MIXED MATERIALS & ORGANICS COLLECTION SERVICES CONTRACT

Executed between

CITY OF OAKLAND

and

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

July 1, 2015
This page intentionally left blank.
# TABLE OF CONTENTS

**Mixed Materials & Organics Collection Services Contract**

<table>
<thead>
<tr>
<th>Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE 1. DEFINITIONS</td>
<td>2</td>
</tr>
<tr>
<td>ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR</td>
<td>13</td>
</tr>
<tr>
<td>ARTICLE 3. TERM OF CONTRACT</td>
<td>15</td>
</tr>
<tr>
<td>ARTICLE 4. CONTRACTOR’S COVENANTS; CITY OPTION TO TERMINATE</td>
<td>15</td>
</tr>
<tr>
<td>ARTICLE 5. SERVICES PROVIDED BY CONTRACTOR</td>
<td>16</td>
</tr>
<tr>
<td>ARTICLE 6. SERVICE STANDARDS</td>
<td>17</td>
</tr>
<tr>
<td>ARTICLE 7. CHARGES AND RATES</td>
<td>26</td>
</tr>
<tr>
<td>ARTICLE 8. DIVERSION REQUIREMENTS</td>
<td>43</td>
</tr>
<tr>
<td>ARTICLE 9. SFD COLLECTION SERVICES</td>
<td>44</td>
</tr>
<tr>
<td>ARTICLE 10. MFD COLLECTION SERVICES</td>
<td>50</td>
</tr>
<tr>
<td>ARTICLE 11. COMMERCIAL COLLECTION SERVICES</td>
<td>54</td>
</tr>
<tr>
<td>ARTICLE 12. CITY COLLECTION SERVICES</td>
<td>64</td>
</tr>
<tr>
<td>ARTICLE 13. COLLECTION ROUTES</td>
<td>68</td>
</tr>
<tr>
<td>ARTICLE 14. COLLECTION EQUIPMENT</td>
<td>69</td>
</tr>
<tr>
<td>ARTICLE 15. LOCAL OFFICE</td>
<td>71</td>
</tr>
<tr>
<td>ARTICLE 16. CUSTOMER SERVICE</td>
<td>71</td>
</tr>
<tr>
<td>ARTICLE 17. COMMUNITY OUTREACH SERVICES</td>
<td>73</td>
</tr>
<tr>
<td>ARTICLE 18. EMERGENCY SERVICE PROVISIONS</td>
<td>76</td>
</tr>
<tr>
<td>ARTICLE 19. RECORD KEEPING &amp; REPORTING REQUIREMENTS</td>
<td>76</td>
</tr>
<tr>
<td>ARTICLE 20. NONDISCRIMINATION</td>
<td>80</td>
</tr>
<tr>
<td>ARTICLE 21. SERVICE INQUIRIES AND COMPLAINTS</td>
<td>80</td>
</tr>
<tr>
<td>ARTICLE 22. QUALITY OF PERFORMANCE OF CONTRACTOR</td>
<td>81</td>
</tr>
<tr>
<td>ARTICLE 23. BILLING AUDIT AND PERFORMANCE REVIEWS</td>
<td>87</td>
</tr>
<tr>
<td>ARTICLE 24. PERFORMANCE SECURITY</td>
<td>88</td>
</tr>
</tbody>
</table>
ARTICLE 51. CORPORATE GUARANTY ................................................................. 116
ARTICLE 52. EMPLOYEE RETENTION REQUIREMENTS .............................. 116
ARTICLE 53. SUBCONTRACTING ................................................................. 116
ARTICLE 54. DISPUTE RESOLUTION ......................................................... 116
ARTICLE 55. LOCAL HIRE COMPLIANCE ............................................... 118
ARTICLE 56. RELIGIOUS PROHIBITION .................................................... 119
ARTICLE 57. POLITICAL PROHIBITION AND CAMPAIGN CONTRIBUTIONS ................................................................. 119
ARTICLE 58. BUSINESS TAX CERTIFICATE ........................................... 119
ARTICLE 59. ATTORNEYS FEES ............................................................... 119
ARTICLE 60. LIMITATION OF FELONY DISCLOSURE ON JOB APPLICATION ................................................................. 120
ARTICLE 61. COMPETITIVE WAGES AND BENEFITS ............................... 120
ARTICLE 62. VALIDITY OF CONTRACTS .................................................. 120
ARTICLE 63. EQUAL BENEFITS ORDINANCE .......................................... 120
ARTICLE 64. LABOR PEACE ....................................................................... 121
ARTICLE 65. AMENDMENT .................................................................... 121
ARTICLE 66. ALL PRIOR CONTRACTS SUPERSEDED ................................. 121
ARTICLE 67. HEADINGS ........................................................................ 121
ARTICLE 68. LEGAL REPRESENTATION .................................................. 121
ARTICLE 69. EXHIBITS .......................................................................... 121
ARTICLE 70. EFFECTIVE DATE .............................................................. 122
ARTICLE 71. COUNTERPARTS ................................................................. 122

EXHIBIT 1 MAXIMUM SERVICE RATES .................................................... 108
EXHIBIT 1A MAXIMUM SERVICE RATES – SFD SERVICES .......................... 108
EXHIBIT 1B MAXIMUM SERVICE RATES – MFD SERVICES ......................... 108
EXHIBIT 1C MAXIMUM SERVICE RATES – COMMERCIAL SERVICES .......... 108
EXHIBIT 1D MAXIMUM SERVICE RATES – SFD, MFD AND COMMERCIAL ROLL-OFF BOX SERVICES ................................................................. 108
EXHIBIT 1E MAXIMUM SERVICE RATES – EMERGENCY SERVICE RATES - EMPLOYEES ................................................................. 108
EXHIBIT 1F MAXIMUM SERVICE RATES – EMERGENCY SERVICE RATES -
<table>
<thead>
<tr>
<th>EXHIBIT</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1G</td>
<td>MAXIMUM SERVICE RATES – SPECIAL EVENTS SERVICES</td>
<td>108</td>
</tr>
<tr>
<td>1H</td>
<td>MAXIMUM RECYCLING SERVICE RATES</td>
<td>109</td>
</tr>
<tr>
<td>2</td>
<td>ANNUAL RATE ADJUSTMENT</td>
<td>121</td>
</tr>
<tr>
<td>3</td>
<td>APPROVED FACILITIES</td>
<td>124</td>
</tr>
<tr>
<td>4</td>
<td>CITY FACILITIES</td>
<td>125</td>
</tr>
<tr>
<td>5</td>
<td>CITY-SPONSORED EVENTS</td>
<td>126</td>
</tr>
<tr>
<td>6</td>
<td>TRANSITION PLAN</td>
<td>127</td>
</tr>
<tr>
<td>7</td>
<td>COMMUNITY OUTREACH STRATEGY</td>
<td>128</td>
</tr>
<tr>
<td>8</td>
<td>DIVERSION PLAN</td>
<td>129</td>
</tr>
<tr>
<td>9</td>
<td>CUSTOMER SERVICE PLAN</td>
<td>131</td>
</tr>
<tr>
<td>10</td>
<td>COLLECTION SERVICES OPERATIONS PLAN</td>
<td>132</td>
</tr>
<tr>
<td>11</td>
<td>CONTAMINATION REDUCTION PLAN</td>
<td>133</td>
</tr>
<tr>
<td>12</td>
<td>VEHICLE SPECIFICATIONS</td>
<td>134</td>
</tr>
<tr>
<td>13</td>
<td>CONTAINER SPECIFICATIONS</td>
<td>135</td>
</tr>
<tr>
<td>14</td>
<td>BULKY GOODS COLLECTION SERVICE AGREEMENT</td>
<td>136</td>
</tr>
<tr>
<td>15</td>
<td>MEMORANDUM OF UNDERSTANDING</td>
<td>146</td>
</tr>
<tr>
<td>16</td>
<td>LOCAL BUSINESS PRESENCE AND PARTICIPATION REPORTING FORM</td>
<td>147</td>
</tr>
<tr>
<td>16A</td>
<td>LOCAL BUSINESS PRESENCE AND PARTICIPATION REQUIREMENTS</td>
<td>148</td>
</tr>
<tr>
<td>17</td>
<td>EMPLOYEE AND LABOR RELATIONS PLAN</td>
<td>149</td>
</tr>
<tr>
<td>18</td>
<td>GUARANTY AGREEMENT</td>
<td>150</td>
</tr>
<tr>
<td>19</td>
<td>BUSINESS TAX CERTIFICATE</td>
<td>160</td>
</tr>
<tr>
<td>20</td>
<td>RESIDUE TONNAGE CALCULATION METHODOLOGY</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>EBMUD LETTER OF JUNE 13, 2014</td>
<td></td>
</tr>
</tbody>
</table>

**ATTACHMENTS**

- ATTACHMENT 1: Contract between CITY of Oakland and Disposal Contractor
- ATTACHMENT 2: Contract between CITY of Oakland and Residential Recycling Contractor
- ATTACHMENT 3: City of Oakland Required Forms
CITY OF OAKLAND

This Contract made and entered into February 20, 2015 (the "Effective Date"), by and between the CITY OF OAKLAND, in the state of California, hereinafter referred to as "CITY" and WASTE MANAGEMENT OF ALAMEDA COUNTY, INC., a California corporation, hereinafter referred to as "CONTRACTOR."

RECITALS

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

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

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

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

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

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

WHEREAS, in 2006 the City Council of the City of Oakland passed Resolution No. 80286 C.M.S., adopting a Zero Waste Strategic Plan;
WHEREAS, it is the intent of CITY to provide for the Collection and Processing of certain subsets of Solid Waste defined as Mixed Materials, Garbage, Organic Materials and Bulky Goods in Article 1 of this Contract; WHEREAS, CITY has entered into Contracts to provide: (i) Residential Recycling Collection Services; and (ii) Disposal Services within CITY;

WHEREAS, Customers may voluntarily subscribe to and cancel such Collection Services from CONTRACTOR, provided Customer otherwise obtains a permit to self-haul waste in compliance with CITY’S self-haul permit provisions;

WHEREAS, CITY further declares its intent to regulate the maximum rates CONTRACTOR may charge Customers for the Collection, transportation, Processing, recycling, composting, and/or Disposal of Mixed Materials, Garbage, and Organic Material;

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

WHEREAS, the City Council has determined through a competitive procurement process for Mixed Materials and Organics (“MM&O”) Collection Services that CONTRACTOR, by demonstrated experience, reputation and capacity, is qualified to provide for the Collection of Mixed Materials, Organic Materials and Bulky Goods within the corporate limits of CITY, the transportation of such material to appropriate places for Processing, Recyling, Composting and/or Disposal; and CITY Council desires that CONTRACTOR be engaged to perform such services on the basis set forth in this Contract;

WHEREAS, CONTRACTOR, through its proposal to CITY, has proposed and represented that it has the ability and capacity to provide for the Collection of Mixed Materials, Organic Materials and Bulky Goods within the corporate limits of CITY; the transportation of such material to appropriate places for Processing, Recycling, Composting and/or Disposal; and the Processing of materials;

WHEREAS, CITY wishes to engage CONTRACTOR to provide the services specified within this Contract, in accordance with the terms and conditions of this Contract; and

WHEREAS, this Contract has been developed by and is satisfactory to CITY and CONTRACTOR.

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

ARTICLE 1. DEFINITIONS

For the purpose of this Mixed Materials and Organics Collection Services Contract ("Contract"), the definitions contained in this Article shall apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

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

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

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

1.04  **Bin.** A watertight metal or plastic Container with a hinged plastic lid and a capacity of between one (1) and seven (7) cubic yards, designed or intended to be mechanically dumped into a packer type truck, which is approved by CITY and labeled as specified by CITY. Bins may also include Compactors that are owned or leased by the MFD or Commercial Service Recipient, contingent upon confirmation of compatibility from CONTRACTOR.

1.05  **Bulky Goods.** Materials such as, but not limited to, stoves, refrigerators, water heaters, washing machines, clothes dryers, small air conditioning units, other large and small household appliances, including appliances containing Freon, furniture, carpets, tires, wood, household items, tires with or without rims, mattresses, clothing, Large Plant Debris, and corrugated cardboard. Bulky Goods may also include E-Waste, U-Waste and materials generated from minor home repairs and other similar materials to the extent set forth in Exhibit 14, which is attached to and included in this Contract and as may be amended from time to time. Except for Bulky Goods Collected at CITY Facilities, Bulky Goods must be generated at the Service Address wherein the Bulky Goods are Collected. Bulky Goods do not include items herein defined as Unacceptable Waste or Construction and Demolition Debris, except as defined above.

1.06  **Cart.** A watertight heavy plastic receptacle with a rated capacity of approximately twenty (20), thirty-two (32), sixty-four (64) or ninety-six (96) gallons, having a hinged tight-fitting lid, and two (2) wheels, that is approved by CITY and is labeled as specified by CITY.

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

1.08  **CITY.** The City of Oakland, California, a municipal corporation.

1.09  **City Administrator.** The CITY official who is responsible for the day-to-day operations of CITY agencies and departments or his/her designee.
1.10 CITY Bulky Goods Collection Service. The Collection of Bulky Goods from CITY Facilities in the Service Area, the delivery of the Bulky Goods to the appropriate facilities, and the Disposal, Processing and marketing of the Bulky Goods.


1.12 CITY Facilities. Those CITY properties or locations as set forth in Exhibit 4, which is attached to and included in this Contract and as may be amended.

1.13 CITY Mixed Materials Collection Service. The Collection of Mixed Materials from CITY Facilities in the Service Area and either the delivery of the Mixed Materials to the appropriate Mixed Materials Processing Facility, the Processing of the Mixed Materials and the transfer of the Processing Residue to the Disposal Facility or the delivery of the non-processed Mixed Materials to the Disposal Facility.


1.15 CITY Special Event Collection Service. The Collection of Garbage, Recyclable Materials, Organic Materials and other materials as appropriate at CITY-sponsored special events.

1.16 Collect/Collection. To pick up, transport and Process Discarded Materials.

1.17 Collection Services. SFD Collection Services, MFD Collection Services, Commercial Collection Services and CITY Collection Services.

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


1.20 Commercial Mixed Materials Collection Service. The Collection of Mixed Materials from Commercial Service Addresses in the Service Area and either the delivery of the Mixed Materials to the appropriate Mixed Materials Processing Facility, the Processing of the Mixed Material and the transfer of the Processing Residue to the Disposal Facility, or the delivery of the non-processed Mixed Materials to the Disposal Facility.

1.21 Commercial Non-exclusive Recyclable Materials Collection Service. The Collection of Recyclable Materials from Commercial Service Addresses subscribing to such service in the Service Area, the delivery of the Recyclable Materials to a Material Recovery Facility, and the Processing and marketing of the Recyclable Materials.
1.22 Commercial Organic Materials Subscription Collection Service. The Collection of Organic Materials from Commercial Service Addresses in the Service Area subscribing to such service, the delivery of the Organic Materials to an Organic Materials Processing Facility and the Processing and marketing of the Organic Materials.

1.23 Commercial Special Events Collection Service. Mixed Materials, Recyclable Materials and Organic Materials Collection, Disposal and processing services at special events such as street festivals.

1.24 Community Outreach. Any information (whether written or otherwise) directed by CONTRACTOR to Customers regarding the programs and services provided under this Contract and shall be subject to the prior review and approval of the Contract Manager. The party proposing to make such communication shall make reasonable good faith efforts to consult with the other party to ensure accuracy and consistency with the requirements and spirit of this Contract.

1.25 Compactor. Any Roll-Off Box or Bin which has a compaction mechanism, whether stationary or mobile, contingent upon confirmation of compatibility from CONTRACTOR.

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

1.27 Container. A Bin, Cart, Roll-Off Box, Compactor, street litter receptacle or other item approved by CITY for use in containing materials set out for Collection under the terms of this Contract.

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

1.29 Contamination Surcharge. The charge CONTRACTOR may impose on a SFD and MFD Customer for Contamination of an Organic Materials Container or the Recycling Contractor may impose on a Customer for Contamination of a Recycling Container that are approved by CITY and contained in Exhibit 1, as it may be modified.

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

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

1.32 Contract Year. Each twelve (12) month period from July 1 to June 30 beginning July 1, 2015.
1.33 CONTRACTOR. WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

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

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

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

1.36.1 A grade greater than fifteen (15) percent;

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

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

1.36.4 An unpaved surface over which Containers must be rolled;

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

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

1.37 Discarded Material. Garbage, Mixed Materials, Recyclable Materials, Organic Materials or Bulky Goods Generated at a Service Address and placed in a manner and location that is designated for Collection pursuant to this Contract.

1.38 Disposal/Dispose. The disposition of Mixed Materials, Garbage and Residue received from CONTRACTOR and CITY at the Disposal Facility under the terms of this Contract, or a) the placement of any materials Collected pursuant to this Contract in landfills, including as "beneficial reuse" as defined by California Code of Regulations Title 27, Chapter 3, Article 1, section 20656; or (b) disposition to "incinerators" as defined by Alameda County Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION 64.150 T.

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

1.40 Disposal Facility or Landfill. The Altamont Landfill located at 10840 Altamont Pass Road, Livermore, California 94551 that is owned and operated by the Disposal Contractor.

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

1.42 Dwelling Unit. Any individual living unit that includes a kitchen, and a room or suite of rooms, and is designed or occupied as separate living quarters for an individual or
Mixed Materials and Organics Collection Services Contract

1.43 EBMUD. The East Bay Municipal Utility District, a public agency that operates a municipal waste water treatment plant in West Oakland.

1.44 EBMUD Facility. The "Food Waste Pre-Processing Facility" described in the February 2011 environmental impact report entitled "EBMUD Main Wastewater Treatment Plant Land Use Master Plan", located at or adjacent to the EBMUD municipal waste water treatment plant in West Oakland.

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

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

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

1.48 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms, floods, pestilence, freezing, earthquakes, explosions, sabotage, civil disturbances, acts of a public enemy, wars, terrorism, blockades, riots or other industrial disturbances, eminent domain, condemnation or other taking or other events of a similar nature not caused or maintained by CITY or CONTRACTOR, which event is not reasonably within the control of the party claiming the excuse from its obligations due to such event to the extent such event has a significant and material adverse effect on the ability of a party to perform its obligations thereunder. Force Majeure shall not include power outages, fuel shortages, strikes, work stoppage or slowdown, sickout, lockout, picketing or other concerted job action conducted by or directed at CONTRACTOR or CONTRACTOR'S employees or subcontractors. Force Majeure shall include a Change in Law if such Change in Law prohibits a party's performance hereunder. Notwithstanding the foregoing, (i) no event relating to the Disposal Facility operated by CONTRACTOR or a related party of CONTRACTOR, or the delivery of Garbage, Mixed Materials and/or Residue to a facility shall constitute a Force Majeure under this Contract unless (and then only to the extent that) such event prevents the delivery of or acceptance of Garbage, Mixed Materials and Residues to or by that facility; (ii) no failure of performance by any subcontractor of CONTRACTOR shall be a Force Majeure unless such failure was itself caused by a Force Majeure; (iii) except as provided herein, no event which merely increases CONTRACTOR'S cost of performance shall be a Force Majeure; and (iv) no event, the effects of which could have been prevented by reasonable precautions, including compliance with agreements and applicable laws, shall be a Force Majeure.

1.49 Garbage. All, putrescible and non-putrescible waste, non-recyclable packaging
Mixed Materials and Organics Collection Services Contract

and rubbish attributed to normal activities of a Service Address wherein the Garbage is generated and Collected, which is set out for Collection by the Service Recipient. Except for Garbage Collected at CITY Facilities, Garbage must be generated at the Service Address wherein the Garbage is Collected. Garbage does not include abandoned automobiles or those items defined herein as Unacceptable Waste.

1.50 Gross Receipts. CONTRACTOR revenue collected from Customers for the provision of the Mixed Materials and Organics Collection Services exclusive of taxes and government fees.

1.51 Guarantor. USA Waste of California, Inc.

1.52 Guaranty. The document contained in Exhibit 18, which is attached to and included in this Contract that is executed by the Guarantor guaranteeing the timely and full performance of CONTRACTOR’S obligations.

1.53 Generator. A Person, Commercial business or any other entity that produces Garbage, Mixed Materials, Organic Materials or Bulky Goods.

