customer's gross negligence, in which case, the  
990 Customer will be billed for repair or replacement of Container at a reasonable cost for  
991 replacement. All Containers shall be maintained in a functional condition.  
992

993 7.05.5 Contractor shall steam clean and/or repaint all Containers as needed (other than Carts) to  
994 present a clean appearance. Contractor shall offer stream cleaning service (or clean container  
995 exchange) to Customers requesting such service and shall charge Customers for such cleaning  
996 (or Container exchange) at an amount not exceeding the reasonable cost of performing the  
997 service, taking into account the scope and range of its ultimate service area which should provide  
998 the volume to make such costs as low as reasonably feasible.  
999

1000 7.05.6 Ownership of Carts. Ownership of Carts is vested in the Contractor.

1001 **7.06 SFD Garbage Collection Service.** This service is governed by the following terms and  
1002 conditions:  
1003

1004 7.06.1 Disposal Facility. Except as set forth below, all Residential Garbage Collected as a  
1005 result of performing SFD Garbage Collection Services must be transported to, and disposed of, at  
1006 the Disposal Facility. In the event the Disposal Facility is closed on a Work Day, Contractor



must transport and dispose of the Residential Garbage at another legally permitted disposal facility. Failure to comply with this provision may result in the Contractor being in default under this Agreement.

**7.07 SFD Recycling Service.** This service is governed by the following terms and conditions:

7.07.1 Material Recycling Facility. Subject to Section 3.09, all Recyclable Materials Collected as a result of performing recycling services must be delivered to the Material Recycling Facility.

**7.08 SFD Organic Waste Collection Service.** This service is governed by the following terms and conditions:

7.08.1 Contractor's SFD Organic Waste Collection Service is required to include Green Waste, Food Waste, and Other Organics to comply with SB 1383 and other applicable state laws. Collected Organic Waste shall be processed in compliance with SB 1383 at a properly permitted Organic Waste Processing Facility.

7.08.2 Contractor must comply with CalRecycle collection frequency requirements as they may apply during the term of this Agreement.

7.08.3 Organic Waste Processing Services. Contractor must ensure that all Organic Waste Collected pursuant to this Agreement is not disposed of in a landfill, except for residue resulting from processing, in accordance with AB 939, AB 1826, AB 1594, SB 1016 and SB 1383, and any subsequent or other Applicable Law.

7.08.4 Organic Waste Processing Facility. Contractor must deliver all Collected Organic Waste to a fully permitted Organic Waste Processing Facility in compliance with SB 1383 or a fully permitted Organic Waste transfer station in compliance with SB 1383. All expenses related to Organic Waste processing and marketing will be the sole responsibility of Contractor.

7.08.5 Waivers. Contractor shall assist City in identifying SFD generators that qualify for waivers pursuant to 14 CCR Section 18984.11.

## **ARTICLE 8: COMMERCIAL AND MFD COLLECTION SERVICES**

**8.01 Commercial Collection Service.** Except as set forth below, Contractor must provide Commercial Collection Services to all Commercial Service Units in the Service Area pursuant to a schedule approved by City. All provisions of this Article 8 shall also apply to MFD Service Units and MFD Collection Service. This service is governed by the following terms and conditions:

8.01.1 Provision of Service. Contractor must provide Commercial Collection Service to all Commercial Service Units in the Service Area. The size of the container and the frequency (above the minimum) of collection will be determined between the Service Recipient and Contractor. The base Commercial Garbage Collection Service will include Commercial Recycling Service as described in Section 8.03.2 below, and Commercial Organic Waste

Collection Service as described in Section 8.04.2 below. Contractor shall assist City in identifying Commercial Service Units that qualify for waivers pursuant to 14 CCR Section 18984.11.

8.01.2 Required Capacity. Contractor must provide Commercial Recycling Service and Commercial Organic Waste Collection Service to all Commercial Service Units in the Service Area. For each Service Unit, Contractor must provide a minimum capacity of Commercial Recycling Service and Commercial Organic Waste Collection Service at no additional cost, as required in Sections 8.03.2 and 8.04.2.

8.01.3 Hours of Collection. Commercial Collection Service must be provided, commencing no earlier than 6:00 a.m., and terminating no later than 7:00 p.m., Monday through Sunday.

8.01.4 Manner of Collection. Contractor must provide Commercial Collection Service with as little disturbance as possible and must leave any Bin, Cart, or Roll-Off Container at the same point it originally located without obstructing alleys, roadways, driveways, sidewalks or mailboxes.

8.01.5 Purchase and Distribution of Bins and Carts for New Commercial Service Units. Contractor must also distribute Bins, Carts or Roll-off Containers to new Commercial Service Units that are added to Contractor's Service Area during the term of this Agreement.

8.01.6 Repair and Replacement of Bins and Carts. Contractor is responsible for repair of Bins and Carts. Within five (5) Work Days of notification by City or a Service Recipient of the need for such repairs, Contractor must repair the Bin or Cart or if necessary, remove the Bin or Cart for repairs and deliver a replacement Bin or Cart to the Service Recipient. Contractor's employees must avoid damage to Bins or Carts by unnecessary rough treatment. Any Bin or Cart damaged by the Contractor must be replaced by Contractor, at Contractor's expense, at no cost or inconvenience to the Service Recipient.

8.01.7 Contractor must comply with CalRecycle container requirements as they may apply during the term of this Agreement.

8.01.8 Ownership of Bins and Carts. Ownership of Carts, Bins, and Roll-off Containers distributed by Contractor is vested in Contractor.

## **8.02 Commercial Garbage Collection Service.**

8.02.1 Conditions of Service. Contractor must provide Commercial Garbage Collection Service to all Commercial Service Units in the Service Area whose Commercial Garbage is properly containerized in Garbage Carts, Bins, or Roll-off Containers, where the Garbage Carts, Bins, or Roll-off Containers are accessible.

8.02.2 Size and Frequency of Service. This service must be provided as deemed necessary and determined between Contractor and the Commercial Service Unit, but such

service must be received no less than one (1) time per week, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Commercial Service Unit and Contractor as long as the minimum frequency requirement is met. Contractor must provide containers as part of the Commercial Collection Service rates set forth in Exhibit 1.

8.02.3 Disposal Facility. All Commercial Garbage collected as a result of performing Commercial Garbage Collection Services must be transported to, and disposed of, at the Disposal Facility.

8.03 **Commercial Recycling Service.** This service is governed by the following terms and conditions:

8.03.1 Conditions of Service. Contractor must offer Commercial Recycling Service to all Commercial Service Units in the Service Area whose Recyclable Materials are properly containerized in Recycling Bins, Recycling Carts, or Recycling Roll-off Containers except as set forth below, where the Recycling Bins or Carts are accessible. Commercial Recycling Collection will occur Monday through Friday, and on Saturdays upon request and as necessary.

8.03.2 Base Commercial Recycling Service. All Commercial Accounts subscribing to Commercial Garbage Collection Service must receive weekly collection of Recycling Service. All MFD Service Recipients subscribing to MFD Garbage Collection Service must receive weekly Collection of Recycling in the MFD complex.

8.03.3 Size and Frequency of Service. This service will be provided as deemed necessary and determined between Contractor and the Service Recipient, but such service must be received no less than one (1) time per week, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Service Recipient and Contractor. The size of the container and the frequency (above the minimum) of Collection will be determined between the Service Recipient and Contractor.

8.03.4 Material Recovery Facility. All Recyclable Materials Collected as a result of performing Recycling Services must be delivered to the Material Recovery Facility. Failure to comply with this provision will result in Contractor being in default under this Agreement.

8.03.5 Compliance with AB 341. Contractor will provide Commercial Recycling Service in a manner to exceed compliance with AB 341, as it may be amended from time to time. Each calendar year, , Contractor will notify all Commercial Service Units of the requirements to comply with the law. Contractor must provide the volume of collection service that all Commercial Service Units in order to be in full compliance with the law. Contractor will conduct in-person outreach to all non-participating commercial covered generators a minimum of once per calendar year.

8.04 **Commercial Organic Waste Collection Service.** This service is governed by the following terms and conditions:

8.04.1 Conditions of Service. Contractor must offer Commercial Organic Waste

Collection Service to all Commercial Service Units in the Service Area whose Organic Waste is properly containerized in Organic Waste Bins or Organic Waste Carts, except as set forth below, where the Organic Waste Bins or Carts are accessible. Contractor will charge for collection of Organic Waste collected in Carts or Bins at the rates set forth in Exhibit 1. Contractor will provide a sufficient number of Carts or Bins and at a collection frequency to allow for any such Commercial Service Unit to utilize the collection of Organic Waste. Commercial Organic Waste Collection will occur Monday through Friday, and on Saturdays upon request and as necessary.

Contractor must comply with CalRecycle collection frequency requirements as they may apply during the term of this Agreement. If any such changes to collection frequency are adopted after January 1, 2022 that result in Contractor being allowed to reduce the frequency of Garbage or Organic Waste Collection, or otherwise cause Contractor to reduce its collection costs as a result in a change in Garbage or Organic Waste collection frequency, Contractor must provide City with its estimate of reduced ~~its~~ costs and shall make adjustments to the Maximum Service Rates.

8.04.2 Base Commercial Organic Waste Service. All Commercial Accounts subscribing to Commercial Garbage Collection Service must receive weekly Organic Waste Collection service. All MFD Service Recipients subscribing to MFD Garbage Collection Service must receive weekly Organic Waste Collection service. The actual configuration of Organic Waste Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with Contractor.

8.04.3 Size and Frequency of Service. This service will be provided as deemed necessary and determined between Contractor and the Service Recipient, but such service must be received no less than one (1) time per week with no exception for holiday(s).

8.04.4 Organic Waste Processing Services. Contractor must ensure that all Organic Waste Collected from Commercial generators pursuant to this Agreement is not disposed of in a landfill, except for residue resulting from processing, in accordance with AB 939, AB 1826, AB 1594, SB 1016 and SB 1383, and any subsequent or other Applicable Law.