1.54 Hazardous Waste. For purposes of this Contract, Hazardous Waste shall include those wastes defined as Hazardous Waste in Oakland Municipal Code section 8.28.010 or as subsequently amended. Section 8.28.010 currently defines Hazardous Waste as any hazardous waste, material, substance or combination of materials which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, Disposed or otherwise managed and which requires special handling under any present or future federal, state or local law excluding de minimis quantities of waste of a type and amount normally found in residential Garbage after implementation of programs for the safe Collection, recycling, treatment, and Disposal of Household Hazardous Waste in compliance with sections 41500 and 41802 of the California Public Resources Code. Hazardous Waste shall include but not be limited to: (a) substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials; and (d) substances defined, regulated or listed (directly or by reference) by applicable local, state or federal law as “hazardous substances,” "hazardous materials," “hazardous wastes,” “pollutant," "reproductive toxins," "toxic waste" or "toxic substances" or similarly identified as hazardous to human health or the environment, including those so defined in or pursuant to any of the following statutes: (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") of 1980, 42 USC section 9001 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC section 1802; et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 et seq.; (iv) the Clean Water Act, 33 USC section 1251 et seq.; (v) California Health and Safety Code section 25115-25117, 25249.8, 25281 and 25316; (vi) the Clean Air Act, 42 USC section 7901 et seq.; and (vii) California Water Code section 13050. All rules and regulations adopted and promulgated pursuant to such statutes and future amendments to or recodifications of such statutes and any regulations adopted pursuant to these statutes after the date of this Contract, as well as any subsequently enacted federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or
regulated under any other applicable federal, state or local environmental laws currently existing 
or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyls 
("PCBs"), petroleum, natural gas and synthetic fuel products and by-products. The parties 
intend that this definition not be limited to any particular statutory or regulatory regime and that it 
be construed as broadly as possible.

1.55 **Household Hazardous Waste ("HHW").** Any Hazardous Waste generated at a 
SFD, MFD or CITY Facility Service Address within the Service Area including but not limited to, 
cleaning products, automotive products, fuel, lubricants, E-Wastes, paints, painting supplies, 
fluorescent lamps, compact fluorescent lamps, varnishes, solvents, herbicides, pesticides, 
fertilizers, automobile batteries, household batteries, adhesives and Universal Waste.

1.56 **Labor Disruption.** Labor Disruptions are defined as strikes, slowdowns, sickout, 
picketing, other concerted job actions, directed at CONTRACTOR, CONTRACTOR’s employees 
or subcontractors, excluding lockouts or stoppages conducted or initiated by CONTRACTOR.

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

1.58 **Material Recovery Facility or MRF.** Any facility selected by CONTRACTOR and 
approved or specifically designated by CITY, designed, operated and legally permitted for the 
purpose of receiving and Processing Recyclable Materials, Organic Materials or Mixed 
Materials.

1.59 **Maximum Service Rates.** Maximum MM&O Service Rates and Maximum 
Recycling Service Rates and the Contamination Surcharge that were approved by CITY and are 
contained in Exhibit 1 which is attached to and included in this Contract.

1.60 **Maximum MM&O Service Rates.** Those rates and ancillary charges that were 
approved by CITY for the provision of Collection Services and are contained in Exhibit 1 which 
is attached to and included in this Contract.

1.61 **Maximum Recycling Service Rates.** Those rates and ancillary charges that were 
approved by CITY for the collection of Recyclable Materials by the Recycling Contractor and are 
contained in Exhibit 1 which is attached to and included in this Contract.

1.62 **Multi-family Dwelling or MFD.** Any residence with five (5) or more Dwelling Units, 
including any flat, apartment, condominium, town home, service-enriched housing or other 
residence and other Dwelling Units in detached buildings on a single parcel and excluding a 
hotel, motel, dormitory, sheltered nursing facility, rooming house or other such similar facility as 
determined by CITY.

1.63 **MFD Bulky Goods Collection Service.** The Collection of Bulky Goods from MFD 
Service Recipients in the Service Area, the delivery of the Bulky Goods to the appropriate 
facilities and the Disposal, Processing or marketing of the Bulky Goods.

1.64 **MFD Collection Services.** MFD Mixed Materials Collection Service, MFD 
Organic Materials Collection Service, Temporary Roll-Off Box Collection Service, and MFD 
Bulky Goods Collection Service.
1.65 **MFD Mixed Materials Collection Service.** The Collection of Mixed Materials from MFD Service Addresses in the Service Area and the delivery of the Mixed Materials to the appropriate Mixed Materials Processing Facility, the Processing of the Mixed Materials and the transfer of the Processing Residue to the Disposal Facility.


1.67 **Mixed Materials.** All materials that are set out by the Service Recipient for Collection by CONTRACTOR excluding items that are Source Separated. Mixed Materials do not include items defined herein as Unacceptable Waste.

1.68 **Mixed Materials Extra Service Tag.** A tag approved by CITY and provided by CONTRACTOR which may be purchased for use at SFD and MFD Service Addresses for the Collection of extra Garbage or Mixed Materials.

1.69 **Mixed Materials Processing Facility.** Any MRF or Organics Processing Facility selected by CONTRACTOR and approved by CITY that is designed, operated and legally permitted for the purpose of receiving and Processing Mixed Materials.

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

1.71 **Organic Materials ("Organics").** Plant Debris, Food Scraps, compostable food ware, compostable food containers, compostable paper, horse stable matter and other material agreed upon by both parties that are separated for inclusion in the SFD Organic Materials Collection Service, MFD Organic Materials Collection Service, Commercial Organic Materials Subscription Collection Service or CITY Organic Materials Collection Service programs except for Organic Materials Collected at CITY Facilities. Organic Materials must be generated at the Service Address wherein the Organic Materials are Collected. Organic Materials do not include items herein defined as Unacceptable Waste.

1.72 **Organic Materials Extra Service Tag.** A tag approved by CITY and provided by CONTRACTOR which may be purchased for use at Commercial Service Addresses subscribing to Commercial Organic Materials Subscription Collection Service for the Collection of extra Organic Materials.

1.73 **Organic Materials Processing Facility.** Any facility selected by CITY or by CONTRACTOR and approved by CITY, which is designed, operated and legally permitted for the purpose of receiving and Processing Organic Materials or Mixed Materials.

1.74 **Overage.** An amount of material in excess of the capacity of the Container utilized at the Service Address for the set out of such material except where such material is set out through the use of an Extra Service Tag.

1.75 **Per Dwelling Unit Recycling Rate.** The dollar amount effective July 1 each year, which CONTRACTOR invoices and collects from SFD and MFD Customers. The Per Dwelling Unit Recycling Rate may comprise a RR Contractor component and a stabilization component.
Mixed Materials and Organics Collection Services Contract

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

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

1.78  **Processing.** An operation or series of operations, whether involving equipment, manual labor, or mechanical or biological processes that sorts, enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares Recyclable Materials, Organic Materials, Mixed Materials or Bulky Goods and returns marketable elements thereof to the economic mainstream in the form of raw material for new, reused or reconstituted products. Processing begins at the time the Recyclable Materials, Organic Materials, Bulky Goods or Mixed Materials are delivered to the Processing facility and ends when the finished Processed materials are sold or reused and the Residue is properly Disposed.

1.79  **Recyclable Materials.** Those materials designated in this Contract or other materials agreed upon by parties for Collection and Recycling under this Contract which are segregated from Mixed Materials by the Service Recipient at the source of generation. Recyclable Materials include newspaper, mixed paper (including white and colored paper, magazines, telephone books, chipboard, junk mail and high grade paper), glass containers, metal containers (ferrous, non-ferrous and bi-metal containers including empty aerosol containers), aluminum foil and trays, milk and juice cartons, soup and juice boxes, all narrow neck rigid plastic containers, non-bottle rigid plastics, and corrugated cardboard set out for Collection as required by CITY. CITY and CONTRACTOR may mutually agree to include additional materials or remove materials from this list of Recyclable Materials.

1.80  **Residential Recycling ("RR") Contractor.** California Waste Solutions, Inc.

1.81  **Residential Recycling Collection Services.** Services performed by the RR Contractor for Recyclable Materials at Multi-Family Dwellings and Single Family Dwellings.

1.82  **Residue.** Materials remaining after the Processing of Mixed Materials, Recyclable Materials, Organic Materials or Bulky Goods which cannot reasonably be Diverted.

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

1.84  **Service Address.** The physical location of the SFD, MFD, Commercial or CITY property receiving Collection Services.

1.85  **Service Area.** That area within the corporate limits of the City of Oakland.
1.86 **Service Recipient.** A Person receiving Collection Services at the Service Address under the terms of this Contract.


1.88 **SFD Bulky Goods Collection Service.** The Collection of Bulky Goods from SFD Service Addresses in the Service Area, the delivery of the Bulky Goods to the appropriate facilities and the Processing marketing and Disposal of the Bulky Goods.

1.89 **SFD Mixed Materials Collection Service.** The Collection of Mixed Materials from SFD Service Addresses in the Service Area and either the delivery of the Mixed Materials to the appropriate Mixed Materials Processing Facility, the Processing of the Mixed Material and the transfer of the Processing Residue to the Disposal Facility or the delivery of the non-processed Mixed Materials to the Disposal Facility.


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

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

1.93 **Source Separated.** Recyclable Materials, Organic Materials and Bulky Goods that have been segregated from Garbage, by or for the Generator at the Service Address at which the materials were generated for Diversion.

1.94 **Street Litter Container Collection Service.** The Collection of Garbage and Recyclable Materials from street litter Containers within the Service Area and the transport and delivery of the Collected materials to the appropriate facility.

1.95 **Temporary Roll-Off Box Collection Service.** The Collection of Discarded Materials from a Service Address, which are generated as a byproduct of activities at that Service Address other than permitted construction or demolition through use of a temporarily placed box and the delivery of those materials to the appropriate facility.
1.96 **Ton/Tonnage.** A unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

1.97 **Universal Waste ("U-Waste").** Materials that DTSC considers Universal Waste (California Code of Regulations Title 22, Div 4.5, Ch 23), including materials such as batteries, thermostats, lamps, cathode ray tubes, computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, some appliances, aerosol cans, fluorescent lamps and certain mercury-containing devices.

1.98 **Unacceptable Waste.** Any and all waste, including but not limited to, Hazardous Waste and Household Hazardous Waste, the acceptance or handling of which would cause a violation of any permit condition or legal or regulatory requirement, damage to CONTRACTOR’S equipment or facilities, or present a substantial endangerment to the health or safety of the public or CONTRACTOR’S employees; provided, that de minimis quantities or waste of a type and amount normally found in Garbage or Mixed Materials after implementation of programs for the safe Collection of HHW shall not constitute Unacceptable Waste.

1.99 **Work Day.** Any day, Monday through Saturday that is not a holiday as set forth in Section 6.11 of this Contract.

**ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

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

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

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

2.03 **Contract Duly Executed.** The Persons signing this Contract on behalf of CONTRACTOR have been authorized by CONTRACTOR to do so, and this Contract has been duly executed and delivered by CONTRACTOR in accordance with the authorization of its Board of Directors or shareholders, if necessary, and constitutes a legal, valid, and binding obligation of CONTRACTOR enforceable against CONTRACTOR in accordance with its terms.

2.04 **No Conflict with Applicable Law or Other Documents.** To the best of CONTRACTOR’s knowledge, neither the execution and delivery by CONTRACTOR of this Contract nor the performance by CONTRACTOR of its obligations hereunder:
2.04.1 Conflicts with, violates or will result in a violation of any existing applicable law; or

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

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

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

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

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

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

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

2.10 Voluntary Use of Approved Disposal Facility. CONTRACTOR, without constraint and as a free-market business decision in accepting this Contract, agrees to use the Disposal Facility for the purposes of Disposing of all Mixed Materials not delivered to a Mixed Materials Processing Facility and Residue resulting from Processing of Mixed Materials Collected in the Service Area. Such decision by CONTRACTOR in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof.
ARTICLE 3. TERM OF CONTRACT

3.01 Term. The term of this Contract shall be for a ten (10) year period beginning July 1, 2015, and terminating on June 30, 2025. CITY in its sole discretion shall have the option to extend the Contract for up to two (2) additional five (5) year periods.

3.01.1 First Extension. On or about May 1, 2022, CITY in its sole discretion may offer to extend this Contract by five (5) years by notifying CONTRACTOR of its intention to do so in writing.

3.01.2 Second Extension. On or about May 1, 2027, CITY in its sole discretion may extend this Contract by five (5) years by notifying CONTRACTOR of its intention to do so in writing.

3.01.3 No Right to Extension. Nothing in the foregoing paragraphs or otherwise set forth in this Contract is intended to create a right in favor of CONTRACTOR to obtain either the first or second extension.

3.01.4 Prior to any award of either extension, the CITY shall evaluate CONTRACTOR's performance under this Contract during the prior term and evaluate the reasonableness of the cost for service under the terms of the existing Contract including projected costs for disposal during the period of extension.

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

4.01 General. CONTRACTOR covenants that it shall obtain and deliver to CITY the document set forth in Section 4.02 below within fifteen (15) days of notification that the Contract has been executed. If such document is not delivered to CITY within the fifteen (15) day notification period, CITY may terminate this Contract with absolutely no continuing financial obligations to CONTRACTOR and may resort to the rights and remedies provided for in Article 29 hereof.

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

4.03 Termination. This Contract may be terminated prior to the expiration of its initial term and any extension as may be provided only in accordance with the provisions of this Contract. At the expiration of the term provided for hereunder, or in the event of a termination as allowed under this Contract, CONTRACTOR, at its own expense for a period of up to six (6) months, shall cooperate fully with CITY, as reasonably necessary, to ensure an orderly transition to any and all new service providers, and CITY shall have no continuing obligations to CONTRACTOR other than those expressly provided for under this Contract. CONTRACTOR shall transfer, Process or Dispose of all materials that have been Collected or are in Process under this Contract as of the date of expiration or termination.
ARTICLE 5. SERVICES PROVIDED BY CONTRACTOR

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

5.02 Limitations to Scope of Exclusive Contract. Nothing in this Contract shall limit the right of any Person to donate or sell his or her Recyclable Materials, Organic Materials or Bulky Goods pursuant to Section 5.03 below.

5.03 Collection by Other Persons. Notwithstanding CONTRACTOR’S rights under this Contract as described above and in Section 6.16, the following materials may be Collected by Persons other than CONTRACTOR:

5.03.1 Solid Waste which is removed from any premises and which is transported personally by the owner or occupant of such premises (or by his or her employees) to any permitted processing or disposal site;

5.03.2 Construction and Demolition Debris that is incidentally removed by a construction or demolition contractor or as part of a total service offered by such company and where the company uses its own equipment and employees;

5.03.3 Mixed Materials, Garbage, Organic Materials, Bulky Goods or Recyclable Materials Collected and transported by CITY crews to the Disposal Facility, Materials Recovery Facility, Organic Materials Processing Facility, Mixed Materials Processing Facility or transfer station;

5.03.4 Recyclable Materials or Bulky Goods that are Source Separated at any Service Address by the Generator and donated or sold. Recyclable Materials are considered “donated or sold” so long as the Person collecting the Recyclable Materials does not receive a net payment from the Generator (including but not limited to any payment for consulting and/or management fees related to the collection of any waste materials including Recyclable Materials);

5.03.5 Beverage containers delivered for Recyclable Materials under the California Beverage Container Recyclable Materials Litter Reduction Act, section 14500, et seq.;

5.03.6 Organic Materials removed from a Service Address by a gardening, landscaping or tree trimming service provider as an incidental part of a total service offered by that service provider rather than as a hauling service;

5.03.7 Source Separated Recyclable Materials generated by Commercial Service Addresses including but not limited to those collected by a Person under contract to CITY and those collected through private arrangements between the Generator and the collection company, which are recycled at a recycling facility that holds all applicable permits; provided, however, that loads that contain more than ten (10) percent by weight or volume of non-recyclable material shall not be considered Source Separated Recyclable Materials;
5.03.8 Discarded Materials removed from a Service Address in a Fixed Body vehicle by a property management, maintenance or cleanup service provider as an incidental part of the total on-property cleanup or maintenance service offered by the service provider rather than as a hauling service;

5.03.9 Animal waste and remains from slaughterhouses and butcher shops or grease or vegetable oil waste for use as tallow;

5.03.10 Waste vegetable oil used as an alternative fuel;

5.03.11 Homogeneous organic by-products such as spent hops or coffee bean chaff which are generated by food product manufacturers and processors delivered to destinations other than solid waste or compost facilities and used as livestock feed;

5.03.12 By-products of sewage treatment including sludge, grit and screenings;

5.03.13 Hazardous Waste regardless of its source;

5.03.14 Bulky Goods removed from a Service Address for a nominal charge by a retailer as an incidental part of a sale of merchandise; and

5.03.15 Bulky Goods removed from a Service Address for a nominal charge by a reuse facility or reuse business.

5.04 Prohibition. Nothing in Section 5.03 shall allow the Collection, through the use of a Roll-Off Box, of Mixed Materials, Garbage, Organics, Bulky Goods, or SFD, MFD or CITY Recyclable Materials for a fee by a service provider whose primary service is hauling.

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

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

ARTICLE 6. SERVICE STANDARDS

6.01 Service Standards. CONTRACTOR shall perform all Collection Services under this Contract in a thorough and professional manner. Subject to Section 29.05, Collection Services described in this Contract shall be performed regardless of weather conditions or difficulty of Collection.
6.02  Hours and Days of Collection.

6.02.1  SFD and MFD Collection Services shall be provided, commencing no earlier than 6:00 a.m. and terminating no later than 6:30 p.m., in accordance with the City Municipal Code, Monday through Friday with no service on Saturday (except for holiday service as set forth in Section 6.11 of this Contract in which case normal Collection hours may be utilized) or Sunday. The hours, days, or both of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the Contract Manager.

6.02.2  Commercial Collection Services and CITY Collection Services shall be provided Monday through Saturday with limited Collection Services on Sunday. CONTRACTOR shall endeavor to route collection vehicles in a manner that minimizes noise and traffic impacts during critical periods of the day, including: near residential properties from 6 pm to 6 am, near schools during pick-up and drop-off hours, in merchant districts during normal business hours, and in high traffic areas during peak commute hours. CONTRACTOR shall resolve complaints of noise and traffic impacts caused by CONTRACTOR’S activities to the satisfaction of the Contract Manager.

6.03  Transfer of Loads on Public Streets and Roads. CONTRACTOR is prohibited from transferring loads from one vehicle to another on any public right-of-way unless there is a necessity to do so because of road conditions, mechanical failure, truck fire or accidental damage to a vehicle without written permission from the Contract Manager.

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

6.05  Record of Non-Collection. When any Discarded Material, or other material set out for regular or special Collection, is not Collected by CONTRACTOR for sufficient reason, CONTRACTOR shall leave a Non-Collection Notice. A copy of any Non-Collection Notice, along with the name and address of the party noticed, shall be delivered to the Contract Manager within twenty-four (24) hours of CITY’S request.

6.06  Containers.

6.06.1  Carts. Carts are to be hot-stamped, embossed, laminated, or labeled with a unique identification number and the “Oakland Recycles” logo along with the type of materials to be Collected (i.e., Garbage, Organic Materials), name and phone number of CONTRACTOR, and instructions for proper usage or otherwise approved by Contract Manager. In-molding or labels on the Carts shall be on the lids. Labeling and graphics of the Carts shall be approved by the Contract Manager. Carts shall not contain any type of advertising without the written approval of the Contract Manager.

6.06.2  Bins. Bins, including those defined herein as Compactors are to be marked with a unique identification number, labeled with the type of materials to be Collected (i.e., Garbage, Organic Materials), the size in cubic yards, CONTRACTOR’S name and phone
number and instructions for proper usage and be in good working order. Labeling and graphics of the Bins shall be approved by Contract Manager. Used Bins may be utilized providing they are newly painted, properly marked, in good working order and free of rust and holes. The initial painting, labeling and identification numbering for used bins shall be accomplished by December 31, 2015. CITY retains the right to inspect any such used Bins and direct CONTRACTOR to replace such used Bin if it is deemed to be not acceptable. Bins shall not contain any type of advertising without the written permission and approval of the Contract Manager.

6.06.3 Roll-Off Boxes. Roll-Off Boxes, including those defined herein as Compactors are to be marked with a unique identification number, labeled with the size in cubic yards, CONTRACTOR’S name and phone number and instructions for proper usage, be in good working order, and at the discretion of CITY have lids. Labeling and graphics of the Roll-Off Boxes shall be approved by the Contract Manager and may include use of the joint CWS/WMAC/City of Oakland logo. Used Roll-Off Boxes may be utilized, provided they are newly painted, properly marked, in good working order and free of rust and holes. The labeling and identification numbering for used Roll-Off Boxes may be accomplished during the repainting process which shall be completed by December 31, 2015. CITY retains the right to inspect any such used Roll-Off Boxes and direct CONTRACTOR to replace such used Roll-Off Box if it is deemed to be not acceptable.