8.04.5 Organic Waste Processing Facility. All Organic Waste Collected as a result of performing Organic Waste Collection Services must be delivered to the Organic Waste Processing Facility in compliance with SB 1383. Failure to comply with this provision may result in Contractor being in default under this Agreement.

8.04.6 Organic Waste - Changes to Services. Should changes in law arise that necessitate any additions or deletions to the services described in this Section 8.04 including the type of items included as Organic Waste, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the services and compensation.

8.04.7 Compliance with AB 1826 and SB 1383. Contractor will provide Commercial Recycling Service in a manner to exceed compliance with AB 1826 and SB 1383, as they may be amended from time to time. Starting January 1, 2022 and each January 1st thereafter, Contractor will notify all Commercial Service Units of the requirements to comply with the law. Contractor must provide the volume of collection service that all Commercial Service Units need in order to

be in full compliance. Contractor shall conduct in-person outreach to all non-participating commercial covered generators a minimum of once per calendar year.

## **ARTICLE 9: CITY SERVICES PROVIDED BY CONTRACTOR**

**9.01 City Collection Services.** City Collection Services shall be provided at no cost to City and shall be governed by the following terms and conditions:

**9.01.1 Conditions of Service.** Contractor shall provide Solid Waste Collection Services to all City Service Units. Contractor must provide City Collection Services in the same manner as service provided to Commercial Service Units in Article 8.

**9.01.2 Construction and Demolition Debris and Other Temporary Collection.** Service related to City construction or public works projects undertaken on force account solely by City employees, shall be provided by Contractor at no cost to City. Contractor shall Collect C&D materials from C&D Collection Sites and Transport the C&D to permitted facilities Contractor designates.

**9.01.3** Contractor shall receive written permission from City before placing any containers on City owned property for service.

**9.01.4** Contractor shall make contractual arrangement to allow the delivery of Garbage, Recyclable Materials, Organic Waste, Construction and Demolition Debris, Bulky Items, and street sweeping debris collected by City's Public Works operations to be delivered to permitted facilities designated by Contractor.

## **ARTICLE 10: COLLECTION ROUTES**

**10.01 Service Routes.** Contractor must provide City with maps precisely defining Collection routes, together with the days and the times at which Collection will regularly commence.

**10.02 Service Route Changes.** Contractor must submit to City, in writing, any proposed route change (including maps thereof) not less than forty-five (45) calendar days prior to the proposed date of implementation. Contractor may not implement any route changes without the prior review of City Manager. If the change will change the Collection day for a Service Recipient, Contractor must notify those Service Recipients in writing of route changes not less than fifteen (15) days before the proposed date of implementation.

**10.02.1** City reserves the right to conduct audits of Contractor's Collection routes. Contractor must cooperate with City in connection therewith, including permitting City employees or agents, designated by City Manager, to ride in the Collection vehicles in order to conduct the audits. Contractor has no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by City Manager to conduct such audits.

## ARTICLE 11: COLLECTION EQUIPMENT

**11.01 General Provisions.** All equipment used by Contractor in the performance of services under this Agreement must be of a high quality and comply with all Applicable Laws and meet or exceed all applicable air quality standards, including all applicable provisions of San Diego Air Pollution Control District.

**11.02 Vehicles.** No later than January 1, 2023, all route collection vehicles used by Contractor under this Agreement shall be powered by Renewable Natural Gas (RNG), or other alternative fuel to diesel both generated by Contractor's Anaerobic Digestion Facility and purchased. Upon City's request, Should Contractor rely on RNG as its source of fuel, Contractor shall obtain and provide City with a written certification by an authorized representative certifying that the Contractor owned in-vessel digestion facility or fuel produced by another RNG facility used by the Contractor produces the RNG in quantities corresponding to City's Organics Waste collected by Contractor consistent with the requirements of 14 CCR Section 18993.1(h). Contractor shall maintain records of the amount of RNG purchased and shall report this information to City on a biannual basis. Contractor shall agree to allow City the right to report this RNG usage toward City's fulfillment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.

**11.03 Registration; Inspection.** All vehicles used by Contractor in providing Collection Services under this Agreement, except those vehicles used solely on Contractor's premises, are to be registered with the California Department of Motor Vehicles. In addition, each such vehicle must be inspected by the California Highway Patrol in accordance with Applicable Law.

**11.04 Maintenance Log.** Contractor must maintain a maintenance log for all Collection vehicles. The log must at all times be accessible to City by physical inspection upon request of City Manager, and must show, at a minimum, each vehicle's Contractor assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

## ARTICLE 12: CONTRACTOR'S OFFICE

**12.01 Contractor's Office.** Contractor must maintain an office where complaints can be received that must be open during from 8:00 a.m. to 5:00 p.m. on Monday through Friday. Contractor must provide either a local or toll-free telephone number, and a telephone answering service or mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours must be addressed the next Work Day morning.

Contractor shall keep records of all Service Recipient's complaint calls for at least three (3) years, collected on a calendar year cycle. The Contractor must include a summary of the call, the time and date of the call, and, if a complaint was made, the resolution to the complaint. These records will also be made available to City upon request, as pursuant to Section 15.01.8 of this Agreement.

12.02. **Complaints.** Contractor must provide a procedure for the receipt and investigation of complaints of alleged violations of SB 1383 and CalRecycle regulations. Contractor shall comply with the complaint and investigation requirements for alleged violations of SB 1383 pursuant to 14 CCR 18995.3. Contractor shall maintain records of complaint investigations as required by SB 1383 and CalRecycle regulations.

12.03 **Emergency Contact.** Contractor must provide City Manager with an emergency phone number where the Contractor can be reached outside of the required office hours.

12.04 **Multilingual/TDD Service.** Contractor must at all times maintain the capability of responding to telephone calls in English and such other languages as City may direct. Contractor must at all times maintain the capability or responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

## ARTICLE 13: CONTRACTOR'S SUPPORT SERVICES

13.01 **Public Outreach and Education Services.** Contractor, at its own expense, must prepare, submit and implement an annual Public Education and Outreach Program beyond City's Public Education and Outreach Program. Contractor shall obtain approval from City Manager or City Manager's Designee on all Contractor-provided advertising, promotional, or service-related materials used within City before publication, distribution, and/or release. City Contract Manager or City Manager's designee, in their discretion, shall have the right to deny the use, or request modifications, of any materials or content. Contractor acknowledges that they are part of a multi-Party effort to operate and educate the public about the regional integrated waste management system. Contractor shall cooperate and coordinate with City Contract Manager or City Manager's Designee on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. Contractor's initial Sustainability Plan must be submitted annually for City approval as a part of Contractor's Annual reporting requirements pursuant to Article 15 of this Agreement.

13.01.1 Sustainability Representative. The Contractor will collaborate with City staff to make available reasonable use of one or more Contractor representatives to assist City in meeting requirements of the California Integrated Waste Management Act (IWMA) of 1989. On an annual basis, Contractor will make an individual available as needed to implement, in cooperation with City, Recycling programs in the Service Area on an average of approximately two days a week.

13.01.2 Diversion and Sustainability Work Plan. Collaboratively, Contractor and City staff will develop an annual Waste Diversion and Sustainability Work Plan to help guide Contractor's staff's work efforts. This program must be designed to increase diversion and Service Recipients participation and should target certain Recyclable Materials or "problem" areas of Contractor's Service Area where improvements can be maximized. Targets of outreach should be based on local trends and recycling patterns based on information obtained by both City Manager and Contractor staff. To the extent possible, Contractor will work to modernize its public outreach and education services throughout the term of this Agreement by providing outreach materials to Service Recipient electronically (e.g., via email). The parties will make good faith efforts to complete each annual Work Plan as a part of Contractor's Annual reporting

requirements pursuant to Article 15 of this Agreement.

13.01.3 Website. Contractor will maintain a website that describes and promotes the use of the available Recycling services. The Contractor will consult, collaborate and coordinate its activities with City regarding Recycling programs so that City is fully informed and provided as opportunity for input to the Contractor's Recycling programs.

13.01.4 Outreach Activities. Contractor's public education and outreach strategy shall focus on improving Service Recipients' 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 13.01.4, should: (i) inform Service Recipients 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 Service Recipients 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 Organic Waste; (iii) clearly define Exempt Waste and educate Service Recipients about the hazards of such materials and their opportunities for proper handling; (iv) discourage Service Recipients from buying products if the product and its packaging are not readily reusable, recyclable, or compostable; (v) encourage the use of compost and mulch; and (vi) encourage generators to purchase products/packaging made with Recyclable Materials. The cumulative intended effect of these efforts is to reduce each Service Recipients' reliance on Contractor-provided solid waste container service and, ultimately, disposal, and Contractor agrees to support and not undermine or interfere with such efforts.

13.01.4.1 On an annual basis, the Contractor will coordinate Recycling and Organics education and outreach programs for Residential and Commercial Service Recipients, in conformance with Applicable Laws, including but not limited to, SB 1383 (including 14 CCR 18985.1(a) and 18985.2), AB 1826, AB 939 and AB 341, in coordination with City. This program will consist of the following:

13.01.4.1.1 Not less than once per year during each rate year, Contractor shall prepare information specified in 14 CCR Section 18985.1(a) and make such information available in an electronic format through the Contractor's website.

13.01.4.1.2 Contractor will attend public events and host booths to promote recycling education and awareness. Contractor will work with City to identify which special events will be attended.

13.01.4.1.3 Contractor will distribute educational material to Service Recipients on an annual basis. Examples include recycling tips, battery and bulb education, proper Cart placement, resource information, and HHW education. Contractor shall mail or electronically distribute such material to Service Recipients.

13.01.4.1.4 Service Recipients will have access to Contractor's local website to find information specific to City's programs. The Contractor will



1357 ensure that information provided on the website is maintained and up-to-date.  
1358 This content will include proper container set out, educational materials,  
1359 newsletters and program descriptions. Service Recipients will also have the ability  
1360 to use Contractor's web-based service request system.