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

6.06.4.1 CONTRACTOR shall be responsible for the Collection of abandoned, used, discarded, or unwanted Mixed Materials or Organic Materials Containers in the Service Area within six (6) Work Days of notification by CITY, a Service Recipient, or a Customer. The Containers shall be repaired or, if repair is not practical, Recycled. This service shall be provided at no additional cost to CITY, Customer or Service Recipient.

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

6.06.6 Replacement of Carts Provided Under Previous Contract. If CONTRACTOR has, or obtains Carts provided under previous contract, then in lieu of providing one hundred percent of new Carts, CONTRACTOR may replace at least twenty (20) percent of the Carts provided under the previous contract at no cost or inconvenience to the Service Recipient or Customer in the initial Contract Year. In particular, CONTRACTOR shall replace at least the following number of Carts in each category:
### Mixed Materials and Organics Collection Services Contract

<table>
<thead>
<tr>
<th></th>
<th>Mixed Material Carts</th>
<th>Organics Carts</th>
</tr>
</thead>
<tbody>
<tr>
<td>SFD Service Addresses</td>
<td>19,525 (est.)</td>
<td>19,525 (est.)</td>
</tr>
<tr>
<td>MFD Service Addresses</td>
<td>2,000</td>
<td>CONTRACTOR will provide all new Carts</td>
</tr>
<tr>
<td>Commercial Service Addresses</td>
<td>400</td>
<td>CONTRACTOR will provide all new Carts to those Customers subscribing to Commercial Organic Materials Collection Service.</td>
</tr>
</tbody>
</table>

770 CONTRACTOR shall be responsible for ongoing replacement of Carts and Bins during the remaining term at a frequency and in amounts to ensure maintenance of adequate serviceability. This continual replacement is estimated to be at a rate of up to three percent (3%) per subsequent Contract Year, but in any event shall be sufficient to maintain serviceability.

6.06.6.1 In those instances where the Residential Recycling Contractor is temporarily utilizing Recycling Carts that were used by CONTRACTOR under the previous contract, CONTRACTOR shall be responsible for picking up such Carts from the Residential Recycling Contractor's facility within forty eight (48) hours of receiving the written request from the Recycling Contractor indicating that such Carts have been replaced.

6.06.7 Replacement of Carts and Bins Damaged by CONTRACTOR.

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

6.06.8 Replacement of Carts and Bins Due to Normal Wear and Tear.

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

6.06.9 Replacement of Carts and Bins Required Through No Fault of CONTRACTOR. Upon notification to CONTRACTOR by CITY or a Service Recipient that the Service Recipient's Mixed Materials or Organics Cart(s), or Bin(s) have been stolen or damaged beyond repair through no fault of CONTRACTOR, CONTRACTOR shall deliver a replacement Cart(s), or Bin(s) to the Service Address no later than the next regularly scheduled Collection day, or within six (6) Work Days (whichever is later), at no cost, subject to the limitations set forth below, or inconvenience to the Service Recipient or Customer.

799 Notwithstanding the foregoing, in cases where CONTRACTOR can demonstrate that the replacement is due to factors other than CONTRACTOR mishandling or damage, ordinary wear and tear, or third-party theft, CONTRACTOR may invoice the Customer or Service Recipient requesting such a replacement in accordance with the "Cart Replacement" Maximum Service Rate set forth in Exhibit 1 to this Contract or as may be adjusted under the terms of this Contract from time to time. CONTRACTOR shall maintain records documenting all Cart and
Bin replacements occurring on a monthly basis.

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

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

6.06.11.1 Each SFD Service Address shall be entitled to receive two (2) free Mixed Materials Cart exchanges (meaning an increased or decreased Cart size) and two (2) free Organic Materials Cart exchanges during the initial Contract Year, and once every year thereafter during the term of this Contract.

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

6.06.11.3 Each CITY Facility shall be entitled to receive one (1) free service exchange per Contract Year during the term of this Contract. For the purposes of this Section, a service exchange represents the exchange of as few as one (1) and as many as the total number of Carts and Bins provided by CONTRACTOR to CITY Facility.

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

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

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

6.06.14 Ownership of Roll-Off Boxes. Ownership of Roll-Off Boxes shall rest with CONTRACTOR and upon termination of this Contract CONTRACTOR shall be responsible for removing all Roll-Off Boxes in service from the Service Area. In the case of this termination of the Contract prior to the expiration of the initial term or optional extension term due to the default of CONTRACTOR as set forth in Article 29 of this Contract, CITY shall have the right to take temporary possession of the Roll-Off Boxes and shall retain such possession until satisfactory arrangements can be made to provide Collection Services using other equipment (not to exceed three (3) months). There shall be no monies owing to CONTRACTOR from CITY for such use of the Roll-Off Boxes.

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

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

6.09 Extra Service Tags. CONTRACTOR shall make Mixed Materials Extra Service Tags readily available to SFD and MFD Service Addresses at a minimum through the mail, at CONTRACTOR's office at 172 98th Avenue, Oakland, CA 94603 and at other retail locations as determined by CONTRACTOR. CONTRACTOR shall maintain a sufficient inventory of Mixed Materials and Organic Materials Extra Service Tags to accommodate Collection of requests from Service Recipients. Mixed Materials Extra Service Tags and Organic Materials Extra Service Tags sold by CONTRACTOR shall be priced in accordance with the Maximum Service Rates set forth in Exhibit 1.

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

6.11 Holiday Service. January 1, Thanksgiving Day, and December 25th shall be designated legal holidays. CONTRACTOR shall not be required to provide Collection Services on the designated holidays. In any week in which one of these holidays falls on a Work Day, and CONTRACTOR elects to not provide Collection Services, SFD Collection Services for the
holiday and each Work Day thereafter may be delayed one (1) Work Day for the remainder of
the week with normally scheduled Collection Services being performed on the next Work Day.
MFD, Commercial and CITY Collection Services shall be adjusted as agreed between
CONTRACTOR and the Customer but must meet the minimum frequency requirement of one
(1) time per week. CONTRACTOR shall notify Service Addresses and CITY at least thirty (30)
calendar days in advance of changes to the Collection day because of a holiday schedule.

6.12 Processing and Disposal.

6.12.1 Compliance with Regulations. All materials Collected under this
Contract shall be delivered to facilities that comply with the Department of Resources
Recycling and Recovery regulations.

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

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

6.12.3 Disposal and Mixed Materials Processing Facilities. Except as
set forth below, all Mixed Materials Collected as a result of performing Collection Services shall
be transported to the Disposal Facility or the Mixed Materials Processing Facility. In the event
the Facility being utilized by CONTRACTOR is closed on a Work Day, CONTRACTOR shall
transport and deliver the Mixed Materials to such other legally permitted Disposal Facility or
Mixed Materials Processing Facility as is approved by CITY. Failure to comply with this
 provision shall result in the levy of liquidated damages as specified in Article 22 of this Contract
and may result in CONTRACTOR being in default under this Contract.

6.12.4 Organic Materials Processing Facility. CONTRACTOR shall
ensure that all Organic Materials Collected pursuant to this Contract are delivered to an
approved Organic Materials Processing Facility. All Commercial Organic Materials Collected
pursuant to Section 11.05 shall be delivered to the EBMUD Facility. In the event that (1)
CONTRACTOR is excused from its obligation to enter into a subcontract with EBMUD pursuant
to Section 11.06 or 26.14.3; (2) the EBMUD Subcontract is terminated; or (3) the facility is
closed on a Work Day or other interim basis, CONTRACTOR shall transport and deliver the
Organic Materials to such other legally permitted facility selected by CONTRACTOR and
approved by CITY. Failure to comply with this provision shall result in the levy of liquidated
damages as specified in Article 22 of this Contract and may result in CONTRACTOR being in
default under this Contract.

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


6.14.1 Mixed Materials and Organic Materials. Except as provided in Section 28.03.11, Mixed Materials and Organic Materials that have been Source Separated and set out for Collection shall not be commingled by CONTRACTOR prior to delivery to a transfer facility, the Disposal Facility, the Mixed Materials Processing Facility, MRF or Organics Processing Facility as appropriate without the express prior written authorization of the Contract Manager and such authorization shall not be unreasonably withheld.

6.14.2 Mixed Materials and Organic Materials Collection. CONTRACTOR may Collect Mixed Materials or Organic Materials Collected pursuant to this Contract together with other material Collected by CONTRACTOR inside or outside the Service Area with the authorization of the Contract Manager (unless an emergency or similar occurrence makes it impractical to obtain such permission) and such authorization shall not be unreasonably withheld. CONTRACTOR shall report Mixed Materials and Organic Materials Tons Collected pursuant to this Contract excluding other Mixed Materials or Organic Materials Collected by CONTRACTOR, using a methodology approved by the Contract Manager.

6.14.3 Material Separation. Except for those materials Collected as part of the provision of SFD, MFD or City Bulky Goods Collection Services, Mixed Materials, Organic Materials, Recyclable Materials and Bulky Goods shall not be mixed together in CONTRACTOR'S Collection equipment. Each category of material Collected shall be kept separated according to type or classification.

6.15 Spillage and Litter. CONTRACTOR shall not litter premises in the process of providing Collection Services or while its vehicles are on the road. CONTRACTOR shall transport all materials Collected under the terms of this Contract in such a manner as to prevent the spilling or blowing of such materials from CONTRACTOR'S vehicle. CONTRACTOR shall exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Discarded Materials and shall immediately, at the time of occurrence, clean up such spilled or dropped materials in accordance with the "Spill Response Plan" approved by CITY in Exhibit 10 which is attached to and included in this Contract. CONTRACTOR shall commence clean up any spillage or litter by end of Work Day upon notice from the CITY.

6.15.1 Litter Cleanup. CONTRACTOR is required to clean up reasonable amounts and types of litter around the area of the Container, whether or not CONTRACTOR has caused the litter. In the event of more than one (1) instance in any six (6) month period, not caused by CONTRACTOR, requiring CONTRACTOR to clean up litter around the Containers at a specific Service Address, CONTRACTOR shall make reasonable efforts to contact the Service Recipient and work with the Service Recipient to resolve the litter problem. In the event the litter problem cannot be resolved CONTRACTOR may bill such Customer in accordance with the appropriate Mixed Material Overage Maximum Service Rate as set forth in Exhibit 1 to this Contract.

6.15.2 Street Litter Containers. Except for Bulky Goods and/or Unacceptable Waste, CONTRACTOR is required to clean up litter in and around street litter Containers regardless of whether CONTRACTOR has caused the litter, and regardless of
whether the amount of litter is considered excessive. Should CONTRACTOR discover the
presence of Bulky Goods or Unacceptable Waste, and/or if a specific street litter Container has
excessive amounts of litter during four (4) consecutive cleanups, CONTRACTOR shall
immediately notify CITY. Upon notification, CITY shall determine the process for removing the
Bulky Goods, Unacceptable Waste and/or excessive amounts of litter, including characterizing
the pickup as one of CONTRACTOR's required illegal dumping pickups. CITY and
CONTRACTOR shall also meet and confer to discuss whether additional steps are necessary
to mitigate excessive litter.

6.15.3 Overage Cleanup. CONTRACTOR is required to Collect
Discarded Materials, including materials not contained in bags with affixed Mixed Materials or
Organics Excess Service Tags, placed for Collection in excess of the capacity of the Container.
CONTRACTOR shall be compensated for Collection of Overages not contained in bags with
affixed Mixed Materials or Organics Excess Service Tags in accordance with the "Overage"
Maximum Service Rate set forth in Exhibit 1 to this Contract.

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

6.15.5 Oil, Other Vehicle Fluid Spills or Vehicle Load Fires. In the event
of a vehicle fluid spill from CONTRACTOR'S vehicle or vehicle load fire, CONTRACTOR shall
immediately respond in the manner as set forth in the "Spill Response Plan" approved by CITY
in Exhibit 10 of this Contract.

6.16 Ownership of Materials.

6.16.1 Title to Mixed Materials, Organic Materials, Recyclable Materials
and Bulky Goods shall pass to CONTRACTOR at such time as said materials are placed in a
Container and set out for Collection, or for those materials that are not required to be placed in
a Container, at the time the materials are set out for Collection.

6.16.2 Title to other materials Collected as part of other Collection
Services offered by CONTRACTOR under the terms of this Contract shall pass to
CONTRACTOR at the time the material is placed in a Container utilized by CONTRACTOR for
Collection or at a CITY approved Drop-off site; provided, however, title to Unacceptable Waste
shall remain with the Generator unless expressly accepted by CONTRACTOR.

6.17 Hazardous Waste. Except regarding services provided outside the scope of this
Contract, under no circumstances shall CONTRACTOR'S employees knowingly Collect
Hazardous Waste, or knowingly remove in an unsafe manner Hazardous Waste, from a
Collection Container. If CONTRACTOR determines that material placed in any Container for
Collection is Hazardous Waste, or other material that may not legally be accepted at the
Disposal Facility or one of the Processing facilities, or presents a hazard to CONTRACTOR'S
employees, CONTRACTOR shall have the right to refuse to accept such material. The
Generator shall be contacted by CONTRACTOR and requested to arrange for proper Disposal.
If the Generator cannot be reached immediately, CONTRACTOR shall, before leaving the
Mixed Materials and Organics Collection Services Contract

premises, leave a Non-Collection Notice that indicates the reason for refusing to Collect the material and submit an incident report to Contract Manager.

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

6.17.2 If Hazardous Waste is identified at the time of delivery to the Disposal Facility, or a Processing facility and the Generator cannot be identified, CONTRACTOR shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste.

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

6.19 Transition. CONTRACTOR understands and agrees that the time between the formal Contract signing and July 1, 2015, is intended to provide CONTRACTOR with ample and sufficient time to, among other things, order equipment, prepare necessary routing schedules and route maps, obtain any permits and licenses, establish/build facilities and begin the public awareness campaign as part of CONTRACTOR’S transition program as specified in Exhibit 6, which is attached to and included in this Contract.

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

ARTICLE 7. CHARGES AND RATES

7.01 General. CONTRACTOR shall perform all services required by this Contract in consideration of the right to bill and collect, from Customers for whom Collection Services are provided, the Maximum MM&O Service Rates as set forth in Exhibit 1 and as may be adjusted under the terms of this Contract. CITY does not guarantee collection of such Maximum MM&O Service Rates. CONTRACTOR shall not look to CITY for payment of any sums under this Contract, and CITY has no obligation to pay CONTRACTOR any public funds under this Contract except as specified in Section 12.07, and Article 18. Nothing in this paragraph is intended to alter the parties' obligations under Articles 26 and 28.

7.01.1 Rates are Comprehensive Compensation. The Maximum MM&O Service Rates, as set forth in Exhibit 1 and as may be adjusted under the terms of this Contract, shall be the full, entire and complete compensation due to CONTRACTOR for furnishing all labor, materials, equipment, supplies and other things necessary to perform all the services required by this Contract in the manner and at the times prescribed. The Maximum MM&O Service Rates include, without limitation, all costs for the items mentioned in the preceding sentence and also for all taxes, franchise fees, insurance, bonds, overhead, profit and all other costs necessary to perform all the services required by this Contract in the
manner and at the times prescribed. Except as provided in Section 30.01, the Maximum
MM&O Service Rates include all costs associated with complying with all current federal and
State statutes, and CITY and County ordinances concerning public health, safety and
environmental issues and all laws, regulations, rules, orders, judgments, degrees, permits,
approvals, or other requirement of any governmental agency having jurisdiction over the
services provided by CONTRACTOR under the terms of this Contract, including any current
provisions that become effective on or which require compliance by a date after the effective
date of this Contract. Except as expressly provided in this Contract, CONTRACTOR shall not
request or seek other or further compensation for or in connection with its performance of
services under this Contract.

7.01.2 Annual Rate Adjustment. On July 1, 2016, and each July 1
thereafter during the term of the Contract (each an “Adjustment Date”), the Maximum MM&O
Service Rates shall be adjusted by an “Annual Rate Adjustment.” The Annual Rate Adjustment
will include the Refuse Rate Index adjustment (Section 7.16.2 and Exhibit 2), and adjustments
due to changes in Franchise Fees (Section 7.01.3) and changes in Government Fees (Section
7.01.4). In addition the Maximum MM&O Service Rates shall also be adjusted due to the
special adjustments set forth in Section 7.17.

7.01.3 Changes in Franchise Fees. The Maximum MM&O Service
Rates shall be adjusted as of July 1, 2016, and annually thereafter (the “Adjustment Date”), to
fully capture CONTRACTOR’s increased costs based on new or increased Franchise Fees
implemented or to be implemented since the previous Adjustment Date (or July 1, 2015
regarding the July 1, 2016 adjustment).

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

7.01.3.1.1. Determine item weight of Franchise Fees:

Total Franchise Fees for the previous calendar year ended
December 31 / (Total Allowable Expenses for all Cost Categories under the MM&O Contract for
previous calendar year ending December 31).

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

7.01.3.1.3. Add 7.01.3.1.2 to the MM&O RRI adjustment (along
with Government Fee adjustments, if any) to arrive at the Annual Rate Adjustment. For
purposes of clarity, the Franchise Fee adjustment and two (2) Government Fee adjustments are
not included in the MM&O RRI adjustment, but are added to the MM&O RRI adjustment to
arrive at the Annual Rate Adjustment. As such, these three (3) adjustments are not subject to
the caps as provided in Section 7.16.2.1.3 of the Contract.

7.01.4 Changes in Government Fees. Prior to July 1, 2015, Maximum
MM&O Service Rates will be adjusted to capture new and increased Government Fees/Taxes
which have been implemented or adopted since July 1, 2014 and will become effective no later
than July 1, 2015.
7.01.4.1 The Maximum MM&O Service Rates shall be adjusted on each Adjustment Date to fully capture CONTRACTOR’s increased costs based on new or increased Government Fees implemented or to be implemented since the previous Adjustment Date (or July 1, 2015 regarding the July 1, 2016 adjustment). For purposes of this Section, “Government Fees” are surcharges, fees, assessments, taxes (non-income), licenses and other amounts payable to federal, state or local authorities in relation to CONTRACTOR’s performance hereunder. Specifically, Government Fees include, but are not limited to, those fees listed in Tables 2 and 3 of Exhibit 2 to this Contract.

7.01.4.2 The two (2) Government Fees/Taxes adjustments will be calculated prior to the upcoming July 1 Adjustment Date as follows:

7.01.4.2.1. Determine item weight of each Government Fees/Taxes Cost Category:

(Total Government Fees/Taxes for previous calendar year ending December 31) / (Total Allowable Expenses for all Cost Categories under MM&O Contract for previous calendar year ending December 31))

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

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

7.01.4.2.3. Multiply the result of 7.01.4.2.1 by the result of 7.01.4.2.2 to determine the weighted percentage change of each Government Fees/Taxes Cost Category.

7.01.4.2.4. Add the result of 7.01.4.2.3 to the MM&O RRI adjustment (along with Franchise Fee adjustments, if any) to arrive at the Annual Rate Adjustment.

7.01.4.3 Retroactive Adjustment. In the event of a new Government Fee/Tax, or a change in an existing Government Fee/Tax, which becomes effective at some time other than July 1 of any year, CONTRACTOR shall be compensated for such change through the inclusion of a "Retroactive Adjustment" in the next Annual Rate Adjustment. However, in the event that the Government Fee/Tax is imposed by CITY, a rate adjustment shall occur at the time such fee becomes effective. CITY and CONTRACTOR agree that the “Retroactive Adjustment” shall be an amount needed to compensate CONTRACTOR for increases in Government Fees/Taxes paid during the period from the inception of the fee increase through the subsequent June 30 and shall not include interest, overhead or any other costs of any type. The "Retroactive Adjustment" shall only be included in the rate structure for twelve (12) months or that period necessary to allow CONTRACTOR to recover all retroactive amounts, if less than twelve (12) months, and shall be removed prior to calculating the rates to be set as of the subsequent July 1. However, no governmental fees or charges to which CONTRACTOR agrees contractually or negotiates shall be passed through to Customers unless agreed to in writing by CITY. For purposes of clarity, the Retroactive Adjustment shall not be subject to the caps set forth in Section 7.16.2.1.3.
7.01.5 Payment of Governmental Fees. CONTRACTOR shall pay, when due, any and all governmental fees to the appropriate federal, State, regional, or local governmental entities that levied the fees, and shall provide CITY with proof of such payments promptly upon request.