1361 13.01.4.1.5 Contractor and City will work with local media to ensure  
1362 information is communicated to the community (new programs, events, recycling  
1363 information, etc.).

1364 13.01.4.1.6 Contractor to use options, such as: local newspaper, broadcast  
1365 news, websites, social media, homeowners' associations (HOAs), and civic  
1366 groups.

1367 13.01.4.1.7 Contractor will assist City in supporting Food Waste and  
1368 Green Waste diversion surveys and programs.

1369 13.01.4.1.8 Contractor will complete Garbage, Organic Waste, and  
1370 Recycling audits for Commercial Service Recipients and provide  
1371 recommendations to Commercial Service Recipients on how to improve overall  
1372 resource efficiency.

1373 13.01.4.1.9 Contractor will provide education materials to regulated  
1374 entities not in compliance beginning on January 1, 2022 and at least annually  
1375 every year thereafter.

1376 13.01.4.1.10 Contractor will provide generators with information on  
1377 properly separating materials, organic waste prevention, on-site recycling,  
1378 methane reduction benefits, how to recycle organic waste, approved haulers,  
1379 information related to public health and safety and environmental impacts  
1380 associated with landfill disposal, self-haul requirements, and edible food donation.

1381 **13.02 Annual Collection Service Notice.** Each year during the term of this Agreement,  
1382 Contractor must publish and distribute (by mail or electronically) a notice to all Service Units  
1383 regarding the Collection Service programs. The notice must contain at a minimum: definitions of  
1384 the materials to be Collected; procedures for setting out the materials; the days when Garbage  
1385 Collection Services, Recycling Services, and Organic Waste Collection Services will be  
1386 provided; City customer service phone number; instructions on the proper filling of Containers;  
1387 instructions as to what materials may or may not be placed in Recyclable Materials or Organic  
1388 Waste Containers; and the amount of overage and contamination fees in the event of non-  
1389 compliance. The notice must also advertise the availability of on-premises Collection Services,  
1390 SFD Bulky Items Collection Services and Temporary Construction and Demolition Debris  
1391 Collection Services, and specifically the availability of no-charge on-premises Collection  
1392 Services for specific qualified Service Recipients as described in Section 7.02.1. The notice must  
1393 also advertise the date and location of upcoming free paper shredding events as described in  
1394 Section 3.16. The notice must be provided in English, and other languages as directed by City  
1395 and must be distributed by Contractor no later than July 1 of each year.

1396 **13.03 Recovered Organic Waste Product Procurement.** At no cost to City, the Contractor

will assist city with meeting procurement requirements of SB 1383 as specified in 14 CCR 18993.1. In order to meet the required amount as set by CalRecycle in the process identified in 14 CCR 18993.1(b), City will receive credit for the Renewable Natural Gas (RNG) used by Contractor as specified herein in Sec 11.02. If the usage of this RNG is insufficient for City's required procurement amount per 14 CCR 18993.1, then Contractor will provide City with Mulch or Compost in an amount sufficient to satisfy the procurement requirements of 14 CCR 18993.1 Contractor must deliver mulch or compost materials at a time and location mutually agreeable between City and Contractor. Delivered mulch or compost can be in bulk form or bagged.

**13.04 Edible Food Recovery Support.** At no cost to City, Contractor must provide support to City's Edible Food Recovery program as required under SB 1383. Contractor support may include educating commercial edible food generators, and providing records of site visits, conducting education efforts, and listing food recovery organizations.

**13.05 Additional Outreach Programs and Services.** Contractor will provide additional public outreach services and programs as requested by City at a price to be mutually agreed upon by written agreement between the Contractor and City Manager. This agreement will ultimately take the form of a standard Contractor personal services agreement. In the event the Contractor and City Manager cannot reach a mutually agreed upon price for the requested service or program, City shall have the right to procure the service of other vendors or contractors to provide the requested public outreach services, and Contractor shall reimburse City for the reasonable costs incurred to obtain the public outreach services.

**13.06 Communications in Non-English Languages.** Consistent with 14 CCR 18985.1(e), as the same may be amended from time to time, Contractor will provide communications in non-English languages spoken by a substantial number of the public that are provided organic waste collection services under this agreement.

## **ARTICLE 14: EMERGENCY SERVICE**

**14.01 Revised Services During an Emergency.** In the event of a natural disaster or Act of God, City Manager may grant the Contractor a variance from regular routes and schedules, which will not be withheld unreasonably. As soon as practicable after such event, Contractor must advise City Manager when it is anticipated that normal routes and schedules can be resumed. City Manager will make an effort through the local news media and in coordination with City to inform the public when regular services may be resumed. The clean-up from a natural disaster or Act of God may require that Contractor hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the natural disaster or Act of God. Contractor will receive additional compensation for extraordinary clean-up directly in response to a natural disaster or Act of God above the normal compensation contained in this Agreement, to cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses based on the rates set forth in Exhibit 1 provided Contractor has first secured written authorization and approval from City through City Manager. City will be given equal priority and access to resources as with other franchise jurisdictions held by Contractor or its affiliates.

## ARTICLE 15: RECORDS

### 15.01 Record Keeping.

**15.01.1 General.** Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational, and other records related to its performance as shall be necessary to provide reporting required by this Agreement and Applicable Law and to demonstrate compliance with this Agreement and Applicable Law (such as, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations).

Record keeping and reporting requirements specified in this Agreement shall not be considered a comprehensive list of reporting requirements. In particular, this Article 15 is intended to highlight the general nature of records and reports and their minimum content and is not meant to comprehensively define the scope and content of the records and reports that Contractor is required to maintain and report by Applicable Law or this Agreement. Upon written direction or approval of City, the records and reports required by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

Contractor shall maintain adequate records, and corresponding documentation, such that the Contractor is able to produce accurate monthly and annual reports and is able to provide records to verify such reports. Contractor will make these records available and provide to City any record or documentation necessary for City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations; and, other current or future federal, State, or local statutes and regulations, as amended. Upon request by City, Contractor shall provide access to Contractor's requested records in a timely manner, not to exceed ten (10) Business Days from the time of City's request to Contractor.

**15.01.2 Record Retention and Security.** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Contractor's records shall be stored in one central location, physical or electronic, that can be readily accessed by Contractor. Unless otherwise required by law, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus 5 years after its expiration or earlier termination. Records and data shall be in chronological and organized form and readily and easily interpreted. Contractor shall maintain adequate record security in such a manner that fulfills state and federal obligations and reserves records from events that can be reasonably anticipated such as a fire, theft, data breach, and an earthquake. Electronically-maintained data and records shall be protected and backed-up. To the extent that Contractor utilizes its computer systems to comply with record keeping and reporting requirements under this Agreement, Contractor shall, on a monthly basis, save all system-generated reports supporting those record keeping and reporting requirements in a static format in order to provide an audit trail for all data required.

**15.01.3 Records Compilation for State Law Purposes.** Contractor must maintain full, complete records required by SB 1383, including but not limited to, the requirements pursuant to 14 CCR Sections 17414.2, 17896.45, 18815.4, 18815.5, 18815.7, 18984.4, 18984.6, 18984.14,

and 18985.3. Such records will be subject to copy, audit, and inspection. Contractor shall maintain accurate records for its operation, including, but not limited to, Discarded Materials quantities Collected and quantities Transported to or Transferred to each Approved/Designated Facility, listed separately by material type, Customer type, and Facility. Records shall be maintained in such form by methods that facilitate the use of data for the production of reports as needed. Contractor will make these records available and provide to City any record or documentation necessary for City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, AB 1595, and SB 1383 statutes and corresponding regulations; and, other current or future local, federal, or State statutes and regulations, as amended.

15.01.4 Accounting Records. Contractor must maintain full, complete, and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records will be subject to audit, copy, and inspection. Gross Receipts derived from provision of the Collection Services, whether such services are performed by Contractor or by a subcontractor or subcontractors, will be recorded as revenues in the accounts of Contractor. Contractor must maintain and preserve all cash, billing and disposal records for a period of not less than three (3) years following the close of each of Contractor's fiscal years. Contractor shall maintain adequate record security in such a manner that fulfills state and federal obligations and reserves records from events that can be reasonably anticipated such as a fire, theft, data breach, and an earthquake. 15.01.5 CERCLA Defense Records. City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, City regards its ability to prove where Collected Recyclable Materials, Organic Materials, and Solid Waste are taken for Transfer, Processing, or Disposal. Contractor shall maintain records which can establish where Recyclable Materials, Organic Materials, and Solid Waste Collected were Transferred, Processed, or Disposed. This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to City (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or Disposing of them.

15.01.6 Report Format. City shall provide to Contractor the format for each report submittal not later than thirty (30) days prior to the due date for such report. If City fails to specify the format as required, Contractor shall use the report format specified for the prior reporting period.

15.01.7 Submittal Process. All reports shall be submitted to City, as directed by the City Manager or City Manager's Designee. Reports shall be submitted electronically via email or uploaded to a document sharing platform agreed upon by the Parties. Annual reports shall be submitted within forty-five (45) days after the end of the reporting year. Reporting year shall run from January 1 – December 31.

15.01.8 Interim Report Requests. Contractor shall comply with any City interim reporting request made by City in effort to comply with CalRecycle inspections or for any other reason. Contractor must make a good faith effort to comply such that City's records are complete prior to

1523 any CalRecycle inspection.

1524 15.01.9 Notice of Deficiency. Contractor shall inform City if Contractor receives any  
1525 notice from CalRecycle or the State of California regarding any notice of deficiency or non-  
1526 compliance with state law.

1527 15.01.10 Failure to Report. Failure of Contractor to comply with the reporting requirements  
1528 as set forth in this Section may require indemnification in accordance with Section 19.06.  
1529 Contractor's repeated failure to submit reports, and/or failure to submit reports on time, may be  
1530 deemed an event of default and may result in the termination of the Agreement at the discretion of  
1531 City Contract Manager in accordance with this agreement.

1532 **15.02 Annual Reporting.** Contractor shall provide an Annual Report, covering the most  
1533 recently-completed calendar year, in accordance with the format and submittal requirements of  
1534 Article 15. Annual reports shall include all information required by SB 1383, including but not  
1535 limited to, the information required under 14 CCR Sections 17414.2, 17896.45, 18815.4,  
1536 18815.5, 18815.7, 18984.4, 18984.6, 18984.14, 18985.3, 18994.2 and shall include the  
1537 information in the following subsections:

1538 15.02.1 Tonnage report.

1539 15.02.11 Contractor shall report the total quantities in Tons of Discarded Materials  
1540 Collected, Transferred, Processed, and Disposed by the Contractor, all of which shall be  
1541 based on actual certified scale weights for each load, if available. Tonnage shall be reported  
1542 separately by material type, customer/sector type, or by facility, or as otherwise requested  
1543 by the City.

1544 15.02.2 Diversion Report and Diversion Plan.

1545 15.02.21 Diversion report must include annual totals and averages for the previous year  
1546 and any other requirements pursuant SB 1383. Contractor must deliver to City diversion  
1547 data for the franchised services performed under this Agreement in the format specified by  
1548 City.

1549 15.02.22 Diversion Plan shall describe programs and activities to be taken by Contractor  
1550 that will achieve a minimum annual Franchised Diversion Rate as described in Section  
1551 5.03 for the upcoming year.

1552 15.02.3 Collection Services Report.

1553

1554 15.02.31 A summary of Customer subscription data, including the number of accounts; the  
1555 total number of Generators enrolled with Contractor for service, listed separately by service  
1556 level and Container type (Cart, Bin, and Roll-Off service), separately by Single-Family, Multi-  
1557 Family, and Commercial Customers, and separately for each type of Discarded Material; and  
1558 the number of Bulky Items Collections performed.

1559 15.02.32 The number of C&D Collection Sites served and Tonnage Collected, Tonnage  
1560 Diverted, and Diversion level for each C&D Collection Sites.

1561 15.02.33 The number of waiver reverifications performed by the Contractor, if any, including  
1562 a copy of documentation for each reverification inspection, which shall include, at a minimum:

1563 the Generator's name, address, and Generator type; the type of waiver being verified; any  
1564 photographic or other evidence collected during the inspection; and the resulting recommended  
1565 conclusion by the Contractor regarding the validity of the waiver. The Contractor shall provide  
1566 a summary of recommendations to City of all waivers which the Contractor concludes to no  
1567 longer be warranted.

1568 15.02.34 Number of Bulky Item/Reusable Materials Collection events by Customer Type.

1569

1570 15.02.4 Processing Facility Report.

1571 15.04.21. Temporary Equipment or Operations Failure: If the Contractor is granted a  
1572 processing facility temporary equipment or operational failure waiver, the Contractor shall  
1573 include the following documents and information:

1574 1. The number of days the Processing Facility temporary equipment waiver or  
1575 operation failure waiver was in effect;

1576 2. Copies of any notifications sent to City and copies of City notices to Contractor;

1577 3. Documentation setting forth the date of issuance of the waiver, the timeframe for  
1578 the waiver; and,

1579 4. A record of the tons of Organic Waste, source separated Recyclable Materials,  
1580 source separated Gray Container Organic Waste, and/or Gray Container Waste  
1581 redirected to an alternative facility or Disposed at an approved disposal facility as  
1582 a result of the waiver, recorded by Collection vehicle or transfer vehicle  
1583 number/load, date, and weight.

1584 15.02.5 Customer Service Log. A summary of the type and number of complaints and their  
1585 resolution,

1586 15.02.6 Homeless Encampments and Illegal Disposal Sites: The total Tonnage amount of  
1587 Discarded Materials, listed separately by Discarded Material type, removed from homeless  
1588 encampments and illegal disposal sites as part of an abatement activity, listing each Collection  
1589 event separately by date, location, and Tonnage Collected.

1590 15.02.7 Quarantined Organic Waste: A record of all compliance agreements for quarantined  
1591 Organic Waste that are Disposed of, including the name of Generator, date issued, location of final  
1592 disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a  
1593 Landfill.

1594 15.02.8 Public Education and Outreach Support. A summary the status of activities identified in  
1595 the annual public education plan.

1596 15.02.9 Compliance Monitoring and Enforcement Report. To include:

1597 1. A summary of the total number of SB 1383 Regulatory non-compliance complaints that  
1598 were received and investigated.

- 1599 2. The total number of3, Hauler Route reviews conducted pursuant to Section 3.17 of the  
1600 Agreement.
- 1601 3. The number of inspections conducted by type for Commercial Businesses.
- 1602 4. A copy of written and/or electronic records and documentation for all audits, studies,  
1603 compliance reviews, and all other inspections conducted pursuant to Section 3.17 of the  
1604 Agreement.
- 1605 5. The number of Commercial Businesses that were included in a compliance review  
1606 performed by the Contractor, and the number of violations found and corrected through  
1607 compliance reviews, including a list with each Generator's name or account name, address,  
1608 and Generator type.
- 1609 15.02.10 Vehicle and Equipment Inventory. To include:
- 1610 1. If applicable, the name, physical location, and contact information of each entity,  
1611 operation, or facility from whom the RNG was procured.
- 1612 2. If applicable, the total amount of RNG procured by the Contractor for use in Contractor  
1613 vehicles, in diesel gallon equivalents (DGE), including copies of any receipts, invoices, or  
1614 other similar documentation evidencing procurement. In addition to the amount procured,  
1615 Contractor shall include the total amount actually used in Contractor vehicles in the  
1616 calendar year, if these values are different.
- 1617 15.02.11 Upon Incident Reporting. City reserves the right to request additional reports or  
1618 documents in the case of unforeseen events or additional requirements imposed upon City. The  
1619 Contractor shall provide the requested reports, documents, or information within ten (10)  
1620 Business Days upon receipt of the request or within a timeframe determined by the Contract  
1621 Manager, which shall not to exceed ten (10) days.
- 1622 15.02.12 CALGreen Code Compliance. Contractor shall maintain records of any information or  
1623 documentation required to demonstrate compliance with the California Green Building Standards  
1624 Code (CALGreen Code). City may request that this information be included in the monthly or  
1625 annual report(s), as it pertains to the services provided under this Agreement. City shall notify  
1626 the Contractor of this request within ten (10) Business Days prior to the submittal deadline of the  
1627 monthly and/annual report where the information is to be included.
- 1628 15.02.13 Buy-Recycled Policy Report. Contractor shall maintain records evidencing compliance  
1629 with the "Buy-Recycled Policy." Contractor shall submit a copy these records and/or a summary  
1630 report to City, upon City request.
- 1631 15.02.14 Customized Reports. City reserves the right to request Contractor to prepare and  
1632 provide customized reports from records Contractor is required to maintain.
- 1633 15.02.15 Financial Reports. Contractor must prepare an annual Financial Report for submittal to  
1634 City. At a minimum, the Financial Report must include the number of SFD Service Units and  
1635 Commercial Service Units provided with Collection Services, including any additional services,  
1636 the Contractor's gross billing and amount collected for each type of Service Unit, identification  
1637 and information related to delinquent accounts pursuant to Section 4.03 of this agreement, and

the cost of residual disposal.

15.02.16 Additional Reports. Contractor must furnish City with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period. Contractor will provide reasonable assistance to City in preparing annual reports to CalRecycle, including but not limited to, supplying required data for preparation of the reports.

**15.02 Quarterly Reporting.** Contractor shall provide the following on a quarterly basis:

15.02.2 The total number of Contamination Violation Notices issued, categorized by type of Generator.

15.02.3 The number of violations that were resolved, categorized by type of Generator.

15.02.4 Copies of all Contamination Violation Notices and education materials issued to non-compliant Generators.

15.02.5 Any other information reasonably requested by City or specified in contamination monitoring provisions of this agreement.

## **ARTICLE 16: NONDISCRIMINATION**

16.01 **Nondiscrimination.** In the performance of all work and services under this Agreement, Contractor may not discriminate against any person on the basis of such person's race, color, sex (including pregnancy, childbirth, and related medical conditions), age, ancestry, national origin, religion, marital status, or sexual orientation, gender identify and gender expression, disability (physical and mental), medical conditions, AIDS/HIV, citizenship status and genetic information, military or veteran status, political affiliations or activities, and status as a victim of domestic violence, assault or stalking. Contractor must comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

## **ARTICLE 17: SERVICE INQUIRIES AND COMPLAINTS**

17.01 **Contractor's Customer Service.** All service inquiries and complaints from Service Recipients will be directed to Contractor. A representative of Contractor must be available to receive the complaints during normal business hours. All service complaints will be handled by Contractor in a prompt and efficient manner.

17.02 Contractor will utilize the Customer Service Log to maintain a record of all inquiries and complaints in a manner prescribed by City. Contractor must maintain a record of all inquiries and complaints for a minimum of three (3) years, available upon City request.

## **ARTICLE 18: ACTS OF GOD AND NATURAL DISASTERS**

18.01 If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation,



acts of the State of California or the U.S. Federal government, acts of God or natural disasters, whether of the kind enumerated or otherwise, that are not reasonably within the control of the affected party, then the affected party will be excused from performance hereunder during the period of such disability.

18.02 The party claiming excuse from performance must promptly notify the other party when it learns of the existence of such cause, including the facts constituting such cause, and when such cause has terminated.

18.03 The interruption or discontinuance of services by a party caused by circumstances outside of its control will not constitute a default under this Agreement.