7.02 CONTRACTOR Billing. CONTRACTOR shall be responsible for the billing and collection of payments for all Collection Services. The rates charged by CONTRACTOR to Customers for the provision of Collection Services shall not exceed the Maximum MM&O Service Rates authorized by CITY and attached in Exhibit 1 to this Contract and as adjusted under the terms of this Contract. CITY shall approve the format and text for all Customer bills and notices. Billing errors identified by CONTRACTOR or Customer shall be corrected within two (2) business days. Customers who notified CONTRACTOR of billing errors shall either be provided with a statement credit or sent a revised bill within three (3) business days after the error is corrected. CONTRACTOR shall use the mailing address provided by the Customer.

7.03 CONTRACTOR as Billing Agent. CONTRACTOR shall Collect Maximum Recycling Service Rates as billing agent for services provided to Customers by CITY’S Residential Recycling Contractor, as set forth in greater detail below in Sections 7.04 and 7.05. CONTRACTOR shall base its billings for Residential Recycling Collection Services on the Maximum Recycling Service Rates as set forth in Exhibit 1 and Customer information exchanged and agreed by CONTRACTOR, the Residential Recycling Contractor and/or CITY as appropriate.

7.04 Production of SFD Customer Invoices. Unless otherwise set forth in the Memorandum of Understanding, appended as Exhibit 15, CONTRACTOR shall invoice SFD Customers for SFD Collection Services and Residential Recycling Collection Services in advance of service, on a quarterly basis beginning July 1, 2015. The invoice may also contain other charges required to be invoiced by governmental agencies within Alameda County. The invoice shall be remitted to the Customer no earlier than the first day of the period for which the service is being billed. CONTRACTOR shall invoice SFD Customers for Contamination Surcharges (as provided in Sections 7.04.3 and 7.04.4 for such surcharges that relate to Residential Recycling Collection Services) on a quarterly basis beginning October 1, 2015 for those Contamination Surcharges earned in the prior quarter. The invoices shall be produced in a form and format that is approved by CITY.

7.04.1 SFD Maximum MM&O Service Rates. The SFD Maximum MM&O Service Rates shall be as set forth in Exhibit 1 to this Contract and include all costs of providing Collection Services including Processing, Disposal and franchise fee costs. The SFD Maximum Recycling Service Rate shall be a flat maximum Per Dwelling Unit rate as provided by CITY.

7.04.2 SFD Recurring Ancillary Service Charges and Invoices. No less than fifteen (15) calendar days before the first day of each quarterly billing period beginning on July 1, 2015, the Residential Recycling Contractor may provide to CONTRACTOR information regarding recurring ancillary charges that it will incur in the upcoming quarter in accordance with Exhibit 15. Such information shall be in the form and format required by Exhibit 15 and include, at a minimum, the Customer name, Service Address and billing address along with a specific description of each ancillary charge. To the extent such information is received in a timely manner and contains the necessary information in the required form and format CONTRACTOR shall include those ancillary charges in the invoices prepared for the upcoming billing cycle. In the event the ancillary service information is not received in a timely manner or
the information is not provided in the form and format required by Exhibit 15, CONTRACTOR
shall notify CITY and the Residential Recycling Contractor of the timing or format
discrepancies, and CONTRACTOR shall not be required to include the ancillary charges in the
invoices prepared for the upcoming billing cycle. The Residential Recycling Contractor may
not provide the information for invoicing later than fifteen (15) days before the first day of the
immediately subsequent billing cycle (relative to the billing cycle for which the charges were
incurred) or correct any format discrepancies later than the same date. If the Residential
Recycling Contractor meets this deadline, then CONTRACTOR shall be required to include
such ancillary charges in the invoices prepared for that immediately subsequent billing cycle.

7.04.3 SFD and MFD Contamination Surcharge and Non-Recurring
Ancillary Charge Invoices. No less than fifteen (15) calendar days before the first day of each
quarter (for SFD Customers) or month (for MFD Customers) beginning on October 1, 2015 for
SFD Customers and August 1, 2015 for MFD Customers, the Residential Recycling Contractor
may provide to CONTRACTOR information regarding SFD and MFD Contamination
Surcharges and non-recurring ancillary charges incurred during the prior billing period,
provided that all such Contamination Surcharges shall have been assessed in accordance with
the contract between CITY and RR Contractor. The information shall be provided in the form
and format approved by CITY. To the extent such information is received in a timely manner
and contains the necessary information in the required form and format, CONTRACTOR shall
include those Contamination Surcharges and non-recurring ancillary charges in Customer
invoices prepared for the upcoming quarter or month, as applicable, for both SFD and MFD
Customers, as set forth in greater detail in Section 7.04.4. In the event the information is not
received in a timely manner or the information is not provided in the required form and format,
CONTRACTOR shall notify CITY and the Residential Recycling Contractor of the timing or
format discrepancies. CONTRACTOR shall not be required to include the Contamination
Surcharges and/or non-recurring ancillary charges in the invoices prepared for the upcoming
billing cycle, but shall be required to include the Contamination Surcharges and/or non-
recurring ancillary charges in the invoices prepared for the subsequent billing cycle, provided
that any format discrepancies are corrected.

7.04.3.1 As a condition of CONTRACTOR performing billing and
payment processing services for RR Contractor for Contamination Surcharges and/or non-
recurring ancillary charges for Residential Recycling Collection Service, RR Contractor shall
reimburse CONTRACTOR for all reasonable billing, accounting, and administrative costs
incurred by CONTRACTOR that are associated with preparing and mailing SFD and MFD
Customer invoices and receiving payment from such Customers, on behalf of RR Contractor.
Such costs may include, but not be limited to, recordkeeping, invoicing, credit card fees,
printing, and postage. CONTRACTOR and RR Contractor shall agree to a process for
reimbursement in Exhibit 15. If RR Contractor fails to timely reimburse CONTRACTOR,
CONTRACTOR shall reconcile such reimbursable costs pursuant to Section 7.14.2. RR
Contractor may, at any time, provide written notice to CONTRACTOR and CITY, directing
CONTRACTOR to cease performance of Customer billing and payment processing services for
Contamination Surcharges or non-recurring ancillary charges. Such notice shall specify a date
upon which CONTRACTOR’s obligation hereunder shall terminate.

7.04.4 Enforcement of Recycling Contractor Contamination Surcharges
and Non-Recurring Ancillary Charges. RR Contractor Contamination Surcharges and non-
recurring ancillary charges will be billed by CONTRACTOR in arrears as a separate invoice in
the regular billing cycle to SFD and MFD Customers. RR Contractor will be paid for
Contamination Surcharges and non-recurring ancillary charges upon receipt of payment for
those charges by the MMO CONTRACTOR. CONTRACTOR may, but shall not be under any
obligation to, place the logo of RR Contractor on any such separate invoice for Contamination
Surcharges and non-recurring ancillary charges, provided that CONTRACTOR shall not make
any use of RR Contractor's logo that would be inconsistent with any trademark or service mark
rights of RR Contractor. Such separate invoice shall indicate that the charge(s) are assessed
by RR Contractor and shall provide the telephone number of RR Contractor. CONTRACTOR
shall maintain a separate Customer account from that used for regular Residential Recycling
Collection Service for the purposes of RR Contractor Contamination Surcharges and non-
recurring ancillary charges. CONTRACTOR shall monthly provide RR Contractor with a
statement of the accounts receivable balance for Contamination Surcharges and non-recurring
ancillary charges and payments received from Customers therefor in the preceding calendar
month. SFD and MFD Customers may pay such separate invoices using any payment method
or location available to such Customers for payment of regular invoices for Collection Services
and Residential Recycling Collection Services. CONTRACTOR shall not be responsible for
any collection activities with regard to Contamination Surcharges and charges for non-recurring
ancillary services other than to notify promptly RR Contractor of nonpayment of those charges.
CITY and CONTRACTOR hereby acknowledge and agree that when CONTRACTOR is
contacted by Customers regarding Contamination Surcharges or non-recurring ancillary
charges for Residential Recycling Collection Services, CONTRACTOR's communication with
any such Customer shall be limited to informing the Customer of the contact information for RR
Contractor.

7.05 Production of MFD Customer Invoices. CONTRACTOR shall invoice MFD
Customers for MFD Collection Services and MFD Recycling Collection Services in advance, not
less than monthly beginning July 1, 2015. The invoice shall be remitted to the Customer no
earlier than the first day of the period for which the service is being billed. CONTRACTOR shall
invoice MFD Customers for Contamination Surcharges on MFD Collection Services on a
monthly basis beginning August 1, 2015, for those Contamination Surcharges earned in prior
months. The invoice shall be produced in a form and format that is approved by CITY.

7.05.1 MFD Maximum MM&O Service Rates. The MFD Maximum
MM&O Service Rates shall be as set forth in Exhibit 1 to this Contract and include all costs of
providing Collection Services including Processing, Disposal and franchise fee costs. The
MFD Maximum Recycling Service Rates shall be a flat maximum Per Dwelling Unit rate as
provided by CITY.

7.05.2 MFD Recurring Ancillary Service Invoices. No less than fifteen
(15) calendar days before the first day of each billing period beginning with the August 1, 2015
billing period, the Residential Recycling Contractor may provide to CONTRACTOR information
regarding MFD recurring ancillary charges that it may have incurred or which will be incurred in
the upcoming month. The recurring ancillary service information is to be produced in the form
and format approved by CITY and include, at a minimum, the Customer name, Service
Address and billing address along with a specific description of each ancillary charge. To the
extent the information is received in a timely manner and contains the necessary information in
the required form and format CONTRACTOR shall include those ancillary charges in the MFD
Customer invoices prepared for the upcoming billing cycle. In the event the ancillary service
information is not received in a timely manner or the information is not provided in the required
form and format, CONTRACTOR shall notify the Contract Manager and the Residential
Recycling Contractor of the timing or format discrepancies, and CONTRACTOR shall not be
required to include the ancillary charges in the invoices prepared for the upcoming billing cycle.
The Residential Recycling Contractor may not provide the information for invoicing later than
Mixed Materials and Organics Collection Services Contract

fifteen (15) days before the first day of the immediately subsequent billing cycle (relative to the billing cycle for which the charges were incurred) or correct any format discrepancies later than the same date. If the Residential Recycling Contractor meets this deadline, then CONTRACTOR shall be required to include such ancillary charges in the invoices prepared for that immediately subsequent billing cycle. CITY and CONTRACTOR hereby acknowledge and agree that Contamination Surcharges and non-recurring ancillary charges for MFD Residential Recycling Collection Services are addressed under Sections 7.04.3 and 7.04.4.

7.06 Production of Commercial Customer Invoices. CONTRACTOR shall invoice Commercial Customers for Commercial Collection Services, either in advance or in arrears but no less than twelve (12) times per year. Invoices shall be remitted no earlier than the first day of the month for which the service is being billed. The invoice shall be produced in a form and format that is approved by CITY. The Commercial invoice shall include at a minimum, a Collection rate which shall be based on Container size and frequency of Collection and include all costs of providing Collection Services including Processing, Disposal and franchise fee costs.

7.07 Invoices for Temporary Roll-Off Boxes. Customers utilizing temporary Roll-Off Boxes shall be invoiced in arrears of the provision of service although a deposit may be required in advance.

7.08 Partial Month Service. If, during a month, a Customer is added to or deleted from CONTRACTOR’S Service Area, CONTRACTOR’S billing (including that on behalf of RR Contractor pursuant to this Article 7) shall be pro-rated based on the service rate established in Exhibit 1 divided by four (4), and multiplied by the number of actual weeks in the month that service was provided to the Customer. CONTRACTOR shall refund Customers who terminate service any pre-paid amount.

7.09 Customer Self Haul. On or before July 15, 2015 and annually thereafter during the term of this Contract, CITY shall provide CONTRACTOR with an electronic list of those Service Addresses that have obtained a self-haul permit. Beginning August 15, 2015 and monthly thereafter during the term of this Contract, CITY shall provide an electronic update of any additional Service Addresses that have obtained a self-haul permit.

7.10 CITY Provided Billing Inserts. CITY may provide educational and other material to CONTRACTOR for inclusion in the invoices provided by CONTRACTOR to SFD, MFD and Commercial Customers as set forth in Article 17.

7.11 Methods of Payment. CONTRACTOR shall provide the means for Customers to pay bills through the following methods: cash, checks, credit cards, internet payment service or automatic withdrawal from bank account. On-line (E-Pay) bill methods shall be password protected and comply with federal regulations protecting the privacy of Customer credit information. CONTRACTOR shall provide evidence of such security certifications and advise CITY of CONTRACTOR’S security measures implemented for on-line payment.

7.12 Delinquent Service Accounts.

7.12.1 SFD invoices shall be delinquent when they are unpaid on the forty-fifth (45th) day of the quarterly billing cycle. CONTRACTOR may charge late fees as set forth in Section 7.13.1 and take such action as is legally available to collect or cause collection of past due amounts, including requesting permission of CITY to terminate Collection Services in accordance with the process set forth below.
7.12.2 MFD invoices shall be delinquent when they are unpaid on the last day of the monthly billing cycle. CONTRACTOR may charge late fees as set forth in Section 7.13.1 and take such action as is legally available to collect or cause collection of past due amounts, including requesting permission of CITY to terminate Collection Services in accordance with the process set forth below.

7.12.3 Commercial invoices shall be delinquent when they are unpaid on the last day of the monthly billing cycle. CONTRACTOR may charge late fees as set forth in Section 7.13.1 and take such action as is legally available to collect or cause collection of past due amounts, including requesting permission of CITY to terminate Collection Services in accordance with the process set forth below.

7.13 Delinquent Service Account Termination Process. CONTRACTOR may implement the following service termination process for SFD, MFD and Commercial Customers whose accounts are delinquent.

7.13.1 CONTRACTOR may charge a delinquent Customer a late fee which is the greater of Five Dollars ($5.00) or one and one half (1.5) percent per month (not compounded). CONTRACTOR may take such action as is legally available to collect or cause collection of such past due amounts.

7.13.2 CONTRACTOR may issue a delinquency notice at any point after the account becomes delinquent. Sections 7.13.2.1 through 7.13.12 outline processes regarding notification and cure of such delinquencies and associated issues, including without limitation regarding notification and collection of delinquencies, termination of service, and CITY’s option to subscribe to service on behalf of delinquent SFD and MFD property owners to whom CONTRACTOR has terminated service and to impose special assessments against delinquent properties to recover the costs of such service. With respect to the timelines related to the delinquency notices and hearings set forth in Sections 7.13.2.1 through 7.13.12, CITY reserves the right to modify the timelines by written policy adopted by the City Administrator, or his or her designee, after consultation with CONTRACTOR.

7.13.2.1 Delinquency notice will be sent to the property owner and billing address.

7.13.2.2 Delinquency notice will include information on hearing scheduled approximately fifteen (15) calendar days after date of the notice to dispute the non-payment.

7.13.2.3 Delinquency notice will specify that failure to pay the bill may result in termination of service and that CITY will deem lack of service to be a nuisance.

7.13.2.4 For SFD and MFD Customers, delinquency notice will further provide that CITY may, in order to abate the nuisance, subscribe on behalf of the property owner at the property owner’s expense beginning with the next billing cycle and impose as special assessment against the property on which the nuisance is maintained.

7.13.3 CONTRACTOR, subject to its compliance with the requirements of Section 7.13, has the right to terminate service if the bill remains unpaid on the forty-fifth (45th) day after issuing the delinquency notice.
7.13.4 CONTRACTOR and CITY will hold hearing concerning delinquent bills on the date specified in the delinquency notice (typically the sixtieth (60th) day of the billing cycle).

7.13.5 Following the hearing (typically the sixty-first (61st) day of the billing cycle), CONTRACTOR, on CITY'S behalf, will send final delinquency notice to property owner, billing address, and Service Address for the accounts with a past due balance notifying them that service will be terminated by CONTRACTOR on the ninetieth (90th) day of the billing, if CONTRACTOR does not receive payment, and that CITY may declare the failure to maintain service for the property a nuisance. For SFD and MFD Customers, the final delinquency notice shall further provided that CITY may (a) subscribe to service on the property owner's behalf at the property owner's expense to abate the nuisance; and (b) impose a special assessment on the property for the costs associated with abating the nuisance.

7.13.6 No sooner than the first day of the next billing cycle, CONTRACTOR shall provide CITY a list of properties (Service Addresses) to which it will stop service for non-payment. The list is to be produced in the form and format approved by CITY and include, at a minimum, the Customer name, Service Address and billing address, assessor's parcel number (APN), Customer service level (i.e., number and size of Containers, frequency of Collection), and Customer billing rate for the next billing cycle.

7.13.7 The next business day following its receipt of the list described in Section 7.13.6, or as soon as reasonably practicable thereafter, CITY will elect, with respect to SFD and MFD Service Addresses only, whether to declare the conditions on the property to be a nuisance and subscribe to service on behalf of property owner at the property owner's expense to abate nuisance.

7.13.8 Approximately ten (10) days following its election under Section 7.13.7, CITY will confirm status of delinquent accounts with CONTRACTOR and, for those properties for which CITY has subscribed on behalf of the property owner, imposes a special assessment on those properties that are still delinquent. CITY will provide notice to property owner (as determined from County Assessor's or Recorder's records) by certified mail.

7.13.9 Upon receipt of proceeds from the special assessment, CITY will forward the portion of the special assessment attributable to CONTRACTOR billing to CONTRACTOR. CITY'S financial liability to CONTRACTOR for payment for services rendered when CITY declares a nuisance and subscribes on behalf of the property owner is limited to the proceeds of such special assessments.

7.13.10 CONTRACTOR can require that in order to reestablish service the Customer must pay any past-due amounts. However, CONTRACTOR shall not be required to address any outstanding assessment before resuming service, but CONTRACTOR shall promptly notify CITY of the initiation of service.

7.13.11 CONTRACTOR may require a credit card, or at the discretion of the Service Recipient, a deposit equal to one billing cycle's payment, be maintained on file for any Customer whose account went into ninety (90) day delinquency.

7.13.12 CITY will continue to subscribe on Customer's behalf and impose special assessments for each billing cycle until it is notified by CONTRACTOR that Customer has cleared delinquent account with CONTRACTOR and subscribed to service. Throughout
Mixed Materials and Organics Collection Services Contract

the period in which CITY has subscribed on behalf of the property owner, CONTRACTOR shall
bill CITY and send a copy of such bill to the property owner and the last known billing address
for the Customer. The bill shall indicate that CONTRACTOR has terminated service as a result
of Customer's non-payment, that as a result CITY has declared the property a nuisance due to
the Customer's failure to maintain service, that CITY has subscribed to service on behalf of the
property owner at the property owner's expense to abate the nuisance, and that CITY will
impose a special assessment for the costs of abating the nuisance, and that the Customer may
avoid the imposition of further special assessments by paying its delinquent balances with
CONTRACTOR and reinstating its account.

7.14 CONTRACTOR'S Payment to Residential Recycling Contractor.

7.14.1 Residential Recycling Contractor Payment. CONTRACTOR
shall, on or before the tenth (10th) day of each calendar month, make payment to the
Residential Recycling Contractor for Residential Recycling Collection Services rendered by the
Residential Recycling Contractor in the preceding calendar month based upon the number of
SFD and MFD Dwelling Units for which CONTRACTOR has invoiced to SFD and MFD
Customers in accordance with Sections 7.04 and 7.05, respectively, as adjusted pursuant to
Section 7.14.2. Such services and payment shall be based on Customer information
exchanged and agreed pursuant to Section 7.03, in the form and format set forth in Exhibit 15,
with such payments commencing on August 10, 2015. CONTRACTOR shall make payment to
the Residential Recycling Contractor based on the number of Dwelling Units consistent with
Sections 9.01.1.1 and 10.02.4 of this Contract, and for which Mixed Material Collection
Services are rendered and billed. Nothing herein prevents CONTRACTOR and the Residential
Recycling Contractor from making alternative invoice and payment arrangements for SFD and
MFD Residential Recycling Collection Services in Exhibit 15.

7.14.2 True-Up. Exhibit 15 shall provide for regular true-ups of
Customer information provided by the Residential Recycling Contractor to the CONTRACTOR
and the payments by the CONTRACTOR to the Residential Recycling Contractor within a
reasonable period of time following the end of each monthly billing period for MFD Customers
and the end of each quarterly billing period for SFD Customers (but in any event each such
true-up shall be concluded in advance of Customer billing for the next billing period) to reflect
new starts, cancellations, refunds, credits, adjustments and pro-rated billings not fully captured
in the current or any previous billing cycle.

7.14.3 Timing of Payment. CONTRACTOR shall provide payment to
Residential Recycling Contractor for all undisputed amounts for Residential Recycling
Collection Services in accordance with the terms and conditions of the Memorandum of
Understanding between CONTRACTOR, CITY and the Residential Recycling Contractor as set
forth in Exhibit 15 to this Contract. CONTRACTOR shall promptly provide written notice to RR
Contractor as soon as CONTRACTOR is aware of disputed amounts with respect to any such
payment.