## ARTICLE 19: INSURANCE AND INDEMNIFICATION

19.01 **Insurance Requirements.** Contractor shall obtain and maintain during the entire Term of this Agreement, and shall maintain for a minimum of (5) years after contract completion, the following insurance policies from companies admitted or authorized in the State of California to transact insurance business in the class of the type provided and shall have a general policyholder's rating of not less than an "A" and a financial size of not less than ten million dollars (\$10,000,000) (currently Class V) or better in the most current A.M. Best's Key Rating Guide; which standards shall be met by the issuing company and not by means of the standing or assets of their parent, subsidiary or affiliate entities:

19.01.1 Comprehensive General Liability. Coverage shall include premises-operations, products/completed operations (10 years), broad form property damage, personal injury, bodily injury and blanket contractual liability, shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits, there shall be no cross-liability exclusion, there shall be no land subsidence exclusion, and there shall be no prohibition against payment of a SIR or deductible in the event of the named insured's failure to do so, in the following coverage amounts:

- i. \$ 10,000,000 per occurrence;
- ii. \$ 15,000,000 general aggregate;
- iii. \$ 2,000,000 property damage or bodily injury per occurrence;
- iv. \$ 3,000,000 cyber liability insurance.

19.01.2 Automobile Liability. Coverage shall include owned, hired and non-owned vehicles, shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits, there shall be no cross-liability exclusion, and there shall be no prohibition against payment of a SIR or deductible in the event of the named insured's failure to do so, in the following coverage amounts:

- i. \$10,000,000 combined single limit;
- ii. \$2,000,000 property damage or bodily injury per occurrence.

19.01.3 Workers' Compensation Insurance. Amounts shall be in accordance with statutory requirements. Employer's Liability insurance shall be in the minimum amount of \$1,000,000 per accident or disease.

i. By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Agreement.

ii. The Contractor shall require each subcontractor to comply with the requirements of Section 3700 of the Labor Code. Before commencing any Work, the Contractor shall cause each subcontractor to execute the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Agreement."

19.01.4 Pollution Liability. Coverage shall be written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$2,000,000 dollars per claim and \$4,000,000 in aggregate. At the required meet and confer of the parties pursuant to Section 19.01.5, Contractor must disclose any proportionally sized contract that provides for pollution liability coverage that exceeds the coverages of this agreement. In the event insurance and coverage amount requirements as set forth in this Section 19.01.4, or any component thereof, is/are exceeded in any proportionally sized franchise agreement, amended franchise agreement, and/or restated franchise agreement between Contractor and any other public agency ("Other Agency Agreement"), the requirements set forth herein shall be deemed to have automatically increased to match that of said Other Agency Agreement as to the insurance levels or coverages which exceed those set forth above in this Section 19.01.4.

19.01.5 Policy limits as set forth in this Article 19 shall apply for a period of five years; Parties agree to meet and confer at five-year intervals regarding coverage limits.

19.01.6 Limits may be met by a combination of primary and umbrella/excess liability policies, provided that: (i) the umbrella/excess policy carriers meet the requirements noted above, (ii) there is sufficient umbrella/excess coverage provided to exceed the specified coverage requirements, so that any claim event will not result in a deficiency in any of the coverage requirements described above; and (iii) umbrella/excess insurance amounts may be applied only once to meet the insurance coverage requirement for only one line of

deficient underlying insurance unless the policy specifically provides otherwise, in which event the portion of the policy so providing will be submitted for Agency's review to its satisfaction.

19.02 **Endorsements.** Endorsements shall be obtained so that each policy contains the following four provisions, the wording for which shall be to the satisfaction of the City Attorney:

- (a) **Additional Insured.** (Not required for Professional Errors and Omissions Liability Insurance or Workers' Compensation.) "The City of San Marcos, and its elected and appointed boards, directors, officers, agents and employees are additional insureds with respect to the agreement with City and the services to be provided thereunder."
- (b) **Preferred Forms.** General Liability: CG 2010 11 85, CG 2037 10 01 or equivalent.
- (c) **Notice.** "Said policy shall not terminate, nor shall it be canceled or reduced in coverage without thirty (30) days' written notice to the City of San Marcos."
- (d) **Primary Coverage.** "The policy provides primary coverage to City of San Marcos and its elected and appointed boards, officers, agents, and employees. It is not secondary or in any way subordinate to any other insurance or coverage maintained by City of San Marcos."
- (e) **Waiver of Subrogation.** "We waive any right of recovery we may have against the City of San Marcos and its elected and appointed boards, officers and employees because of payments we make for injury or damages arising out of your ongoing operations or your work done under contract with the City of San Marcos."

19.03 **Insurance and Indemnity Obligations Separate.** The requirements as to the types and limits of insurance coverage to be maintained by Contractor as required by this contract, and any approval of such insurance by Agency, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement including, but not limited to, the indemnification provision.

19.04 **Insurance Certificates.** Contractor shall provide Agency with certificates of insurance and accompanying endorsements showing the insurance coverages described in the paragraphs above, in a form and content approved by the City, prior to beginning Work under this Agreement.

City utilizes an online Evidence of Coverage database, PINS Advantage, to electronically maintain the insurance documents required by this Section. City will send Contractor an automatic email through the PINS system with information to provide to Contractor's insurance representative to upload insurance documents into the City's system.

1807 19.05 **Bond.** The following bond shall be executed in favor of Agency and submitted by  
1808 Contractor:  
1809

1810 Within (7) calendar days of City's notification to Contractor that City has executed this Agreement,  
1811 Contractor shall file with the City a bond, in a form acceptable to the City Attorney, payable to the  
1812 City, securing the Contractor's performance of its obligations under this Agreement and such bond  
1813 shall be renewed annually if necessary, so that the performance bond is maintained at all times  
1814 during the Term. The principal sum of the bond shall be Two Million Dollars (\$2,000,000), which  
1815 shall be adjusted every three (3) years, commencing with rate period three, to equal (3) months of  
1816 the prior rate period's annual gross receipts. The bond shall be executed as surety by a corporation  
1817 authorized to issue surety bonds in the State of California that has a rating of A or better in the  
1818 most recent edition of the Best's Key Rating Guide, and that has a record of service and financial  
1819 condition satisfactory to City.  
1820

1821 City shall have the right to draw against the faithful performance bond in the event of a breach or  
1822 default of Contractor or the failure of Contractor to perform fully any obligation under this  
1823 agreement. Within five (5) days of receipt of notice from City, Contractor shall renew or replace  
1824 such sums of money as needed to bring the faithful performance bond current.  
1825

1826 19.06 **General Indemnification.** Contractor must indemnify, defend and hold harmless City,  
1827 City's contractors, and its elected and appointed public officials, officers, directors, employees,  
1828 agents and other contractors of each of them (collectively, "City Indemnitees"), from and against  
1829 any and all claims, costs, losses and damages (including but not limited to all fees and charges of  
1830 engineers, architects, attorneys and other professionals as well as all court or other dispute  
1831 resolution costs), liabilities, expenditures or causes of action of any kind (including negligent,  
1832 reckless, willful or intentional acts or omissions of the Contractor, any subcontractor, any  
1833 supplier, any person or organization directly or indirectly employed by any of them to perform or  
1834 furnish any services or anyone for whose acts any of them may be liable), arising from, relative  
1835 to or caused by the performance of the services. (collectively, "Claims") This indemnity includes  
1836 but is not limited to Claims attributable to bodily injury, sickness, disease or death and to injury  
1837 or destruction of tangible property. Contractor agrees, at Contractor's expense, after written  
1838 notice from City, to defend any action against City. Indemnitees that falls within the scope of this  
1839 indemnity using counsel selected by Contractor and approved by City in its reasonable judgment.  
1840 Additionally, if Contractor, after receipt of written notice from City, fails to make any payment  
1841 due under this Agreement to City, Contractor must pay any reasonable attorneys' fees or costs  
1842 incurred by City in securing any such payment from Contractor. Payment of any amount due  
1843 pursuant to the foregoing indemnity must, after receipt of written notice by Contractor from City  
1844 that such amount is due, be made by Contractor prior to City being required to pay same, or in  
1845 the alternative, City, at City's option, may make payment of an amount so due and Contractor  
1846 must promptly reimburse City for the same, with interest thereon at the rate of 12% per annum  
1847 simple interest from the date of receipt by Contractor of written notice from City that payment is  
1848 due.

1849 19.07 **Diversion Indemnification.** Subject to the requirements of Public Resources Code  
1850 Section 40059.1, which will control in the event of any conflict with the provisions of this  
1851 Section, Contractor agrees to protect and defend City Indemnitees with counsel selected by  
1852 Contractor and approved by City, to pay all attorneys' fees, and to indemnify and hold City  
1853 Indemnitees harmless from and against all fines or penalties imposed by the CalRecycle if the  
1854 diversion goals specified in California Public Resources Code Section 41780, as it may be

amended, are not met by City with respect to the materials Collected by Contractor and if the lack in meeting such goals are attributable to the failure of Contractor to implement and operate the recycling or diversion programs or undertake the related activities required by this Agreement. In the event CalRecycle provides an administrative process to challenge the imposition of a compliance order or a fine or fines, Contractor will be responsible for engaging any consultants or attorneys necessary to represent City in any challenge. Contractor will be responsible for the retention of and payment to any consultants engaged to perform waste generation studies (diversion and disposal). All consultants and attorneys engaged hereunder are subject to the mutual agreement of City and Contractor.

**19.08 Hazardous Substances Indemnification.** Contractor agrees to indemnify, defend (with counsel reasonably approved by City), protect and hold harmless City Indemnitees from and against any and all Claims of any kind whatsoever paid, suffered or incurred by or against City Indemnitees resulting from any repair, cleanup, removal action or response action undertaken pursuant to CERCLA, the Health & Safety Code or other similar federal, state or local law or regulation, with respect to Solid Waste Collected and Disposed of by Contractor. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA and Section 25364 of the Health & Safety Code to defend, protect, hold harmless and indemnify City. Indemnitees from all forms of liability under CERCLA, the Health & Safety Code or other similar federal, state or local law or regulation.

**19.09 Limitations on Rate Adjustments.** Contractor understands and agrees that City may elect to or be required to comply with California Constitution Article XIII D or other applicable laws before approving any new or increased maximum rates. City shall not be in breach of this Agreement if its residents lawfully delay or prevent City from raising or imposing the rates through the California Constitution Article XIII D or other applicable process. In such event, City and Contractor shall meet in good faith to consider alternatives and options, which may include permitting Contractor to terminate the Agreement without cause. All costs incurred in providing notices required under California Constitution Article XIII D or other applicable law in connection with a rate adjustment shall be paid by the Contractor.