7.14.4 Non-Payment of Residential Recycling Contractor. In the event
CONTRACTOR does not provide payment to Residential Recycling Contractor in the time and
manner set forth in Exhibit 15, CONTRACTOR shall be liable for liquidated damages as set
forth in Article 22 of this Contract in addition to any other remedies available under this
Contract.
7.14.5 Security for Payment to RR Contractor. In order to allow CITY to insure timely payment to the Residential Recycling Contractor of amounts not reasonably disputed by CONTRACTOR, CONTRACTOR and CITY shall, together with a bank as provided below, enter into an escrow agreement that requires CONTRACTOR to deposit into escrow an amount of One Million Five Hundred Thousand Dollars ($1,500,000.00) (the "RR Payment Escrow Agreement").

7.14.5.1 The bank that is party to the RR Payment Escrow Agreement must be a FDIC insured banking institution chartered to do business in the State of California as selected by CONTRACTOR (the "Escrow Bank"). The RR Payment Escrow Agreement shall be structured so that, in the event funds are drawn by CITY, CONTRACTOR shall restore the balance of One Million Five Hundred Thousand Dollars ($1,500,000) within two (2) Work Days. The RR Payment Escrow Agreement shall further provide that (a) all fees and expenses of the Escrow Bank shall be timely paid by CONTRACTOR; (b) all earnings on funds deposited into escrow shall be for the account of CONTRACTOR; (c) the funds deposited into escrow shall be invested only in U.S. Treasury securities, bond and money market funds comprised substantially of U.S. Treasury securities or other instruments with similar levels of risk; (d) CONTRACTOR may terminate the RR Payment Escrow Agreement and cause all remaining escrowed funds to be released to CONTRACTOR on or after July 1, 2025; (e) any indemnification required by the Escrow Bank as a condition of it entering into the RR Payment Escrow Agreement shall be borne severally but not jointly by CONTRACTOR and CITY; and (f) the terms and conditions set forth below in this Section 7.14.5 with respect to withdrawal conditions and disputes shall be incorporated into the RR Payment Escrow Agreement to the extent reasonably necessary to protect the rights of CONTRACTOR and CITY. Not later than forty-five (45) days following the date of execution of this Contract, the CITY and CONTRACTOR shall complete negotiations of the form of RR Payment Escrow Agreement with the Escrow Bank. Not later than July 1, 2015, CONTRACTOR shall deposit into escrow under the RR Payment Escrow Agreement the sum of One Million Five Hundred Thousand Dollars ($1,500,000.00).

7.14.5.2 Not later than seven (7) Work Days before CITY may submit a withdrawal request to the Escrow Bank, CITY shall deliver written notice to CONTRACTOR stating the amount CITY intends to withdraw. CITY may not request any withdrawal unless the claimed amount exceeds ten (10) percent of the average monthly payments by CONTRACTOR to RR Contractor. CITY may proceed to submit a withdrawal request if CONTRACTOR does not timely deliver a written notice to CITY disputing the withdrawal request as provided in the immediately following sentence. CONTRACTOR may dispute the withdrawal request by delivering to CITY, within five (5) Work Days following CONTRACTOR's receipt of the notice from CITY, a written notice stating the amount that CONTRACTOR disputes and promptly paying any undisputed portion to RR Contractor. Such written notice of dispute from CONTRACTOR shall commence dispute resolution between CONTRACTOR and the RR Contractor in accordance with Article 54, subject to modification as provided below in Section 7.14.5.3.

7.14.5.3 CONTRACTOR and the RR Contractor shall have an informal meet and confer period of seven (7) Work Days. If the dispute is not informally resolved, then the parties shall agree to binding arbitration procedures as generally set forth in Section 54.01.3; provided, however, that Section 54.01.3.4 shall have no applicability to disputes related to the RR Payment Escrow Agreement or otherwise under this Section. Notwithstanding Section 54.01.3.2, the parties may agree to other expedited procedures for completing binding arbitration within ninety (90) days. Failure to agree upon such procedures...
will cause the parties to proceed pursuant to the then-current JAMS Streamlined Arbitration Rules. During the pendency of dispute resolution, CITY may not submit a withdrawal request to the Escrow Bank. If CONTRACTOR has not made payment to the RR Contractor of amounts determined to be owed as a result of written agreement between the parties following informal meet-and-confer or as an award of the arbitrator pursuant to Section 54.01.3 within five (5) Work Days of such agreement or award, CITY may submit to the Escrow Bank a withdrawal request for such amounts. CITY shall cause RR Contractor to agree to substantially similar arbitration requirements under the Residential Recycling Contract.

7.14.5.4 In the event CONTRACTOR withholds payment of the RR Contractor’s entire monthly bill or a substantial portion thereof ("substantial" shall mean no less than Four Hundred Thousand Dollars ($400,000.00)) and CITY reasonably determines, after reviewing all information provided CITY by CONTRACTOR and the RR Contractor, such withholding by CONTRACTOR is not justified, then CITY may submit a withdrawal request to the Escrow Bank of the amount withheld and submit such payment to the RR Contractor, after first providing five (5) Work Days' notice to both CONTRACTOR and the RR Contractor of CITY's determination. If, after withdrawal by the CITY, final resolution of the dispute under Section 7.14.5.3 affirms CONTRACTOR's withholding of payment, or a portion thereof, to the RR Contractor, then CONTRACTOR shall be entitled to recapture the final agreed-upon or arbitrated amount of the payment withdrawn from the Escrow Bank as well as any legal interest thereon. The RR Contractor may either reimburse CONTRACTOR such amounts or CONTRACTOR may deduct such amounts from its subsequent monthly payment(s) to the RR Contractor.

7.15 Maximum Service Rates. Maximum Service Rates shall consist of a Maximum MMO Service Rate, which includes all costs of providing Collection Services including but not limited to Collection, Processing, Disposal, and franchise fee costs, and such other charges as may be added by CITY during the term of this Contract and a Maximum Recycling Service Rate and a Contamination Surcharge as approved by CITY. CONTRACTOR shall not be entitled to any compensation that is not listed in Exhibit 1. On or after July 1, 2015, and each subsequent July 1, CONTRACTOR'S Maximum MM&O Service Rates shall be adjusted as set forth in the next Section below.

7.16 Annual Rate Adjustments.

7.16.1 Annual Adjustment to Maximum Service Rates Prior to Start of Collection Services. The Maximum Collection Service Rates as set forth in Exhibit 1 to this Contract shall be adjusted prior to July 1, 2015 as set forth in Section 7.01.4.

7.16.2 Annual Adjustment to Maximum MM&O Service Rates after Start of Collection Services. On each Adjustment Date, the Maximum MM&O Service Rates as set forth in Exhibit 1 shall be adjusted by an Annual Rate Adjustment, which will include a RRI adjustment, pursuant to this Section 7.16.2. and Exhibit 2 to this Contract, as well as Franchise Fee and Government Fee/Tax adjustments and the special adjustments provided for in Section 7.17. The RRI adjustment is calculated independently of the Franchise Fee and Government Fee/Tax adjustments. The Contamination Surcharge set forth in Exhibit 1 shall not receive an Annual Rate Adjustment.

7.16.2.1 Annual Rate Adjustment. On the Adjustment Date during the term of this Contract, the Maximum MM&O Service Rates set forth in Exhibit 1 shall be adjusted by a RRI adjustment pursuant to this Section 7.16.2.1 and Exhibit 2 to this Contract.
7.16.2.1.1. **Cost Category Weight.** Contractor will calculate the
total of all Allowable Expenses (as defined in Exhibit 2) for each Cost Category (also defined in
Exhibit 2) for the period of July 1, 2015 through December 31, 2015. Each Cost Category will
then be assigned an "item weight" based on the proportionate share of its Allowable Expenses
to the total of all Allowable Expenses for all Cost Categories. For example, if the Allowable
Expenses of the Diesel Fuel Cost Category total One Hundred Dollars ($100) and the Allowable
Expenses within all Cost Categories is Two Thousand Dollars ($2,000), then the Diesel Fuel
Cost Category's item weight will be five (5) percent. The Cost Categories shall be reweighed
eyery year based on allowable expenses thereafter from January 1 through December 31.

7.16.2.1.2. **Annual Rate Adjustment Calculation.** The RRI
adjustment (a component of the Annual Rate Adjustment) shall be the lower of: (i) six (6)
percent, or (ii) the sum of the weighted percentage change (based on the total of all Cost
Categories) in the Cost Indicators of Cost Categories 1 - 8 (each described in Exhibit 2) from
the previous review date to the current review date. For Cost Category Items 2 (Diesel Fuel), 3
(CNG Fuel), 4 (Vehicle Replacement), 5 (Vehicle Maintenance), and all but the Union Labor
Cost Category of Items 6 (Davis Street Processing) and 7 (Disposal) and 8 (All Other), the
current review year is the most recent calendar year ended December 31. For Cost Category
Item 1 (MM&O Union Labor), and the Union Labor Cost Category of Items 6 (Davis Street
Processing) and 7 (Disposal), the current review date is July 1 of the current year. For
purposes of clarification the parties agree and understand that Categories 9 (Government
Fees/Taxes – Disposal), 10 (Government Fees/Taxes – Processing), and 11 (Franchise Fees)
will be used for purposes of weighting the RRI Cost Categories, but they will not be included in
the RRI calculation. Instead, they will be added to the RRI calculation.

7.16.2.1.3. The weighted percentage change in the Cost
Indicator of a Cost Category may be either positive or negative. There shall be no limit on
Annual Rate Adjustments, but an RRI adjustment shall not be greater than six (6) percent in any
individual year (except the final year of the original Contract term and the final year of any
extension Contract terms when it may not be greater than eight (8) percent) or lower than
negative 5 (-5) percent. In any year that the RRI adjustment calculation is more than six (6)
percent, the amount above six (6) percent and up to eight (8) percent shall be carried-forward to
successive RRI adjustments under this Contract until applied or the Contract terminates. RRI
adjustments in any year in excess of eight (8) percent shall not be carried forward to any future
year. With regard to the July 1, 2024, RRI adjustment, carried-forward RRI adjustment amounts
that had not been recouped in previous RRI adjustments due to the six (6) percent cap shall be
recouped to the extent they do not exceed eight (8) percent. With regard to the July 1, 2029,
RRI adjustment, carried-forward RRI adjustment amounts that had not been recouped in 2025,
2026, 2027 or 2028 RRI adjustments due to the six (6) percent cap shall be recouped to the
extent they do not exceed eight (8) percent. With regard to the July 1, 2034, RRI adjustment,
carried-forward RRI adjustment amounts that had not been recouped in 2030, 2031, 2032 or
2033 RRI adjustments due to the six (6) percent cap shall be recouped to the extent they do not
exceed eight (8) percent.

7.16.2.1.4. **Differential Adjustment.** Should CONTRACTOR
agree to labor increases with Local 70 that exceed the labor increase allowable under the 2009
CBA ("differential"), those differential amounts shall not be included in the RRI adjustment (i.e.,
as a CONTRACTOR cost for purposes of calculating a percent change of the MM&O Union
Labor Cost Category). However, such differential amounts shall be recovered by
CONTRACTOR in Annual Rate Adjustments by applying them to the Maximum MM&O Service
Rates in equal installments (“Differential Adjustments”) over a three (3) year period, including
the year in which the differential is first incurred. For example, if the weighted differential
between the 2009 CBA and a subsequent CBA is three tenths (0.3) percent, then the current
Annual Rate Adjustment would be increased by one tenth (0.1) percent and the two (2)
subsequent Annual Rate Adjustments by one tenth (0.1) percent. For purposes of clarity, recovery of the differential amounts shall not be subject to any cap under this Section.

7.16.2.2 Diversion Adjustment. Beginning with the July 1, 2017, rate adjustment, the Diversion adjustment shall be applied to all RRI adjustments. Except for those instances as set forth in Section 7.16.2.4 when the reciprocal of the Diversion adjustment is required to be used, the Diversion adjustment shall be the lesser of one hundred (100) percent or the percentage calculated by dividing the Diversion rate achieved by CONTRACTOR in the calendar year immediately preceding the effective date of the rate adjustment, by the minimum annual Diversion requirement for that calendar year, pursuant to Article 8 of this Contract and as set forth in Exhibit 8, which is attached to and included in this Contract. The Diversion rate achieved by CONTRACTOR each calendar year will be calculated using Table B of Exhibit 8. In the event the Diversion adjustment is less than one hundred (100) percent, the adjustment shall only be effective for one (1) year and shall be removed prior to calculating the subsequent year’s rate adjustment as set forth in Section 7.16.2.1 above.

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

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

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

7.16.2.6 In any year that CITY chooses to postpone the implementation of an negative Annual Rate Adjustment for one (1) year, CONTRACTOR shall retain those excess funds that it collects as a result of the Maximum Service Rates not being reduced for that year in the Recycling stability account as set forth in Section 7.19.1 below for use in such manner as may be directed by the Contract Manager. An accounting of the funds shall be provided to the Contract Manager by the fifteenth (15th) day of each month after the month in which the funds are collected and shall be accompanied by such documentation as may be requested by CITY.

7.17 Special Adjustments.
7.17.1 Special Prior Year CPI Adjustments. For the second and third years of the Contract, the Annual Rate Adjustment shall include an additional percentage increase per year, over and above the Annual Rate Adjustment percentage amounts calculated above. This adjustment will be added to the Annual Rate Adjustment, for the July 1, 2016, and July 1, 2017 rate adjustments in the manner set forth in Section 3.8 of Exhibit 2 to this Contract. These special prior year CPI adjustments shall not be restricted by the six (6) percent or eight (8) percent upper limitations set forth in Section 7.16.2.1.3. The increases shall not be a part of the base Maximum MM&O Service Rates as set forth in Exhibit 1 to this Contract for succeeding RRI calculations after Year 3 and instead shall be removed from the base Maximum MM&O Service Rates prior to calculating the Year 4 Maximum MM&O Service Rates in the manner set forth in Tables 6A and 6B of Section 3.8 of Exhibit 2 to this Contract. For purposes of this calculation, the adjustment will be based on the percentage change in the annual average of the CPI for the calendar years 2013 and 2014. For purposes of clarity, the Special CPI Adjustment shall be applied to the rates in Exhibit 1 as specified on Exhibits 1A through 1G.

7.17.2 Special 1.5% Adjustment. For the second through the fifth years of the Contract, the Annual Rate Adjustment shall include an additional 1.5% increase per year, over and above the amounts calculated above (four 1.5% increases). This adjustment will be added to the Annual Rate Adjustment, for the July 1, 2016, July 1, 2017, July 1, 2018 and July 1, 2019 rate adjustments in the manner set forth in Section 3.8 of Exhibit 2 to this Contract. This special 1.5% adjustment shall not be restricted by the six (6) percent or eight (8) percent upper limitations set forth in Section 7.16.2.1.3. The increases shall be a part of appropriate base Maximum MM&O Service Rates as set forth in Exhibit 1 to this Contract for succeeding RRI calculations. For purposes of clarity, the Special 1.5% Adjustment shall be applied to the rates in Exhibit 1 as specified on Exhibits 1A through 1D and 1G.

7.17.3 Special Local 6 Adjustment. For the second through the fifth years of the Contract, the Annual Rate Adjustment shall include an additional Local 6 Adjustment as follows. July 1, 2016 an additional .82%, July 1, 2017 an additional .89%, July 1, 2018 an additional .96% and July 1, 2019 an additional 1.03%. These adjustments will be added to the Annual Rate Adjustment, for the July 1, 2016, July 1, 2017, July 1, 2018 and July 1, 2019 rate adjustments in the manner set forth in Section 3.8 of Exhibit 2 to this Contract. These increases shall be over and above the amounts calculated above. This special Local 6 adjustment shall not be restricted by the six (6) percent or eight (8) percent upper limitations set forth in Section 7.16.2.1.3. The increases shall be a part of the appropriate base Maximum MM&O Service Rates as set forth in Exhibit 1 to this Contract for succeeding RRI calculations. For purposes of clarity, the Special Local 6 Adjustment shall be applied to the rates in Exhibit 1 as specified on Exhibits 1A through 1D and 1G.

7.18 Required Information.

7.18.1 Financial Information. On or before March 1, 2016, or such later time as may be agreed to between CITY and CONTRACTOR and annually thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY financial information for the specific services performed under this Contract for the preceding calendar year. Such financial information shall be in the format as set forth in Exhibit 2, or as may be further revised by CITY from time to time. If CONTRACTOR fails to submit the financial information in the required format by March 1, or such later time as may be agreed to between CITY and CONTRACTOR it is agreed that CONTRACTOR shall be deemed to have waived the RRI adjustment for the next billing period and if the delayed submission exceeds three (3) months then the increase
1699 will be delayed for a second billing period.

1700 7.18.2 Diversion Data. On or before March 1, 2017, and annually thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY Diversion data for the specific services performed under this Contract in the format specified by CITY. If CONTRACTOR fails to submit the Diversion data in the required format by March 1, CONTRACTOR may be subject to daily liquidated damages pursuant to Article 22.

1705 7.18.3 Adjustments. Annual Maximum MM&O Service Rate adjustments shall be made only in units of one cent ($0.01). Fractions of less than one cent ($0.01) shall not be considered in making adjustments. The indices shall be rounded at four (4) decimal places for the adjustment calculations.

1709 7.18.4 If CONTRACTOR’S failure to submit the financial information required under Section 7.18.1 is the result of extraordinary or unusual circumstances as demonstrated by CONTRACTOR to the reasonable satisfaction of the Contract Manager, CITY, at its reasonable discretion, may consider the request for the annual Maximum Service Rate adjustment.

1714 7.18.5 As of May 15, 2016, and annually thereafter during the term of this Contract, the Contract Manager shall notify CONTRACTOR of the Maximum Service Rate adjustment to the affected service rates to take place on the subsequent July 1.

1717 7.18.6 Adjustments Due to Changes in Law. CONTRACTOR agrees that no extraordinary adjustment shall occur or rate adjustment be provided except as set forth in Article 30 and Sections 28.01 and 28.02.

1720 7.18.7 CONTRACTOR’S Payments to CITY. CONTRACTOR shall make payment to CITY of a negotiated franchise fee, and such other fees as may be specified in this Contract.

1723 7.18.8 Franchise Fee. The franchise fee for the fiscal year July 1, 2015, through June 30, 2016, shall be the initial franchise fee of Twenty-five Million Thirty-four Thousand Dollars ($25,034,000). The franchise fee for the next fiscal year and each subsequent fiscal year shall be adjusted annually by the percentage change in the annual average of the Franchise Fee cost indicator (Series ID: cuura422sa0 Consumer Price Index, All urban Consumers, All Items, San Francisco-San Jose-Oakland, CA) as set forth in Section 2 of Exhibit 2 to this Contract except that in no year shall the franchise fee adjustment be less than zero (0) percent. Notwithstanding the foregoing, no adjustment shall be implemented for a particular fiscal year if CONTRACTOR’S Gross Receipts for the prior calendar year were less than the calendar year previous to that, but not including any calendar years prior to July 1, 2015. Such determination of whether or not CONTRACTOR’S Gross Receipts for the prior calendar year were less than the calendar year previous to that shall be based on the results of a Gross Receipts review to be performed by a qualified firm under contract to CITY. CITY shall have the final responsibility and discretion for the selection of the firm but shall seek and consider comments and recommendations from CONTRACTOR. CONTRACTOR shall be responsible for, and shall upon request by CITY promptly pay, the cost of the review up to a maximum of Twenty-five Thousand Dollars ($25,000), adjusted annually by the annual CPI cost indicator (Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items, San Francisco-San Jose-Oakland, CA) as set forth in Exhibit 2. The franchise fee for each fiscal year shall be divided into twelve (12) equal payments, and paid monthly no later than the
twentieth (20th) day of each month for the preceding month except that the first franchise fee payment will be due no later than August 15, 2015.

7.18.9 Proposal Development and Cost Reimbursement Fee. No later than thirty (30) calendar days after the execution of this Contract by CITY and CONTRACTOR, CONTRACTOR shall submit proposal development and cost reimbursement fee to CITY in the amount of Seven Hundred Fifty Thousand Dollars ($750,000).

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

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

7.19 Stability Funds.

7.19.1 Recycling Stability Funds. Recycling stability funds represent the stabilization component of the Maximum Recycling Service Rates, that may be included at the sole discretion of CITY, and to the extent included in the SFD and MFD Maximum Recycling Service Rates, are collected by CONTRACTOR for use in stabilizing recycling billing fluctuations or to make up for shortfalls experienced by CONTRACTOR, when required payments to the RR Contractor exceed the RR Contractor Component of the Maximum Recycling Service Rate funds collected over any calendar year. Recycling stability funds shall be maintained by CONTRACTOR in a separate interest bearing account, whose interest accrues to the account. Recycling stability funds may only be used at the direction of CITY.

7.19.1.1 SFD Recycling stability funds are calculated by multiplying the stabilization component of the SFD Maximum Recycling Service Rate by the total number of SFD Dwelling Units associated with each of the invoices that were collected during each month.

7.19.1.2 MFD Recycling stability funds are calculated by multiplying the stabilization component of the MFD Recycling Service Rate by the total number of MFD Dwelling Units associated with each of the invoices that were collected during each month.

7.19.1.3 SFD and MFD Recycling stability fund account balances shall be reported to the Contract Manager no later than the tenth (10th) day of each month beginning in August of 2015 and monthly thereafter during the term of this Contract.
7.20 **Billing Records.** CONTRACTOR shall keep records, electronically or paper, of all billing documents and Customer account records, including but not limited to, invoices, receipts, and collection notices, each in chronological order, for a period of three (3) years after the date of receipt or issuance.

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

7.22 **Collection Services Census Data.** On or before July 15, 2016 and annually thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY, Collection Services census data for all Service Addresses as of the preceding July 1. This information shall be delivered electronically in a format approved by CITY, using software approved by CITY.

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

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

**ARTICLE 8. DIVERSION REQUIREMENTS**

8.01 **Minimum Annual Diversion Requirements.** CONTRACTOR shall achieve minimum annual Diversion requirements beginning with calendar year 2016 as set forth in Part 1 of Table A of Exhibit 8 to this Contract, or such other Diversion requirements as may be set in accordance with the provisions of Article 30 of this Contract. Except as provided in Section 8.01.1 and Sections 11.06.2.2 through 11.06.2.3, annual Diversion rates shall be calculated for each calendar year using Table B of Exhibit 8, and the methodology in Exhibit 20, beginning with calendar year 2016.

8.01.1 CITY waives CONTRACTOR's Minimum Annual Diversion Requirement of 45.69% for the calendar year 2018, and will allow a Minimum Annual Diversion
Requirement of 42.93% for the calendar year 2018, a difference of 2.76%, provided that
CONTRACTOR increases the Minimum Annual Diversion Requirements in calendar years
2019, 2020 and 2021 by 0.92% in each of those years, a total of 2.76%, so that the Minimum
Annual Diversion Requirement in 2019 shall be 53.99%, 2020 shall be 57.30%, and 2021 shall
be 58.59%.

8.01.2 If CONTRACTOR achieves greater than 42.93% Diversion in
2018, it may apply the amount in excess of 42.93%--up to 45.69%, a difference of up to 2.76%--
to shortfalls in its achievement of the Minimum Annual Diversion Requirements in 2019, 2020
and 2021, as cited in Section 8.01.1, such that the total amount applied to all shortfalls in 2019,
2020 and 2021 shall be equal to the amount in excess of 42.93% and not exceed 2.76%.

8.02 Failure to Meet Minimum Annual Diversion Requirements. CONTRACTOR’S
failure to meet the minimum annual Diversion requirement set forth in Part 1 of Table A of
Exhibit 8 shall result in a Diversion adjustment being applied to Maximum Service Rate
adjustments as specified in Section 7.16.2.2 of this Contract.

8.03 Minimum Diversion Requirement for Contract Extension. CONTRACTOR shall
meet a minimum Diversion requirement of forty (40) percent in calendar year 2022, calculated
as set forth in Section 8.01 of this Contract. Meeting the 2022 minimum Diversion requirement
will be a significant factor in CITY’s decision, at its sole discretion, to offer the Contract
extension set forth in Section 3.01.1 of this Contract or terminate this Contract no later than
June 30, 2025.

8.04 Annual Diversion Requirements for Contract Extension(s). By March 31, 2023,
CONTRACTOR shall provide to CITY Part 2 of Table A of Exhibit 8 to this Contract by entering
annual Diversion requirements for Contract Years ending June 30, 2026, June 30, 2027,
June 30, 2028, June 30, 2029 and June 30, 2030. Should CONTRACTOR receive a Contract
extension for such years as set forth in Article 3 of this Contract, the proposed annual Diversion
requirements shall be incorporated into Exhibit 8 of the Contract extension.

8.05 If the initial five (5)-year extension had been granted and CONTRACTOR seeks
a second five (5)-year extension, by March 31, 2028, CONTRACTOR shall provide to CITY Part
2 of Table A of Exhibit 8 to this Contract by entering annual Diversion requirements for Contract
Years ending June 30, 2031, June 30, 2032, June 30, 2033, June 30, 2034, and June 30, 2035.
Should CONTRACTOR receive a Contract extension(s) for such years as set forth in Article 3 of
this Contract, the proposed annual Diversion requirements shall be incorporated into Exhibit 8 of
the Contract extension.

8.06 CONTRACTOR shall use a statistically significant method approved by CITY to
calculate the Tonnage of finished Processed material, net of Residue, attributable to material
Collected under this Contract. CONTRACTOR shall use a statistically significant method
approved by CITY, attached as Exhibit 20, to calculate the Tonnage of Residue attributable to
material Collected under this Contract. Processed Mixed Materials, Organic Materials and
Recyclable Materials departing a Mixed Materials, Organic Materials or Recyclable Materials
Processing Facility (e.g., CONTRACTOR’s Davis Street facilities) for processes other than
Disposal will be calculated as Diverted.

ARTICLE 9. SFD COLLECTION SERVICES

9.01 SFD Collection Services. These services shall be governed by the following
terms and conditions.
9.01.1 Size and Frequency of Service. CONTRACTOR shall offer Mixed Materials Carts in 20, 32, 64 and 96 gallon nominal Cart sizes, with the default Cart size being 32 gallons. CONTRACTOR shall offer Organic Materials Carts in 20, 32, 64 and 96 gallon nominal Cart sizes, with the default Cart size being 64 gallons. The size of the Cart shall be selected by the SFD Customer. Service Recipients receiving Backyard Collection Service as set forth in Sections 9.01.4, 9.01.5, 9.01.6, or 9.01.7 below may set out their Mixed Materials or Organic Materials in their own can. Except as set forth in Sections 9.04 through 9.06, SFD Collection Services shall be provided one (1) time per week on a scheduled route basis. SFD Collection Services shall be scheduled so that a SFD Service Address receives SFD Mixed Materials Collection Service and SFD Organic Materials Collection Service on the same Work Day.

9.01.1.1 Minimum Capacity. CONTRACTOR shall provide Mixed Materials Container sizes and with Collection frequencies such that the total weekly capacity of Mixed Materials Collection Service is equal to the number of Dwelling Units in the SFD multiplied by twenty (20) gallons. The size and number of the Container(s) and the frequency (above the minimum) of Collection shall be determined by the SFD Customer. However, the size and frequency shall be sufficient to meet the minimum capacity set forth in this Section 9.01.1.1 and to provide that no Mixed Materials need be placed outside the appropriate Container on a regular basis. CONTRACTOR shall make commercially reasonable efforts to update and maintain an accurate count of Dwelling Units in all SFD, including but not limited to using available parcel data information, site surveys, and other methods, so that SFD are provided and billed for no less than the minimum capacity Mixed Materials Collection Service.

9.01.1.2 Overage. CONTRACTOR shall be required to Collect all Overage of Mixed Materials Carts that are set out for Collection regardless of whether the Overage are properly contained in bags affixed with an Extra Service Tag. CONTRACTOR may be compensated for the Collection of such Overage if the Overage are not properly contained in bags affixed with an Extra Service Tag, and Contractor obtains and retains pictorial evidence of such Overage. Compensation shall be provided in accordance with the approved "Overage" Maximum Service Rate set forth in Exhibit 1 or as may be adjusted under the terms of this Contract.

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

9.01.2 Manner of Collection. CONTRACTOR shall provide SFD Collection Services with as little disturbance as possible. Except in the case of backyard Collection Services CONTRACTOR shall leave any Cart in an upright position, with the lid closed, at the point of collection without obstructing alleys, roadways, driveways, sidewalks or mail boxes. In the case of Backyard Collection Service, CONTRACTOR shall remove the Containers from the back or side of the Service Address (or from such other location as agreed to by
CONTRACTOR and the Service Recipient), shall empty the contents into the collection vehicle
and shall return the Containers to the location from which they were removed. CONTRACTOR
will not be responsible for Carts or Bins being moved or open due to weather conditions or
other factors beyond its control, such as scavengers.

9.01.3 Curbside Collection Service. SFD Curbside Collection Service shall be
provided where Mixed Materials and Organic Materials are placed within three (3) feet of the
curb, or at edge of street pavement for streets without curbs.

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

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

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

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

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

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

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

9.01.7 Disability Exemption Program. CONTRACTOR shall provide exempt
backyard Collection of Mixed Materials, and Organic Materials to SFD Service Addresses
whose occupants demonstrate that they meet the requirements set forth in this Section 9.01.7
through the submission of a complete application requesting this exemption along with all
required documentation and certifications. Services shall begin on the next regularly
Mixed Materials and Organics Collection Services Contract

1962 scheduled Collection day of the Service Address after CONTRACTOR'S receipt of the completed application. No additional monies shall be due to CONTRACTOR for the exempt backyard Collection of Mixed Materials, and Organic Materials.

1965 Applicant must be the owner of record or primary renter.

9.01.7.1

1966 The Dwelling Unit must be solely occupied by the applicant, unless all other occupants meet the requirements of the senior exemption program as set forth in Section 9.01.6, the disability exemption program as set forth in this Section 9.01.7, or are under the age of twelve (12) years old.

1967 Applicant must provide proof that is acceptable to CONTRACTOR of long term or permanent physical disability, which may include; 1) a signed statement from a registered Doctor of Medicine (M.D.); 2) proof or registration as a disabled driver as determined by the Department of Motor Vehicles; or 3) documentation of grant of permanent disability status by the State of California.

1968

9.01.8Curbside Placement Exemption. CONTRACTOR may petition CITY for exempt backyard Collection of Mixed Materials and Organic Materials from SFD Service Recipients other than as required by Sections 9.01.6 and 9.01.7

1969

1970

9.01.9Collection Day. CONTRACTOR shall provide exempt backyard Collection of Mixed Materials and Organic Materials on the same Work Day that curbside Collection Service would otherwise be provided to the Service Address.

1971

1972

1973

1974

1975

1976

1977

1978

1979

1980

1981

1982

1983

1984

1985

1986

1987

1988

1989

1990

1991

1992

1993

1994

1995

1996

1997

1998

1999

2000

2001

2002

SFD Mixed Materials Collection Service. This service will be governed by the following additional terms and conditions:

9.02 SFD Mixed Materials Collection Service. CONTRACTOR shall provide SFD Mixed Materials Collection Service to all SFD Service Addresses in the Service Area whose Mixed Materials are properly placed into a Mixed Materials Containers, except as set forth in Section 9.01.1.2 above, regardless of whether or not the lid is fully closed, where the Containers have been placed within three (3) feet of the curb, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and Service Recipient which will provide safe and efficient accessibility to CONTRACTOR'S Collection crew and vehicle.

9.02.1Containerized Mixed Materials. CONTRACTOR shall provide SFD Mixed Materials Collection Service to all SFD Service Addresses in the Service Area whose Mixed Materials are properly placed into a Mixed Materials Containers, except as set forth in Section 9.01.1.2 above, regardless of whether or not the lid is fully closed, where the Containers have been placed within three (3) feet of the curb, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and Service Recipient which will provide safe and efficient accessibility to CONTRACTOR'S Collection crew and vehicle.

9.02.2Disposal Facility or Mixed Materials Processing Facility. All Mixed Materials Collected as a result of performing SFD Mixed Materials Collection Services shall be transported and delivered to the Disposal Facility or Mixed Materials Processing Facility.

9.02.3Residue From Mixed Materials Processing. An amount of Residue equal to the Residue generated as a result of Processing the Mixed Material Collected during the performance of SFD Mixed Materials Collection Services under the terms of this Contract shall be delivered to the Disposal Facility.

9.02.4Additional Mixed Materials Capacity. Upon notification to CONTRACTOR by CITY or a SFD Customer that additional Mixed Materials capacity is requested, CONTRACTOR shall deliver such Mixed Materials Carts as are needed to meet the capacity requirements of the Service Address by the next regularly scheduled Collection day or within six (6) Work Days (whichever is later). CONTRACTOR may be compensated for the cost of
Mixed Materials and Organics Collection Services Contract

2003 providing additional Mixed Material capacity in accordance with the approved Maximum
2004 Service Rate as provided in Exhibit 1 or as may be adjusted under the terms of this Contract.

2005 9.02.5 Contaminated Material. In the event the RR Contractor determines that
2006 the Recycling Container contains Contamination, the RR Contractor shall have the right to
2007 Collect such contaminated material and to provide the applicable SFD Customer with a
2008 Contamination Surcharge invoice in the manner set forth in Section 7.04.3. CONTRACTOR
2009 shall not be responsible to RR Contractor if the SFD Customer fails to pay the Contamination
2010 Surcharge.

2011 9.03 SFD Organic Materials Collection Service. This service will be governed by the
2012 following additional terms and conditions.

2013 9.03.1 Containerized Organic Materials. CONTRACTOR shall provide SFD
2014 Organic Materials Collection Service to all SFD Service Addresses in the Service Area whose
2015 Organic Materials, except as set forth in Sections 9.03.2, 9.04 and 9.05, are properly placed in
2016 Organic Materials Containers, regardless of whether or not the lid is fully closed where the
2017 Containers have been placed within three (3) feet of the curb, paved surface of the public
2018 roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and
2019 Service Recipient, that will provide safe and efficient accessibility to CONTRACTOR’S
2020 Collection crew and vehicle.

2021 9.03.2 Organic Materials in Excess of Container Capacity. SFD Service
2022 Recipients may set out unlimited additional Organic Materials each week in recyclable 32-
2023 gallon paper gardening bags, in bundles, or in Service Recipient’s container, provided it meets
2024 the requirements of Oakland Municipal Code Section 8.28.140. No bag, bundle or container
2025 may exceed seventy five (75) pounds in weight. Branches and unpainted/untreated wood may
2026 not exceed four (4) feet in length or six (6) inches in diameter. CONTRACTOR may limit the
2027 amount of Organic Materials to be Collected from a SFD Service Address to sixty four (64)
2028 gallons per week if it is able to show to the satisfaction of CITY that the Service Recipient is
2029 setting out Organic Materials generated from a location other than the Service Address.

2030 9.03.2.1 In the event excess Organic Materials are set out in a
2031 plastic bag, CONTRACTOR may Collect the Organics as Mixed Materials Overage and invoice
2032 the SFD Customer at the Mixed Materials Overage Maximum Service Rate as set forth in
2033 Exhibit 1 to this Contract.

2034 9.03.2.2 CONTRACTOR shall not be required to Collect excess
2035 Organic Materials that are not set out in compliance with Section 9.03.2. In the event of non-
2036 collection CONTRACTOR shall deliver a Non-Collection Notice to the Service Address, which
2037 explains why Collection was not made and how the item(s) may be properly set out, and shall
2038 maintain a copy of such notice during the term of this Contract.

2039 9.03.3 Organic Materials Processing Services. Except for Organic Materials
2040 Residue, or as otherwise provided in this Contract, CONTRACTOR shall ensure that all
2041 Organic Materials Collected pursuant to this Contract are Diverted.

2042 9.03.4 Organic Materials Processing Facility. Except as expressly provided in
2043 this Contract, CONTRACTOR shall deliver all Collected Organic Materials to a fully permitted
2044 Organic Materials Processing Facility or a properly permitted transfer station. CONTRACTOR
2045 shall transfer or deliver all Organic Material to the Covered Aerated Static Pile (CASP)
2046 composting facility at the Altamont Landfill located at 10840 Altamont Pass Road, Livermore,
California once the facility is in operation. CONTRACTOR shall promptly construct and accept materials at the CASP Facility at Altamont Landfill by December 13, 2016. CONTRACTOR shall employ all reasonable efforts to obtain needed governmental approvals to meet this agreed upon completion date. Prior to operation of the Altamont CASP Facility, CONTRACTOR will deliver Organic Materials to CONTRACTOR’s CASP Facility at Redwood Landfill in Marin County. The parties may agree to modify the designated Organic Materials Processing Facility or address disposition of any portion of Organic materials that may be unsuitable for processing at the CASP. All expenses related to Organic Materials Collection and marketing will be the sole responsibility of CONTRACTOR.

9.03.5 Additional Organic Materials Capacity. Upon notification to CONTRACTOR by CITY or a SFD Customer that additional Organic Materials Cart capacity is requested in the form of a larger Cart or an additional Cart, CONTRACTOR shall deliver such Organic Materials Carts as are needed to meet the capacity requirements of the Service Address by the next regularly scheduled Collection day or within six (6) Work Days (whichever is later). CONTRACTOR shall not receive additional compensation for the Collection of a larger Organic Materials Cart. However CONTRACTOR may be compensated for the Collection of more than one (1) Organic Materials Cart in accordance with the approved Maximum Service Rate as provided in Exhibit 1 or as may be adjusted under the terms of this Contract.

9.03.6 Contamination of Organic Materials. CONTRACTOR shall retain the right to temporarily reduce capacity of, or levy a Contamination Surcharge on, Organic Materials Collection Service to SFD Service Addresses subject to the Contamination Reduction Plan attached to this Contract as Exhibit 11.

9.04 Curbside Holiday Tree Collection. CONTRACTOR shall Collect Holiday trees from all SFD Service Addresses as part of the SFD Organic Materials Collection Service when such trees are in lengths of four (4) feet or less and are set out at the curb. CONTRACTOR shall provide this service beginning on the first Work Day after December 25th through the end of the second full work week in January or dates approved by CITY.

9.04.1 Contaminated Holiday Trees. Holiday trees that are flocked or contain tinsel or other decorations or are attached to a tree stand may be delivered to the Disposal Facility at the discretion of CONTRACTOR.

9.05 Bulky Goods Collection Service. This service will be governed by the terms and conditions set forth in Exhibit 14 and such changes to that Exhibit as may be agreed to between CITY and CONTRACTOR.

9.05.1 Annual Changes to Bulky Goods Collection Service Requirements. Beginning with Bulky Goods Collection Service for Contract Year July 1, 2016, through June 30, 2017 and annually thereafter during the term of this Contract, CITY and CONTRACTOR may mutually agree to changes in the Bulky Goods Collection Service program. Such mutually agreed to changes shall be documented through the revision of Exhibit 14 to this Contract and the revised Exhibit 14 shall be signed by authorized representatives of CITY and CONTRACTOR.

9.06 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide Temporary Roll-Off Collection Service to all SFD Customers in the Service Area subscribing to such service. CONTRACTOR shall respond to requests for service within two (2) Work Days of
ARTICLE 10. MFD COLLECTION SERVICES

10.01 MFD Collection Services. These services shall be governed by the following terms and conditions.

10.01.1 Manner of Collection. CONTRACTOR shall provide MFD Collection Service with as little disturbance as possible and shall leave any Container in an upright position, with the lid closed, at the same point it was Collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close or lock, as appropriate, Containers and Container enclosures that were opened by CONTRACTOR as part of the Collection process. CONTRACTOR will not be responsible for Carts or Bins being moved or open due to weather conditions or other factors beyond its control, such as scavengers.

10.01.2 Collection Location. The default MFD Collection location shall be designated areas within the property confines, and in compliance with any applicable City codes and ordinances, unless with consent of the building owner/manager Collection may be from an alternate location, including at the curb.

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

10.01.4 Difficult to Serve. If CONTRACTOR determines that the set-out location for Carts or Bins is Difficult to Serve, CONTRACTOR may contact the MFD Customer to discuss a change in the set-out location. In the event a new set out location is not agreed to between the CONTRACTOR and MFD Customer, then CONTRACTOR may be compensated for providing Difficult to Serve Collection Services in accordance with any applicable Ancillary and "Difficult to Serve" charges set forth in the Maximum Service Rates approved by CITY.

10.02 MFD Mixed Materials Collection Service.

10.02.1 Containerized Mixed Materials. CONTRACTOR shall provide MFD Mixed Materials Collection Service to all MFD Service Addresses in the Service Area where the Mixed Materials are properly placed in Mixed Materials Carts or Bins, except as set forth in Sections 10.02.5, 10.04 or 10.05 regardless of whether or not the lid is fully closed.