**19.10 Subcontractors.** Contractor must require all subcontractors performing work in City to enter into an Agreement containing the provisions set forth in Section 19.06 such that the subcontractor fully indemnifies City in accordance with this Agreement.

**19.11 Damage by Contractor.** If Contractor's employees or subcontractors cause any injury, damage or loss to City property, including but not limited to City streets or curbs, excluding normal wear and tear, Contractor must reimburse City for City's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of City to be indemnified by Contractor for any such injury, damage or loss. With the prior written approval of City, Contractor may repair the damage at Contractor's sole cost and expense. Any injury, damage or loss to private property caused by the negligent, reckless or willful acts or omissions of Contractor to private property must be repaired or replaced by Contractor at Contractor's sole expense. Disputes between Contractor and its Service Recipients or private property owners as to damage to private property are civil matters and complaints of damage will be referred to Contractor as a matter within its sole responsibility and as a matter within the scope of Section 19.06.

1898

## ARTICLE 20: DEFAULT OF AGREEMENT

1899     20.01   **Termination.** City may cancel this Agreement, except as otherwise provided below in  
1900     this Section, by giving Contractor thirty (30) calendar days advance written notice, to be served  
1901     as provided in this Agreement, upon the occurrence of any one of the following events:

1902             20.01.1 Contractor takes the benefit of any present or future insolvency statute, or makes  
1903     a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy  
1904     (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment  
1905     of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the  
1906     United States or any state thereof, or consent to the appointment of a receiver, trustee or  
1907     liquidator of all or substantially all of its property; or

1908             20.01.2 By order or decree of a court, Contractor is adjudged bankrupt or an order is  
1909     made approving a petition filed by any of its creditors or by any of the stockholders of  
1910     Contractor, seeking its reorganization or the readjustment of its indebtedness under the Federal  
1911     bankruptcy laws or under any law or statute of the United States or of any state thereof, provided  
1912     that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the  
1913     entry thereof, any notice of default will be and become null, void and of no effect; unless such  
1914     stayed judgment or order is reinstated in which case, such default will be deemed immediate; or

1915             20.01.2.1 By, or pursuant to, or under the authority of any legislative act,  
1916     resolution or rule or any order or decree of any court or governmental board, agency or officer  
1917     having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or  
1918     substantially all of the property of Contractor, and such possession or control continues in effect  
1919     for a period of sixty (60) calendar days; or

1920             20.01.3 Contractor has defaulted, by failing or refusing to pay in a timely manner the  
1921     administrative charges or other monies due City and such default is not cured within thirty (30)  
1922     calendar days of receipt of written notice by City to do so; or

1923             20.01.4 Contractor has defaulted by allowing any final judgment for the payment of  
1924     money owed to City to stand against it unsatisfied and such default is not cured within thirty (30)  
1925     calendar days of receipt of written notice by City to do so; or

1926             20.01.5 In the event that the monies due City under Section 20.01.3 above or an  
1927     unsatisfied final judgment under Section 20.01.4 above is the subject of a judicial proceeding,  
1928     Contractor will not be in default if the sum of money is bonded. All bonds must be in the form  
1929     acceptable to City Attorney.

1930     20.02   **Excuse from Performance.** The Contractor shall be excused from performing their  
1931     respective obligations hereunder in the event they are prevented from so performing by reason of  
1932     floods, earthquakes, other “acts of God,” war, civil insurrection, riots, acts of any government  
1933     (including judicial action), and other similar catastrophic events which are beyond the control of  
1934     and not the fault of the party claiming excuse from performance hereunder, if such events  
1935     prevent Contractor’s ability to collect or perform services.

1936 Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing,  
1937 or other concerted job action conducted by Contractor's employees or directed at Contractor is  
1938 not an excuse from performance and Contractor shall be obligated to continue to provide service  
1939 notwithstanding the occurrence of any or all of such events; provided, that in the case of labor  
1940 unrest or job action by City's employees or directed at a third party (e.g. customer) over whom  
1941 Contractor has no control, the inability of Contractor to make collection due to the unwillingness  
1942 or failure of City or the third party, as the case may be, to provide reasonable assurance of the  
1943 safety of Contractor's employees while making collections or to make reasonable  
1944 accommodations with respect to container placement and point of delivery, time of collection or  
1945 other operating circumstances to minimize any confrontation with pickets or the number of  
1946 persons necessary to make collections shall, to that limited extent, excuse performance and  
1947 provided further than the foregoing excuse shall be conditioned on Contractor's cooperation in  
1948 making collection at different times and in different locations.

1949 The party claiming excuse from performance shall, within two (2) days after such party has  
1950 notice of such cause, give the other party notice of the facts constituting such cause and asserting  
1951 its claim to excuse under this Section 20.02. Notwithstanding, Contractor in the event of a  
1952 catastrophic event shall comply with City's emergency preparedness plan and must try to  
1953 implement a reasonable alternative plan for service.

1954 In the event that either party validly exercises its rights under this Section, the parties hereby  
1955 waive any claim against each other for any damages sustained thereby. Notwithstanding the  
1956 foregoing, however, if Contractor is excused from performing its obligation hereunder for any of  
1957 the causes listed in this Section for a period of thirty (30) days or more, other than as the results  
1958 of third party labor disputes where services cannot be provided for reasons described earlier in  
1959 this Section, City shall nevertheless have the right, in its sole discretion, to terminate this  
1960 Agreement by giving ten (10) days' notice.

1961 **20.03 Right to Cure.** If Contractor has defaulted, by failing or refusing to perform or observe  
1962 the terms, conditions or covenants in this Agreement, any of the provisions of this Article 20, or  
1963 any of the rules and regulations promulgated by City pursuant thereto or has wrongfully failed or  
1964 refused to comply with the instructions of City Manager or City Manager's designee thereto and  
1965 such default is not cured within thirty (30) calendar days of receipt of written notice by City to  
1966 do so, or if by reason of the nature of such default, the same cannot reasonably be remedied  
1967 within thirty (30) calendar days following receipt by Contractor of written demand from City to  
1968 do so, Contractor fails to commence the remedy of such default within such thirty (30) calendar  
1969 days following such written notice or having so commenced fails thereafter to continue with  
1970 diligence the curing thereof (with Contractor having the burden of proof to demonstrate (a) that  
1971 the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with  
1972 diligence to cure such default, and such default will be cured within a reasonable period of time),  
1973 City may cancel this agreement upon (30) days written notice to Contractor.

1974 **20.04 Violations.** Notwithstanding the foregoing and as supplemental and additional means of  
1975 termination of this Agreement under this Article 20, in the event that Contractor's record of  
1976 performance shows that Contractor has defaulted in the performance of any of the covenants and  
1977 conditions required herein to be kept and performed by Contractor three (3) or more times in any  
1978 twenty-four (24) month period, and regardless of whether the Contractor has corrected each

1979 individual condition of default, Contractor will be deemed a "habitual violator", will be deemed  
1980 to have waived the right to any further notice or grace period to correct, and all such defaults will  
1981 be considered cumulative and collectively will constitute a condition of irredeemable default.  
1982 City will thereupon issue Contractor a final warning citing the circumstances therefore, and any  
1983 single default by Contractor of whatever nature, subsequent to the occurrence of the last of such  
1984 cumulative defaults, will be grounds for immediate termination of the Agreement. In the event of  
1985 any such subsequent default, City may terminate this Agreement upon giving of written final  
1986 notice to Contractor, such cancellation to be effective upon the date specified in City's written  
1987 notice to Contractor, and all contractual fees due hereunder plus any and all charges and interest  
1988 will be payable to such date, and Contractor will have no further rights hereunder. Immediately  
1989 upon the specified date in such final notice Contractor must cease any further performance under  
1990 this Agreement.

1991 **20.05 Effective Date of Termination.** In the event of any the events specified above, and  
1992 except as otherwise provided in such subsections, termination will be effective upon the date  
1993 specified in City's written notice to Contractor and upon such date this Agreement will be  
1994 deemed immediately terminated and upon such termination all liability of City under this  
1995 Agreement to Contractor will cease, and City will have the draw down on the Performance Bond  
1996 described in Section 19.05 and will be free to negotiate with other contractors for the operation  
1997 of interim and long-term Collection Services. Contractor must reimburse City for all direct and  
1998 indirect costs of providing any interim Collection Services as a result of Contractor's default in  
1999 this Agreement.

2000 **20.06 Immediate Termination.** City may terminate this Agreement immediately upon written  
2001 notice to Contractor in the event Contractor: (a) fails to obtain or maintain insurance policies  
2002 endorsements as required by this Agreement, (b) fails to provide the proof of insurance as  
2003 required by this Agreement, or (c) offers or gives any gift to a City official or employee  
2004 prohibited by City's Municipal Code.

2005 **20.07 Termination Cumulative.** City's right to terminate this Agreement is cumulative to any  
2006 other rights and remedies provided by law or by this Agreement.

2007 **20.08 Alternative Service.** Should Contractor, for any reason, refuse or be unable for a period  
2008 of more than forty-eight (48) hours, to Collect a material portion or all of the Solid Waste which  
2009 it is obligated under this Agreement to Collect, and as a result, Solid Waste should accumulate in  
2010 City to such an extent, in such a manner, or for such a time that City Manager, in the reasonable  
2011 exercise of City Manager's discretion, should find that such accumulation endangers or menaces  
2012 the public health, safety or welfare, then City will have the right to contract with another Solid  
2013 Waste enterprise to Collect any or all Solid Waste which Contractor is obligated to Collect  
2014 pursuant to this Agreement. City must provide twenty-four (24) hours prior written notice to  
2015 Contractor during the period of such emergency, before contracting with another Solid Waste  
2016 enterprise to Collect any or all Solid Waste which Contractor would otherwise collect pursuant to  
2017 this Agreement for the duration of period during which Contractor is unable to provide such  
2018 services. In such event, Contractor must undertake commercially reasonable efforts to identify  
2019 sources from which such substitute Solid Waste services are immediately available, and must  
2020 reimburse City for all of its expenses for such substitute services during the period in which  
2021 Contractor is unable to provide Collection services required by this Agreement.