10.02.2 Service Frequency. CONTRACTOR shall provide MFD Mixed
Materials Collection Service at least weekly. However, in those instances where the scheduled Collection day falls on a holiday as set forth in Section 6.11 herein, the Collection day may be adjusted in a manner agreed to between the MFD Service Recipient and CONTRACTOR as long as service is received a minimum of one (1) time per week.

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

10.02.3 Container Sizes. CONTRACTOR shall offer Mixed Materials Containers in 20, 32, 64 and 96 gallon nominal Cart sizes and in 1, 1.5, 2, 3, 4, 6 and cubic yard Bins. CONTRACTOR shall offer Roll-Off Boxes in 6, 14, 20, 30 and 40 cubic yard sizes with lids.

10.02.4 Minimum Capacity. CONTRACTOR shall provide Mixed Materials Container sizes and with Collection frequencies such that the total weekly capacity of Mixed Materials Collection Service is equal to the number of Dwelling Units in the MFD multiplied by twenty (20) gallons. The size and number of the Container(s) and the frequency (above the minimum) of Collection shall be determined by the MFD Customer. However, the size and frequency shall be sufficient to meet the minimum capacity set forth in this Section 10.02.4 and to provide that no Mixed Materials need be placed outside the appropriate Container on a regular basis. CONTRACTOR shall make commercially reasonable efforts to update and maintain an accurate count of Dwelling Units in all MFD, including but not limited to using available parcel data information, site surveys, and other methods, so that MFD are provided and billed for no less than the minimum capacity Mixed Materials Collection Service.

10.02.4.1 For purposes of calculating minimum capacity in cubic yards under Section 10.02.4, the minimum gallons (calculated by multiplying the number of Dwelling Units in the MFD times twenty (20) gallons) shall be divided by two hundred (200) and the result calculated to the first decimal place. In those instances where the result does not equal a specific Container size offered by CONTRACTOR, the results shall be rounded to the nearest Container size, in accordance with the examples set forth below.

10.02.4.2 For example, if a MFD is composed of twelve (12) Dwelling Units then the minimum capacity would be calculated as two hundred forty (240) gallons, (12 Dwelling Units x 20 gallons per Dwelling Unit), which is equivalent to 1.2 cubic yards (240 gallons /200 gallons per cubic yard = 1.2 cubic yards), and rounded down to 1 cubic yard.

10.02.4.3 For example, if a MFD is composed of fifteen (15) Dwelling Units then the minimum capacity would be calculated as three hundred (300) gallons, (15 Dwelling Units x 20 gallons per Dwelling Unit) which is equivalent to 1.5 cubic yard (300 gallons /200 gallons per cubic yard = 1.5 cubic yards). Since CONTRACTOR offers a 1.5 cubic yard Bin rounding is not necessary.

10.02.4.4 For example, if a MFD is composed of twenty five (25) Dwelling Units then the minimum capacity would be calculated as five hundred (500) gallons, (25 Dwelling Units x 20 gallons per Dwelling Unit) which is equivalent to 2.5 cubic yard (500 gallons /200 gallons per cubic yard = 2.5 cubic yards), rounded up to 3 cubic yards.

10.02.5 Collection of Mixed Materials Overage. CONTRACTOR shall be required to Collect all Mixed Materials Overage that are set out for Collection regardless of whether or not the Mixed Materials Overages are properly contained in a bag affixed with an...
Extra Service Tag. CONTRACTOR shall not be entitled to additional compensation for the
Collection Mixed Materials Overages unless such Overages are not contained in bags with
affixed Extra Service Tags in which case CONTRACTOR shall obtain and retain pictorial
evidence of such Overages and may be compensated for the Collection of such Overages in
accordance with the approved “Overage” Maximum Service Rate as provided in Exhibit 1 or as
may be adjusted under the terms of this Contract.

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

10.02.7 Additional Mixed Materials Capacity. Upon notification to
CONTRACTOR by CITY or a MFD Customer that additional Mixed Materials capacity is
requested, CONTRACTOR shall deliver such Mixed Materials Containers as are needed to
meet the capacity requirements of the Service Address by the next regularly scheduled
Collection day or within six (6) Work Days (whichever is later). CONTRACTOR may be
compensated for the cost of providing additional Mixed Materials capacity in accordance with
the approved Maximum Service Rates as provided in Exhibit 1 or as may be adjusted under
the terms of this Contract.

Mixed Materials Processing Facility. All Mixed Materials
Collected as a result of performing MFD Mixed Material Collection Service shall be delivered to
the Mixed Materials Processing Facility.

CONTRACTOR shall promptly construct and accept Mixed
Materials at the Mixed Materials Recovery Facility (MMRF, also known as “Integrated Waste
Processing Facility”) by January 1, 2019. CONTRACTOR shall employ all reasonable efforts to
obtain needed governmental approvals to meet this agreed upon completion date. Prior to
operation of the MMRF, CONTRACTOR shall deliver Mixed Materials to CONTRACTOR’s Dry
MRF Facility at Davis Street, or other Mixed Materials Processing Facility approved by CITY.
All expenses related to Mixed Materials Collection, Processing and marketing will be the sole
responsibility of CONTRACTOR.

Residue from Mixed Materials Processing. An amount of
Residue equal to the Residue generated as a result of Processing the Mixed Material Collected
during the performance of MFD Mixed Materials Collection Service under the terms of this
Contract shall be delivered to the Disposal Facility.

Contaminated Material. In the event the RR Contractor
determines that a Recycling Container contains Contamination, the RR Contractor shall have
the right to Collect such contaminated material and to provide the applicable MFD Customer
with a Contamination Surcharge invoice as set forth in Section 7.04.3. CONTRACTOR shall
not be responsible to RR Contractor if the MFD Customer fails to pay the Contamination
Surcharge.

10.03 MFD Organic Materials Collection Service. This service will be governed by the following terms and conditions:

10.03.1 Organic Materials Containers. CONTRACTOR shall provide a minimum of one (1) Organic Materials Container to each MFD Customer according to the capacity requirements set forth in Section 10.03.4. CONTRACTOR shall provide MFD Organic Materials Collection Service to all MFD Customers in the Service Area whose Organic Materials are properly placed in Organic Materials Carts or Bins, except as set forth in Sections 10.03.5, 10.04, and 10.05, regardless of whether the lids are closed.

10.03.2 Service Frequency. CONTRACTOR shall provide MFD Organic Materials Collection Service one (1) time per week. However, in those instances where the scheduled Collection day falls on a holiday as set forth in Section 6.11 herein, the Collection day may be adjusted in a manner agreed to between the Service Recipient and CONTRACTOR as long as service is received a minimum of one (1) time per week.

10.03.3 Container Sizes. Except as set forth in Section 10.03.6 CONTRACTOR shall provide Organic Materials Containers in 32, and 64 gallon nominal cart sizes.

10.03.4 Minimum Capacity. At a minimum, CONTRACTOR shall provide one (1) 32 gallon Organic Materials Cart to any MFD of twelve (12) or fewer Dwelling Units, and one (1) 64 gallon Organic Materials Cart to any MFD of thirteen or (13) more Dwelling Units.

10.03.5 Collection of Organic Materials Overages. CONTRACTOR shall be required to Collect all Organic Materials that are set out for Collection regardless of whether or not the Organic Materials are contained in an Organic Materials Cart. CONTRACTOR shall be entitled to additional compensation for the Collection of Organic Materials Overages in accordance with the approved "Overage" Maximum Service Rates as provided in Exhibit 1 or as may be adjusted under the terms of this Contract.

10.03.6 Additional Organic Materials Capacity. Upon notification to CONTRACTOR by CITY or a Customer that additional Organic Materials capacity is requested, CONTRACTOR shall deliver such Organic Materials Containers as are needed to meet the capacity requirements of the Service Address by the next regularly scheduled Collection day or within six (6) Work Days (whichever is later). CONTRACTOR must provide additional Container capacity if requested by the MFD Customer.

10.03.7 Contamination of Organic Materials. CONTRACTOR shall retain the right to temporarily reduce capacity of, or levy a Contamination Surcharge on, Organic Materials Collection Service to Service Addresses subject to the Contamination Reduction Plan attached to this Contract as Exhibit 11.

10.03.8 Organic Materials Processing Facility. Except as expressly provided in this Contract, CONTRACTOR shall deliver all Collected Organic Materials to a fully permitted Organic Materials Processing Facility or a properly permitted transfer station. CONTRACTOR shall transfer or deliver all Organic Material to the Covered Aerated Static Pile (CASP) composting facility at the Altamont Landfill located at 10840 Altamont Pass Road,
Livermore, California once the facility is in operation. CONTRACTOR shall promptly construct and accept materials at the CASP Facility at Altamont Landfill by December 13, 2016. CONTRACTOR shall employ all reasonable efforts to obtain needed governmental approvals to meet this agreed upon completion date. Prior to operation of the Altamont CASP Facility, CONTRACTOR will deliver Organic Materials to CONTRACTOR's CASP Facility at Redwood Landfill in Marin County. The parties may agree to modify the designated Organic Materials Processing Facility or address disposition of any portion of Organic materials that may be unsuitable for processing at the CASP. All expenses related to Organic Materials Collection and marketing will be the sole responsibility of CONTRACTOR.

10.03.9 Organic Materials Processing Services. Except for Organic Materials Residue or as otherwise provided in Article 30 of this Contract, CONTRACTOR shall ensure that all Organic Materials Collected pursuant to this Contract are Diverted.

10.04 Holiday Tree Collection. CONTRACTOR shall collect holiday trees from all MFD Customers in the manner set forth in Exhibit 10 to this Contract. CONTRACTOR shall provide this service beginning on the first Work Day after December 25th through the end of the second full work week in January or dates approved by CITY.

10.04.1 Contaminated Holiday Trees. Holiday trees that are flocked or contain tinsel or other decorations or are attached to a tree stand may be delivered to the Disposal Facility at the discretion of CONTRACTOR.

10.05 Bulky Goods Collection Service. This service will be governed by the terms and conditions set forth in Exhibit 14 and such changes to that Exhibit as may be agreed to between CITY and CONTRACTOR.

10.05.1 Annual Changes to Bulky Goods Collection Service Requirements. Beginning with Contract Year July 1, 2016, through June 30, 2017 and annually thereafter during the term of this Contract, CITY and CONTRACTOR may mutually agree to changes in the Bulky Goods Collection Service program. Such mutually agreed to changes shall be documented through the revision of Exhibit 14 to this Contract and the revised Exhibit 14 shall be signed by authorized representatives of CITY and CONTRACTOR.

10.06 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide Temporary Roll-Off Collection Service to all MFD Customers in the Service Area subscribing to such service. CONTRACTOR shall respond to requests for service within two (2) Work Days of receipt of the request. CONTRACTOR shall be compensated for such services in accordance with the Maximum Service Rates as set forth in Exhibit 1 to this Contractor as may be adjusted in accordance with the terms of this Contract.

ARTICLE 11. COMMERCIAL COLLECTION SERVICES

11.01 Commercial Collection Services. These services will be governed by the following terms and conditions.

11.01.1 Size and Frequency of Service. CONTRACTOR shall offer Mixed Materials Carts and Organic Materials Carts in 20, 32, 64 and 96 gallon nominal Cart sizes. CONTRACTOR shall offer Mixed Materials and Organic Materials Bins in 1, 1.5, 2, 3, 4, 6 and 7 cubic yard sizes. CONTRACTOR shall offer Mixed Materials and Organic Materials Roll-Off Boxes in 6, 14, 20, 30 and 40 cubic yard sizes with lids. However, in those instances
where the scheduled Collection day falls on a holiday as set forth in Section 6.11 herein, the
Collection day may be adjusted in a manner agreed to between the Commercial Customer and
CONTRACTOR as long as service is received a minimum of one (1) time per week. The size of
the Container and the frequency (above the minimum) of Collection shall be determined
during the Commercial Customer and CONTRACTOR. However, size and frequency shall
be sufficient to provide that no Mixed Materials or Organic Materials need be placed outside
the Container on a regular basis. CONTRACTOR shall respond to requests for services
utilizing Roll-Off Boxes within two (2) Work Days of the request from the Commercial
Customer. Commercial Customers may use a Compactor they own or lease provided that the
Customer is completely responsible for its proper maintenance and that such Compactor shall
be of a type that can be serviced by CONTRACTOR’S equipment.

11.01.2 Manner of Collection. CONTRACTOR shall provide Commercial
Collection Services with as little disturbance as possible and shall leave any Container in an
upright position, with the lid closed, at the same point it was Collected without obstructing
alleys, roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close or lock, as
appropriate, Containers and Container enclosures that were opened by CONTRACTOR as part
of the Collection process. CONTRACTOR will not be responsible for Carts or Bins being
moved or open due to weather conditions or other factors beyond its control, such as
scavengers.

11.01.3 Accessibility. CONTRACTOR shall Collect all Mixed Materials
and Organic Materials Containers that are readily accessible to CONTRACTOR’S crew and
vehicles and not blocked. However, CONTRACTOR shall provide “push services” and “key
services” as necessary during the provision of Commercial Collection Services. Push services
shall include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or
Carts from their storage location for Collection and returning the Bins or Carts to their storage
location. Push services may include unlocking and relocking the Bin or enclosure. Key
services shall include the provision of a master lock and key by CONTRACTOR to the Service
address for the convenience of CONTRACTOR. CONTRACTOR shall be compensated for
providing “push services” and or “key services” in accordance with the approved Maximum
Service Rates as provided in Exhibit 1 or as may be adjusted in accordance with the terms of
this Contract.

11.01.4 Difficult to Serve. If CONTRACTOR determines that the set-out
location for Carts or Bins is Difficult to Serve, CONTRACTOR may contact the MFD Customer
to discuss a change in the set-out location. In the event a new set out location is not agreed to
between the CONTRACTOR and MFD Customer, then CONTRACTOR may be compensated
for providing Difficult to Serve Collection Services in accordance with any applicable Ancillary
and “Difficult to Serve” charges set forth in the Maximum Service Rates approved by CITY.

11.01.5 Multiple Overages. In the case of repeated Overages of Mixed
Materials or Organic Materials, CONTRACTOR may send written notification to the
Commercial Customer that includes dates of observed Overages, any previous notifications,
photographic documentation of said Overages and an offer to arrange for an appropriate
change in Bin or Cart size, and/or Collection frequency. Should Overages persist after three
notifications and CONTRACTOR is unable to reach an agreement with the Commercial
Customer regarding an appropriate change in Bin or Cart size and/or frequency of Collection,
CONTRACTOR may impose such service level increase as is needed to avoid the Overages
and notify the Commercial Customer and Contract Manager in writing. The Commercial
Customer may petition CITY regarding any change in Bin or Cart size and/or Collection

City of Oakland Page 55
frequency. Should three (3) months elapse with no Overage recurrence taking place following
the change in service the Overage problem shall be considered resolved.

11.02 Commercial Mixed Materials Collection Service. This service will be governed by
the following additional terms and conditions.

11.02.1 Containerized Mixed Materials. CONTRACTOR shall provide
Commercial Mixed Materials Collection Service to all Commercial Service Addresses in the
Service Area where Mixed Materials are properly placed in Mixed Materials Containers,
regardless of whether the lid is fully closed, where the Containers are accessible as set forth in
Section 11.01.3 above.

11.02.2 Collection of Mixed Materials Overage. CONTRACTOR shall
also be required to Collect all Mixed Materials Overages that are set out for Collection
regardless of whether or not the Mixed Materials Overages are properly contained in a
Container. CONTRACTOR shall obtain and retain pictorial evidence of such Overages and
may be compensated for the Collection of such Overages in accordance with the approved
"Overage" Maximum Service Rate as provided in Exhibit 1 or as may be adjusted under the
terms of this Contract.

11.02.3 Disposal and Mixed Materials Processing Facilities. All Mixed
Materials Collected as a result of performing Commercial Mixed Materials Collection Services
shall be transported and delivered to the Disposal Facility or the Mixed Materials Processing
Facility.

11.02.4 Residue From Mixed Materials Processing. An amount of
Residue equal to the Residue generated as a result of Processing the Mixed Materials
Collected during the performance of Commercial Mixed Materials Collection Services under the
terms of this Contract shall be delivered to the Disposal Facility.

11.03 Additional Mixed Materials Capacity. Upon notification to CONTRACTOR by
CITY or a Commercial Customer that additional Mixed Materials capacity is requested,
CONTRACTOR shall deliver such Mixed Materials Containers as are needed to meet the
capacity requirements of the Service Address by the next regularly scheduled Collection Day, or
within six (6) Work Days (whichever is later). CONTRACTOR may be compensated for the cost
of providing additional Mixed Materials capacity in accordance with the approved "Mixed
Materials Collection" Maximum Service Rates provided in Exhibit 1 or as may be adjusted under
the terms of this Contract.

11.04 Commercial Non-Exclusive Recyclable Materials Collection Service. This service
will be governed by the following additional terms and conditions.

11.04.1 Separate Agreements. CONTRACTOR may provide Commercial
Non-Exclusive Recyclable Materials Collection Service pursuant to separate agreements with
Customers, and subject to related sections of the Oakland Municipal Code.

11.04.2 Material Recovery Facility. All Recyclable Materials Collected as
a result of performing Commercial Non-Exclusive Recyclable Materials Collection Service shall
be delivered to a properly permitted material recovery facility. All expenses related to
Recyclable Materials Processing and marketing will be the sole responsibility of
CONTRACTOR.
Mixed Materials and Organics Collection Services Contract

11.04.3 Non-Franchised Commercial Recycling Services. CONTRACTOR may include Recyclable Materials Collected as a result of providing Commercial Non-Exclusive Recyclable Materials Collection Service in the annual calculation of Diversion per section 8.01.

11.05 Commercial Organic Materials Subscription Collection Service. This service will be governed by the following terms and conditions.

11.05.1 Containerized Organic Materials. CONTRACTOR shall provide Commercial Organic Materials Subscription Collection Service to all Commercial Customers in the Service Area that subscribe to such service and whose Organic Materials are properly placed in Organic Materials Carts or Bins, regardless of whether the lids are closed, where the Organic Materials Containers are accessible as set forth in Section 11.01.3. CONTRACTOR may be compensated for Commercial Organic Materials Collection Service in accordance with the approved "Commercial Organic Materials Collection" Maximum Service Rates as provided in Exhibit 1.

11.05.2 Civicsors. Except as otherwise provided in this Section 11.05, Civicsors shall provide Organic Materials Collection to Commercial Customers that subscribe to the Commercial Organic Materials Subscription Collection Service CONTRACTOR and Civicsors may mutually agree, subject to CITY approval, to allow CONTRACTOR to provide some Collection of Commercial Organic Materials.

11.05.2.1 Subcontract with Civicsors. CONTRACTOR shall enter into a ten (10)-year subcontract with Civicsors ("Civicsors Subcontract") to provide Collection of Commercial Organic Materials that are limited to Food Scraps. The CITY shall be entitled to review and approve the Civicsors Subcontract. The Civicsors Subcontract shall include the following provisions:

11.05.2.1.1. That Collection of Commercial Organic Materials begin July 1, 2015. Civicsors shall provide notice by March 31, 2015 to CONTRACTOR and CITY that Civicsors will or will not be able to provide Collection of Commercial Organic Materials, by July 1, 2015. If Civicsors cannot provide such Collection by July 1, 2015, then Civicsors and CONTRACTOR shall immediately meet and confer to develop a remedial plan, subject to approval by CITY, to promptly address the potential delay.

11.05.2.1.2. That all services provided by Civicsors under the Civicsors Subcontract meet Contract requirements including but not limited to those addressing equipment, performance, local hire, indemnity, insurance and other commercial provisions. The Civicsors Subcontract shall provide for rates to be paid by CONTRACTOR to Civicsors that reflect customary commercial practice in the waste collection industry and are reasonably comparable to those of commercial haulers providing only collection services (e.g., no billing, customer communication or processing). The Civicsors Subcontract will provide tiered remedies for poor performance, including pass through of Liquidated Damages, material default remedies, potential modification of scope and will include insurance provisions providing coverage acceptable to CITY. Provisions for potential modification of scope or termination shall require CITY approval, which will not be unreasonably withheld.

11.05.2.1.3. That the Civicsors Subcontract address issues of breach, default and termination in a manner that is generally consistent with the provision of Article 29 of this Contract and Article 11 of the Disposal Services Contract between the CITY and CONTRACTOR. The provisions shall include language to address repetitive compliance
issues such as those addressed in Section 29.01.4 of this Contract.