20.09 **Survival of Certain Contractor Obligation.** Notwithstanding the termination of this Agreement by Contractor or City, Contractor's obligation to indemnify, defend and hold City and City Indemnitees harmless as provided in Article 19 shall survive termination for five (5) years from the date of termination. Notwithstanding the termination of this Agreement by Contractor or City, such act shall not automatically invalidate or cancel any insurance policy, letter of credit, performance bond or similar instruments provided by Contractor under this Agreement and such policies, letters of credit, performance bonds and other instruments shall remain in full force and effect for one full year after termination.

## ARTICLE 21: MODIFICATIONS TO THE AGREEMENT

21.01 **City-Directed Change.** City has the power to make changes in this Agreement as the result of changes in law, changes in the Code, or both, to impose new rules and regulations on Contractor under this Agreement relative to the scope and methods of providing Collection Services as may from time-to-time be necessary and desirable for the public welfare. City will give the Contractor notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing Collection Services as referenced herein will be liberally construed to include procedures, operations and obligations, financial or otherwise, of Contractor. When such modifications are made to this Agreement, City and Contractor will negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of Contractor due to any modification in the Agreement under this Article 21. City and Contractor will not unreasonably withhold agreement to such compensation adjustment.

21.01.1 Change in Law. City and Contractor understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Collection legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. Contractor agrees that the terms and provisions of the Code, as it now exists or as it may be amended in the future, will apply to all of the provisions of this Agreement and the Service Recipients of Contractor located within the Service Area. In the event that AB 939, SB 1383, or other state or federal laws or regulations enacted after this Agreement have been enacted, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. No other amendment of this Agreement shall be valid unless in writing duly executed by the Parties. Nothing contained in this Agreement will require any party to perform any act or function contrary to law. City and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law.

## ARTICLE 22: LEGAL REPRESENTATION

22.01 **Acknowledgement.** It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that an Agreement will be interpreted strictly against

the party preparing the same will not apply due to the joint contributions of both parties.

## **ARTICLE 23: FINANCIAL INTEREST**

**23.01 Representation.** Contractor warrants and represents that no elected official, officer, agent or employee of City has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no City employee who acts in City as a “purchasing agent” as defined in the Code, nor any elected or appointed officer of City, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the Contractor and, further, that no such City employee, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material financial interest in Contractor or this Agreement.

## **ARTICLE 24: EXEMPT WASTE**

**24.01** Contractor is not required to Collect or dispose of Exempt Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not regulated under this Agreement, but if provided by Contractor must be in strict compliance with all Applicable Laws.

## **ARTICLE 25: INDEPENDENT CONTRACTOR**

**25.01** In the performance of services pursuant to this Agreement, Contractor is an independent contractor and not an officer, agent, servant or employee of City. Contractor will have exclusive control of the details of the services and work performed and over all persons performing such services and work. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither Contractor nor its officers, employees, agents, contractors or subcontractors will obtain any right to retirement benefits, Workers Compensation benefits, or any other benefits which accrued to City employees and Contractor expressly waives any claim to such benefits.

**25.02 Subcontractors.** Contractor will require all subcontractors performing work in City to enter into an Agreement containing the provisions set forth Section 25.01 in which Agreement the subcontractor agrees that Contractor and subcontractor are independent contractors and have no other agency relationship with City.

## **ARTICLE 24: LAWS TO GOVERN**

**24.01** The law of the State of California governs the rights, obligations, duties and liabilities of City and Contractor under this Agreement and govern the interpretation of this Agreement.

## **ARTICLE 25: CONSENT TO JURISDICTION**

**25.01** The parties agree that any litigation between City and Contractor concerning or arising out of this Agreement must be filed and maintained exclusively in the Superior Courts of San Diego County, State of California, or in the United States District Court for the Southern District of

2097 California. Each party consents to service of process in any manner authorized by California law.

2098 **ARTICLE 26: ASSIGNMENT**

2099 26.01 No assignment of this Agreement or any right occurring under this Agreement may be  
2100 made in whole or in part by Contractor without the express prior written consent of City. City  
2101 will have full discretion to approve or deny, with or without cause, any proposed or actual  
2102 assignment by the Contractor. Any assignment of this Agreement made by Contractor without  
2103 the express written consent of City will be null and void and will be grounds for City to declare a  
2104 default of this Agreement and immediately terminate this Agreement.

2105 26.02 The use of a subcontractor to perform services under this Agreement will not constitute  
2106 delegation of Contractor's duties provided that Contractor has received prior written  
2107 authorization from City Manager to subcontract such services and City Manager has approved a  
2108 subcontractor who will perform such services. Contractor will be responsible for directing the  
2109 work of Contractor's subcontractors and any compensation due or payable to Contractor's  
2110 subcontractor will be the sole responsibility of Contractor. City Manager will have the right to  
2111 require the removal of any approved subcontractor for reasonable cause.

2112 26.03 For purposes of this Section, the term "proposed assignee" shall refer to the proposed  
2113 transferee(s), shareholders, and other successor(s) in interest pursuant to the assignment. Intra-  
2114 family transfers of stock are specifically excluded from the Assignment provision and shall not  
2115 be subject to City consideration and consent.

2116 **ARTICLE 27: COMPLIANCE WITH LAWS**

2117 27.01 In the performance of this Agreement, City and Contractor must comply with all  
2118 Applicable Laws, including, but not limited to, the Code.

2119 **ARTICLE 28: PERMITS AND LICENSES**

2120 28.01 Contractor must obtain, at its own expense, all permits and licenses required by law or  
2121 ordinance and maintain same in full force and effect throughout the term of this Agreement.  
2122 Contractor must provide proof of such permits, licenses or approvals and must demonstrate  
2123 compliance with the terms and conditions of such permits, licenses and approvals upon the  
2124 request of City Manager.

2125 **ARTICLE 29: OWNERSHIP OF WRITTEN MATERIALS**

2126 29.01 Contractor hereby grants City a non-exclusive license as to all reports, documents,  
2127 brochures, public education materials, and other written, printed, electronic or photographic  
2128 materials developed by Contractor at the request of City or as required under this Agreement,  
2129 without limitation or restrictions on the use of such materials by City. Contractor may not use  
2130 such materials that specifically reference City for other purposes without the prior written  
2131 consent of City Manager. This Article 29 does not apply to ideas or concepts described in such  
2132 materials and does not apply to the format of such materials.

2133

## ARTICLE 30: WAIVER

2134 30.01 Waiver by City or Contractor of any breach for violation of any term covenant or  
2135 condition of this Agreement will not be deemed to be a waiver of any other term, covenant or  
2136 condition or any subsequent breach or violation of the same or of any other term, covenant or  
2137 condition. The subsequent acceptance by City of any fee, tax, or any other monies which may  
2138 become due from Contractor to City will not be deemed to be a waiver by City of any breach for  
2139 violation of any term, covenant or condition of this Agreement.

2140

## ARTICLE 31: NOTICES

2141 31.01 Except as provided in this Agreement, whenever either party desires to give notice to the  
2142 other, it must be given by written notice addressed to the party for whom it is intended, at the  
2143 place last specified and to the place for giving of notice in compliance with the provisions of this  
2144 Section. For the present, the parties designate the following as the respective persons and places  
2145 for giving of notice:

2146 **City:**  
2147 City Manager  
2148 City of San Marcos  
2149 1 Civic Center Drive  
2150 San Marcos, CA 92069  
2151 Telephone: (760) 744-1050

2152  
2153 **Contractor:**  
2154 EDCO Waste & Recycling Services, Inc.  
2155 Attn: President  
2156 6670 Federal Boulevard  
2157 Lemon Grove, CA 91945  
2158 Telephone: (619) 287-7555

2159  
2160 31.02 Notices will be effective when received at the address as specified above. Changes in the  
2161 respective address to which such notice is to be directed may be made by written notice.  
2162 Facsimile or e-mail transmission is acceptable notice, effective when received, however,  
2163 facsimile transmissions received (i.e. printed) or mail transmissions received after 4:30 p.m. or  
2164 on weekends or holidays, will be deemed received on the next business day. The original of  
2165 items that are transmitted by facsimile equipment or by email must also be mailed as required  
2166 herein.

2167 31.03 Notice by City to Contractor of a Collection or other Service Recipient problem or  
2168 complaint may be given to Contractor orally by telephone at Contractor's local office with  
2169 confirmation sent to Contractor through the Customer Service System by the end of the Work  
2170 Day.

2171

## ARTICLE 32: TRANSITION TO NEXT CONTRACTOR

2172 32.01 In the event Contractor is not awarded a new Agreement to continue to provide Collection

Services following the expiration or early termination of this Agreement, Contractor will cooperate fully with City and any subsequent contractors to assure a smooth transition of services described in this Agreement. Such cooperation will include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and a current list of Service Recipients (complete with addresses for Collection Services and billing); providing a complete inventory of all Carts, Bins and Roll-Off Containers; providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement; taking reasonable actions necessary to transfer ownership of Carts, Bins and Roll-Off Containers, as appropriate, to City; including transporting such containers to a location designated by City Manager; coordinating Collection of materials set out in new containers if new containers are provided for a subsequent Agreement; and providing other reports and data required by this Agreement.

### **ARTICLE 33: CONTRACTOR'S RECORDS**

33.01 Contractor must maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents described in Article 15 for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

33.02 Contractor must maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

33.03 Any records or documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by City Manager. Unless an alternative site is mutually agreed upon, the records will be available at Contractor's address indicated for receipt of notices in this Agreement.

33.03.1 Contractor acknowledges that City is legally obligated to comply with the California Public Records Act ("CPRA"). City acknowledges that Contractor may consider certain records, reports, or information contained therein, ("Records") which Contractor is required to provide to City under this Agreement, to be of a proprietary or confidential nature. In such instances, Contractor will inform City in writing of which records are considered proprietary or confidential and shall identify the statutory exceptions to disclosure provided under the CPRA that legally permit non-disclosure of the Records. At such time as City receives a request for records under the CPRA or the Federal Freedom of Information Act ("FOIA") or a subpoena or other court order requesting disclosure of the Records, City will notify Contractor of the request, subpoena or order and of City's obligation and intent to provide a response within ten (10) calendar days. Contractor shall within five (5) calendar days either: (i) consent in writing to the disclosure of the Records; (ii) demand that City assert the Contractor identified exceptions to disclosure under the CPRA and agree in writing to indemnify, defend and hold City harmless from any litigation, orders or judgments arising from the non-disclosure; or (iii) seek and obtain, at Contractor's sole cost and expense, the order of a court of competent jurisdiction staying or enjoining the disclosure of the Records. If Contractor fails to timely respond, then City may proceed to disclose the Records in which event Contractor agrees that it waives and releases City of any liability for the disclosure of the Records.

2215 33.04 Where City has reason to believe that such Records or documents may be lost or  
2216 discarded due to the dissolution, disbandment or termination of Contractor's business, City may,  
2217 by written request or demand of any of the above-named officers, require that custody of the  
2218 Records be given to City and that the Records and documents be maintained in City Hall. Access  
2219 to such Records and documents will be granted to any party authorized by Contractor,  
2220 Contractor's representatives, or Contractor's successor-in-interest.

2221 **ARTICLE 34: ENTIRE AGREEMENT**

2222 34.01 This Agreement and the attached Exhibits constitute the entire Agreement and  
2223 understanding between the parties, and the Agreement will not be considered modified, altered,  
2224 changed or amended in any respect unless in writing and signed by the parties.

2225 **ARTICLE 35: SEVERABILITY**

2226 35.01 If any provision of this Agreement or the application of it to any person or situation is to  
2227 any extent held invalid or unenforceable, the remainder of this Agreement and the application of  
2228 such provisions to persons or situations other than those as to which it is held invalid or  
2229 unenforceable, will not be affected, will continue in full force and effect, and will be enforced to  
2230 the fullest extent permitted by law.

2231 **ARTICLE 36: RIGHT TO REQUIRE PERFORMANCE**

2232 36.01 The failure of City at any time to require performance by Contractor of any provision of  
2233 this Agreement will in no way affect the right of City thereafter to enforce same. Nor will  
2234 waiver by City of any breach of any provision of this Agreement be taken or held to be a waiver  
2235 of any succeeding breach of such provision or as a waiver of any provision itself.

2236 **ARTICLE 37: ALL PRIOR AGREEMENTS SUPERSEDED**

2237 37.01 This Agreement incorporates and includes all prior negotiations, correspondence,  
2238 conversations, agreements and understandings applicable to the matters contained in this  
2239 Agreement and the parties agree that there are no commitments, agreements or understandings  
2240 concerning the subject matter of this Agreement that are not contained in this document.  
2241 Accordingly, it is agreed that no deviation from the terms of this Agreement will be predicated  
2242 upon any prior representations or agreements, whether oral or written.

2243 **ARTICLE 38: EXHIBITS**

2244 38.01 Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each  
2245 such Exhibit is a part of this Agreement and each is incorporated by this reference.

2246 **ARTICLE 39: AUTHORITY**

2247 39.01 City and Contractor each represent that the persons executing this Agreement on their behalf have  
2248 full authority to do so and to bind such party to perform pursuant to the terms and conditions of this  
2249 Agreement.

2250 IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.  
2251  
2252

**CITY:**

CITY OF SAN MARCOS,  
a chartered municipal corporation

**CONTRACTOR:**

EDCO Disposal Corporation  
a California Corporation

By: \_\_\_\_\_  
Jack Griffin, City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Helen Holmes Peak, City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Phillip Scollick, City Clerk

2253

# Residential & Commercial Rates - Effective 7/1/21

## Service Type

|   | Total<br>Rate | Waste<br>Rate * | AB939<br>AB 939 Fee |
|---|---------------|-----------------|---------------------|
| <b><u>Residential Services</u></b>        |               |                 |                     |
| Residential Street                        | \$27.73       | \$27.19         | \$0.54              |
| Yard Stop A                               | \$33.18       | \$32.50         | \$0.68              |
| Yard Stop B                               | \$40.32       | \$39.46         | \$0.86              |
| Yard Stop C                               | \$48.80       | \$47.73         | \$1.07              |
| Easement 1                                | \$29.59       | \$29.00         | \$0.59              |
| Easement 2                                | \$33.62       | \$32.93         | \$0.69              |
| Residential Units (1st Unit)              | \$27.73       | \$27.19         | \$0.54              |
| Each Additional Unit                      | \$25.46       | \$24.97         | \$0.49              |
| Family Mobile Home Parks                  | \$21.44       | \$20.97         | \$0.47              |
| Adult Mobile Home Parks                   | \$20.47       | \$20.02         | \$0.45              |
| <b><u>Residential Processing Fees</u></b> |               |                 |                     |
| Contamination Processing Fee/Cart         | \$9.10        | Fee Excl        | Fee Excl            |
| <b><u>Commercial Services</u></b>         |               |                 |                     |
| Commercial Can (minimum)                  | \$29.40       | \$28.73         | \$0.67              |
| <b>2 Cubic Yard Bins</b>                  |               |                 |                     |
| 1 x week                                  | \$91.40       | \$91.40         |                     |
| 2 x week                                  | \$165.83      | \$165.83        |                     |
| 3 x week                                  | \$241.04      | \$241.04        |                     |
| 4 x week                                  | \$314.82      | \$314.82        |                     |
| 5 x week                                  | \$389.11      | \$389.11        |                     |
| 6 x week                                  | \$463.58      | \$463.58        |                     |
| <b>3 Cubic Yard Bins</b>                  |               |                 |                     |
| 1 x week                                  | \$125.92      | \$125.92        |                     |
| 2 x week                                  | \$226.34      | \$226.34        |                     |
| 3 x week                                  | \$326.76      | \$326.76        |                     |
| 4 x week                                  | \$467.02      | \$467.02        |                     |
| 5 x week                                  | \$527.71      | \$527.71        |                     |
| 6 x week                                  | \$628.15      | \$628.15        |                     |
| <b>4 Cubic Yard Bins</b>                  |               |                 |                     |
| 1 x week                                  | \$167.88      | \$167.88        |                     |
| 2 x week                                  | \$302.26      | \$302.26        |                     |
| 3 x week                                  | \$435.78      | \$435.78        |                     |
| 4 x week                                  | \$569.92      | \$569.92        |                     |
| 5 x week                                  | \$703.67      | \$703.67        |                     |
| 6 x week                                  | \$837.60      | \$837.60        |                     |
| <b>5 Cubic Yard Bins</b>                  |               |                 |                     |
| 1 x week                                  | \$194.96      | \$194.96        |                     |
| 2 x week                                  | \$347.50      | \$347.50        |                     |
| 3 x week                                  | \$500.05      | \$500.05        |                     |
| 4 x week                                  | \$652.85      | \$652.85        |                     |
| 5 x week                                  | \$805.15      | \$805.15        |                     |
| 6 x week                                  | \$957.74      | \$957.74        |                     |

\* Rates include 18.6% Franchise Fee



**Commercial Commingled Organics \***  
**Effective 7/1/21**

**1st Container**

|              | Frequency |           |           | Extra         |
|--------------|-----------|-----------|-----------|---------------|
| <u>Size</u>  | <u>1</u>  | <u>2</u>  | <u>3</u>  | <u>Pickup</u> |
| Cart (65 gl) | \$ 97.85  | \$ 195.69 | \$ 293.54 | \$ 39.13      |
| Cart (96 gl) | \$ 110.35 | \$ 220.71 | \$ 331.06 | \$ 44.14      |
| 2 CY         | \$ 178.97 | \$ 357.95 | \$ 536.93 | \$ 71.59      |

**Each Additional Container**

|              | Frequency |           |           |
|--------------|-----------|-----------|-----------|
| <u>Size</u>  | <u>1</u>  | <u>2</u>  | <u>3</u>  |
| Cart (65 gl) | \$ 92.95  | \$ 185.91 | \$ 278.86 |
| Cart (96 gl) | \$ 104.84 | \$ 209.67 | \$ 314.52 |
| 2 CY         | \$ 170.02 | \$ 340.05 | \$ 510.08 |

**\* Rates include 18.6% Franchise Fee**

## **Rolloff Rates - Effective 7/1/21**

| <b>DESCRIPTION</b> | <b>1ST DEPOSIT<br/>(1)</b> | <b>2ND DEPOSIT<br/>(2)</b> | <b>Del'y</b> | <b>Haul</b> | <b>Tip<br/>Rate/Ton</b> | <b>4 Tons</b> |
|--------------------|----------------------------|----------------------------|--------------|-------------|-------------------------|---------------|
| MIXED CDI LOADS    | \$ 632.76                  | \$ 586.94                  | \$ 45.82     | \$ 243.42   | \$ 85.88                | \$ 343.52     |
| 14 or 40 YD TRASH  | \$ 545.76                  | \$ 499.94                  | \$ 45.82     | \$ 243.42   | \$ 64.13                | \$ 256.52     |
| 40 YD GREEN        | \$ 602.28                  | \$ 556.46                  | \$ 45.82     | \$ 243.42   | \$ 78.26                | \$ 313.04     |
| Rolloff Cardboard  | \$ 463.16                  | \$ 417.34                  | \$ 45.82     | \$ 243.42   | \$ 43.48                | \$ 173.92     |
| 14YD CONCRETE      | \$ 674.24                  | \$ 628.42                  | \$ 45.82     | \$ 243.42   | \$ -                    | \$ 385.00     |

(1) includes Delivery, Haul , disposal of up to 4 Tons and 8% Franchise Fee

(2) includes Haul , disposal of 4 Tons and 8% Franchise Fee