11.05.2.1.4. That a process for fees to be paid by CONTRACTOR to Civicorps for Collection of Commercial Organic Materials by Civicorps is established. CONTRACTOR understands and agrees that the costs for Collection of Commercial Organic Materials is an integral part of the RRI set forth in Exhibit 2 to this Contract. As such, regardless of the actual cost and the change in the charge for Collection and Processing of Commercial Organic Materials, Commercial Organic Materials Subscription Collection Service Maximum Service Rates shall only be adjusted as set forth in Article 7 and Exhibit 2 to this Contract.

11.05.2.1.5. That Civicorps utilize a truck driver apprentice program to train and graduate commercially licensed drivers qualified for hire by CONTRACTOR or other entity needing commercially licensed drivers. Civicorps shall be allowed to display its training program messaging on its Collection vehicles, in addition to the vehicle signage and painting requirements of Contract Section 14.08.

11.05.2.1.6. That Civicorps shall make all reasonable efforts to (i) reduce Contamination of Commercial Organic Materials and (ii) ensure that Commercial Organic Materials Collected are Source Separated.

11.05.2.1.7. Contract requirements in Article 24 shall pass through to Civicorps, with the exception that the Performance Bond amount shall be fixed at an amount to be agreed upon by CONTRACTOR and Civicorps, subject to CITY approval. Similarly, certain of the other commercial requirements set forth in this Contract may be adjusted as may be required to properly reflect the magnitude and scope of the Civicorps Subcontract, subject to CITY approval.

11.05.2.2. In the event that Civicorps fails or refuses to agree to include terms which materially address the provisions required by this Section 11.05.2 in the Civicorps Subcontract, CONTRACTOR shall be excused from its obligation to enter into the subcontract with Civicorps.

11.05.3 Collection of Organic Materials Overage. CONTRACTOR and Civicorps shall be required to Collect all Organic Materials that are set out for Collection regardless of whether or not the Organic Materials are properly contained in a Container. CONTRACTOR shall obtain and retain pictorial evidence of such Overage and may be compensated for the Collection of such Overage in accordance with the approved "Overage" Maximum Service Rate as provided in Exhibit 1 or as may be adjusted under the terms of this Contract.

11.05.4 Diversion of Organic Materials. Except for Organic Materials Residue, or as otherwise provided in this Contract, CONTRACTOR shall ensure that all Organic Materials Collected pursuant to this Contract are Diverted.

11.06 Organic Materials Processing Facility. Except as expressly provided in this Contract, CONTRACTOR and/or Civicorps shall deliver all Collected Organic Materials to a fully permitted Organic Materials Processing Facility or a properly permitted transfer station. All expenses related to Organic Materials Collection and marketing will be the sole responsibility of CONTRACTOR.

11.06.1 EBMUD Subcontract. CONTRACTOR shall enter into a ten (10)-
year subcontract ("EBMUD Subcontract") with EBMUD that shall provide for the Processing
and Diversion of Commercial Organic Materials Collected pursuant to this Article. The CITY
shall be entitled to review and approve the EBMUD Subcontract. The EBMUD Subcontract
shall also include the following provisions:

11.06.1.1 EBMUD Facility. The EBMUD Subcontract shall require
EBMUD to place the EBMUD Facility into full operation so as to be able, on or before July 1,
2016, to accept, provide Processing of and Divert all Commercial Organic Materials Collected
pursuant to Section 11.05.2, or a portion thereof as mutually agreed upon by CONTRACTOR
and EBMUD and approved by CITY, and comply with the requirements of this Contract. The
EBMUD Facility shall, on or before July 1, 2016, have a minimum permitted capacity equal to or
exceeding the amount of all Commercial Organic Materials Collected by Civics and/or
CONTRACTOR pursuant to Section 11.05.2. If CONTRACTOR and EBMUD mutually agree
that only a portion of such Commercial Organic Materials Collected by CONTRACTOR or
Civics are to be delivered to the EBMUD Facility, then CONTRACTOR shall direct the
remaining Commercial Organic Materials to CONTRACTOR's Davis Street Transfer Station or
an alternative Organic Materials Processing Facility that is fully permitted, subject to CITY's
approval. All expenses related to Organic Materials Processing and marketing including any
transfer and transportation costs, shall be the sole responsibility of CONTRACTOR.

11.06.1.2 Notice. EBMUD must provide notice by January 31, 2016,
to CONTRACTOR and CITY, that the EBMUD Facility will or will not be fully constructed,
permitted and able to accept and provide Processing of all Commercial Organic Materials or the
agreed-upon portion of those materials, by July 1, 2016. The notice shall provide sufficient
detail and backup information to demonstrate that the planning, permitting, contracting and
construction of the EBMUD Facility is progressing in a manner to reasonably ensure the
EBMUD Facility will be in operation and able to accept and provide Processing of all or an
agreed upon portion of the Commercial Organic Materials on July 1, 2016. If (i) EBMUD does
not provide a notice confirming that the EBMUD Facility will be able to accept and provide
Processing of the material as of July 1, 2016, (ii) or the information provided in the notice does
not reasonably demonstrate that EBMUD will complete construction and so that the EBMUD
Facility can accept and provide Processing of Commercial Organic Materials not later than
July 1, 2016, the CONTRACTOR shall have the right to immediately convene a meet and confer
with EBMUD to address the apparent deficiencies in the notice and/or the potential delay in
operation. EBMUD and CONTRACTOR shall develop a remedial plan to promptly address the
potential delay, which plan must be approved by the CITY in its sole and absolute discretion.
Such remedial plan shall include a firm outside date by which the EBMUD Facility shall be fully
constructed, permitted and able to accept and provide Processing of all Commercial Organic
Materials delivered by CONTRACTOR or Civics. If the EBMUD Facility is not fully
constructed, permitted or able to accept and provide Processing of all Commercial Organic
Materials as of such outside date, the Subcontract shall be subject to default and termination
without any additional cure period, absent performance otherwise being excused under this
Contract or the EBMUD Subcontract provisions. The remedial plan shall include intermediate
milestones and scheduled dates for achievement thereof sufficient to provide reasonable
certainty of achievement of full operation by the outside date. The remedial plan may also
include obligations to immediately meet and confer with CITY and CONTRACTOR to discuss
options, if milestones are not being met which may include termination of the EBMUD
Subcontract in advance of the outside date.

11.06.1.3 Temporary Facility. EBMUD shall arrange for an
alternative, temporary Organic Materials Processing Facility for the period of July 1, 2015,
through July 1, 2016, and for any temporary inability of the EBMUD Facility to accept and
provide Processing of all Commercial Organic Materials Collected pursuant to this Contract due
to planned or unplanned disruptions to operations after July 1, 2016. Any such alternative,
temporary Organic Materials Processing Facility, or transfer site for delivery to same, may not
be located more than approximately fifteen (15) air miles from the site of the EBMUD Facility.
The EBMUD Subcontract shall require that the alternative, temporary Organic Materials
Processing Facility or facilities are permitted and able to accept, provide Processing of and
Divert all Commercial Organic Materials, or the portion of Commercial Organic Materials,
Collected pursuant to this Contract, in either case in compliance with Section 11.05.4 of this
Contract and all laws, and shall be subject to CITY’s approval. The EBMUD Subcontract shall
require that all additional costs, expenses or liabilities to the CITY or CONTRACTOR and
reasonably attributable to (i) CONTRACTOR and/or Civicorps being required to use a temporary
Organic Materials Processing Facility under the provisions of this section or (ii) the non-
compliance of any of the EBMUD Facility or any alternative, temporary Organic Materials
Processing Facility arranged by EBMUD pursuant to the provisions of this section, shall be the
sole responsibility of EBMUD.

11.06.1.4 The EBMUD Subcontract shall include, without limitation,
the provisions for defense and indemnity of CITY by EBMUD, as generally provided in Section
26.14 of this Contract. This Provision for the defense and indemnity of the CITY by EBMUD
shall be a condition to the CITY’s execution of the Contract.

11.06.1.5 The requirement for CONTRACTOR to deliver
Commercial Organic Materials to the EBMUD Facility may be excused at the discretion of the
CITY if the Processing and Diversion of Commercial Organic Materials at that facility does not
conform to the Alameda County Waste Management Authority (ACWMA) Mandatory Recycling
Ordinance 2012-01 ("MRO"), including but not limited to the disposition of the residual digestate,
as per the EBMUD letter to ACWMA dated June 13, 2014, as Exhibit 21, or as may be further
required by ACWMA. CITY and ACWMA shall have the right to make such inspections of the
EBMUD Facility, and records, as necessary to validate conformance with the MRO and Exhibit
21. In the event the EBMUD Facility fails to conform with the MRO and Exhibit 21, EBMUD,
CONTRACTOR, and CITY shall promptly meet and confer to address EBMUD’s noncompliance
and, to the extent reasonably curable, develop a schedule to cure such noncompliance.
Continued failure of the EBMUD Facility to conform with the MRO and Exhibit 21 shall constitute
a breach and potential default of the EBMUD Subcontract. If this breach and default results in
termination of the EBMUD Subcontract, CONTRACTOR will be excused from any obligation to
deliver Commercial Organic Materials to EBMUD.

11.06.1.6 The EBMUD Subcontract shall include provisions that
determine per Ton fees for the delivery of Commercial Organic Materials to the EBMUD Facility
as of July 1, 2015. For unprocessed Commercial Organic Materials Collected by
CONTRACTOR or Civicorps as a result of performing Commercial Organic Materials
Subscription Collection Services, fees shall not exceed $96 per Ton, for amounts less than or
equal to 50 Tons per day. To the extent greater than 50 Tons of Commercial Organic Materials
are Collected by CONTRACTOR or Civicorps on any day, CONTRACTOR may deliver the
excess Tons to the EBMUD Facility as either unprocessed or pre-processed Commercial
Organic Materials. The fee for any Commercial Organic Materials pre-processed to pass
through a 2" screen will be $46 per Ton, escalated as set forth below. Notwithstanding the
foregoing, Commercial Organic Materials delivered directly from the generator of such materials
and which require no pre-processing prior to use in a digester shall be invoiced at the $46 per
Ton rate regardless of the aggregate Tonnage delivered by CONTRACTOR or Civicorps on any
day. The foregoing fees of $96 and $46 per Ton shall not increase during the first ten (10) years of this Contract pursuant to any methodology that exceeds the all urban CPI. (Series ID: cuura422sa0 Consumer Price Index, All urban Consumers, All Items, San Francisco-San Jose-Oakland, CA.) Any increases shall be further subject to the Cap limitations imposed on CONTRACTOR in Article 7. Nothing herein prevents EBMUD and CONTRACTOR from agreeing to different terms in the EBMUD Subcontract.

11.06.1.7 The EBMUD Subcontract shall include provisions to require that the fees payable by CONTRACTOR to EBMUD for Services performed in each month shall be reduced (offset) by fifty (50) percent of the value of REC sales receipts of EBMUD attributable to electric energy generated from digested Commercial Organic Materials delivered by CONTRACTOR or Civicorps to EBMUD. CONTRACTOR shall pass through the full value of all REC offsets to those Commercial Customers subscribing to Commercial Organic Materials Collection Service.

11.06.1.8 The EBMUD Subcontract shall address issues of breach, default and termination in a manner that is generally consistent with the provisions of Article 29 of this Contract and Article 11 of the Disposal Services Contract between the CITY and CONTRACTOR. The provisions shall include language to address repetitive compliance issues such as addressed in Section 29.01.4 of this Contract.

11.06.1.9 The EBMUD Subcontract shall also provide EBMUD with commercially reasonable remedies in the event the Commercial Organic Materials delivered to the EBMUD Facility contain significantly greater than ten (10) percent of material that cannot be Diverted, and which causes substantial interference with the operations of the EBMUD Facility.

11.06.1.10 The EBMUD Subcontract shall not include terms providing a right to terminate by CONTRACTOR or EBMUD other than for uncured or incurable breach by the other party. Any terms providing for the potential of early termination by either party shall include provisions for interim processing of Commercial Organic Materials and address commercial principles such as notice, legal excuse and mitigation of damages. Early termination of the EBMUD Subcontract, for any cause by either party or by mutual agreement shall be subject to CITY approval.

11.06.1.11 The EBMUD Subcontract shall not require any more stringent Contamination standard with respect to Commercial Organic Materials delivered to the EBMUD Facility or an alternate, temporary Organic Materials Processing Facility than CONTRACTOR may impose on Commercial Customers subscribing to Commercial Organic Materials Subscription Collection Service under this Contract. The EBMUD Subcontract shall require that the EBMUD Facility accept all materials delivered by CONTRACTOR or Civicorps in accordance with this Contract and provide Processing of and Divert all Food Scraps, including items referenced in Section 1.47 that are compostable but may not be suitable for digestion at the EBMUD municipal waste water facility, and Recyclable Materials that may be included in Commercial Organic Materials. CONTRACTOR shall cause Civicorps to make all reasonable efforts to (i) reduce Contamination of Commercial Organic Materials and (ii) ensure that Commercial Organic Materials Collected are Source Separated. The EBMUD Subcontract shall require EBMUD to hire a qualified third party, subject to CITY approval, to perform material characterization studies of the Commercial Organic Materials delivered under the EBMUD Subcontract to determine the amount of material that cannot be Diverted. These studies shall quantify the material that cannot be Diverted on an annual basis, effective each calendar year of the EBMUD Subcontract year starting from and after the commencement of acceptance and
Mixed Materials and Organics Collection Services Contract

Processing of Commercial Organic Materials at the EBMUD Facility. EBMUD shall be responsible for all costs associated with the performance of these studies.

11.06.1.12 Diversion. The EBMUD Subcontract shall require EBMUD to produce a monthly report on the Diversion of Commercial Organic Materials delivered to the EBMUD Facility pursuant to the Subcontract. The report shall include tonnage data for: Commercial Organic Materials received; the portion of that material recovered for digestion; the portion of that material recovered and shipped for composting; the portion of that material recovered and shipped for recycling; and the portion of that material recovered and shipped for Disposal. EBMUD shall provide copies of the monthly report to both CONTRACTOR and CITY. Such monthly reporting shall begin on July 1, 2016 or at such time the EBMUD Facility begins accepting and Processing Commercial Organic Materials pursuant to the EBMUD Subcontract. Effective three (3) months after reporting begins, in the event that three (3) successive monthly reports indicate that EBMUD has materially failed to achieve substantial Diversion of the Commercial Organic Materials received, the EBMUD Subcontract shall require EBMUD to meet and confer with CITY and CONTRACTOR within thirty (30) calendar days to discuss a process for improving Diversion performance. Should EBMUD continue to materially fail to improve its Diversion performance, such failure shall be deemed an incurable breach subject to termination of the EBMUD Subcontract.

11.06.2 For purposes of calculating the Minimum Annual Diversion Requirements, Diversion of Commercial Organic Materials delivered under the EBMUD Subcontract shall be calculated as follows:

11.06.2.1 During the period of July 1, 2015 through July 1, 2016 and any extension of the period preceding the completion of and commencement of acceptance and Processing of Commercial Organic Materials at the EBMUD Facility, all Commercial Organic Materials delivered to an alternative, temporary Organic Materials Processing Facility per Section 11.06.1.3 shall be deemed one hundred (100) percent Diverted.

11.06.2.2 Upon commencement of acceptance and Processing of Commercial Organic Materials at the EBMUD Facility CONTRACTOR's Diversion shall be deemed as follows:

11.06.2.2.1 In any calendar year that the material characterization study shows that ninety (90) percent to one hundred (100) percent of the Commercial Organic Materials delivered to the EBMUD Facility can be Diverted, then CONTRACTOR's Diversion in that year shall be deemed equal to that percentage, regardless of EBMUD's actual Diversion performance.

11.06.2.2.2 In any calendar year that the material characterization study shows less than ninety (90) percent of the Commercial Organic Materials delivered to the EBMUD Facility can be Diverted, then CONTRACTOR's Diversion in that year shall be deemed ninety (90) percent and regardless of EBMUD's actual Diversion performance. In such circumstance CITY and CONTRACTOR shall meet and confer to develop a commercially reasonable plan for CONTRACTOR to achieve ninety (90) percent. Should such circumstance occur in three (3) consecutive years, CITY reserves the right to make a reasonable adjustment to CONTRACTOR's deemed Diversion of Commercial Organic Materials delivered to the EBMUD Facility.

11.06.2.3 In the event that CONTRACTOR is excused from its obligation to enter into the EBMUD Subcontract pursuant to this Section 11.06 or Section
2669 26.14.3 or the EBMUD Subcontract is terminated, for any reason, and results in the necessity of
2670 CONTRACTOR to secure an alternative Commercial Organic Material Processing Facility under
2671 this Contract, in order to address a reasonable transition period to an acceptable alternative
2672 facility, which shall not to exceed twenty-four (24) months, the process, standards and
2673 requirements set forth in above Section 11.06.2.2 shall be applied during such transition period,
2674 in which case CONTRACTOR shall hire a qualified third party, subject to CITY approval, to
2675 perform material characterization studies of the Commercial Organic Materials delivered under
2676 the EBMUD Subcontract to determine the amount of material that cannot be Diverted. These
2677 studies shall quantify the material that cannot be Diverted on an annual basis, effective during
2678 the transition period addressed in this Section.

2679 11.06.3 In the event CITY determines that EBMUD has failed or refused
2680 to agree to include terms which materially address the provisions required by Section 11.06 of
2681 this Contract in the EBMUD Subcontract, then CONTRACTOR shall be excused from its
2682 obligation to enter into the EBMUD Subcontract.

2683 11.06.4 In the event that the requirement to deliver Commercial Organic
2684 Materials to the EBMUD Facility is excused under any provision in Section 11.06 of this
2685 Contract, CONTRACTOR and Civincorps shall direct the Commercial Organic Materials to
2686 CONTRACTOR’s Davis Street Transfer Station or an alternative Organic Materials Processing
2687 Facility that is fully permitted, subject to CITY’s approval.

2688 11.06.5 CONTRACTOR further understands and agrees that the cost of
2689 processing Commercial Organic Materials are an integral part of the Processing RRI set forth
2690 in Exhibit 2 to this Contract. As such, regardless of the change in the per Ton charge for
2691 delivery of Commercial Organic Materials to the EBMUD Facility, Commercial Organic
2692 Materials Subscription Collection Service Maximum Service Rates shall not be adjusted other
2693 than as set forth in Article 7 and Exhibit 2 to this Contract.

2694 11.07 Additional Organic Materials Capacity. Upon notification to CONTRACTOR by
2695 CITY or a Commercial Customer that additional Organic Materials Capacity is requested,
2696 CONTRACTOR shall deliver such Organic Materials Containers as are needed to meet the
2697 capacity requirements of the Service Address by the next regularly scheduled Collection day, or
2698 within six (6) Work Days (whichever is later). CONTRACTOR shall be compensated for the cost
2699 of providing additional Organic Materials Containers in accordance with the approved
2700 “Commercial Organic Materials Collection” Maximum Service Rate provided in Exhibit 1 or as
2701 may be adjusted under the terms of this Contract.

2702 11.08 Reduction or Discontinuation of Service. CONTRACTOR shall retain the right to
2703 reduce capacity or discontinue provision of Organic Materials Subscription Collection Services
2704 to Commercial Customers under the following circumstances:

2705 11.08.1 The Organic Materials Cart or Bin is found to be contaminated
2706 through the inclusion of more than ten (10) percent of materials that are not Organic Materials
2707 as defined herein more than four (4) times in any twelve (12) month period. Upon a finding a
2708 fourth instance of such contamination in any twelve (12) month period, CONTRACTOR shall
2709 notify the Commercial Customer in writing that an additional violation of the Contamination
2710 requirements of the program will result in the discontinuation of service.

2711 11.09 Commercial Special Events Collection Service. CONTRACTOR shall offer Mixed
2712 Materials, Recyclable Materials and Organic Materials Collection, Disposal and processing
2713 services at special events in accordance with the approved “Special Events Collection”
2714 Maximum Service Rates provided in Exhibit 1 or as may be adjusted under the terms of this
Mixed Materials and Organics Collection Services Contract

Contract. Such services shall include the delivery and pickup of Containers. CONTRACTOR will deliver Containers the day before the event and pick up Containers the day following the event, unless arranged otherwise with Customer. If the event is on a weekend or Collection holiday, CONTRACTOR will deliver Containers the last Work Day before the event and pick up Containers the first Work Day following the event, unless arranged otherwise with Customer.

11.10 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide Temporary Roll-Off Collection Service to all Commercial Customers in the Service Area subscribing to such service. CONTRACTOR shall respond to requests for service within two (2) Work Days of receipt of the request. CONTRACTOR shall be compensated for such services in accordance with the Maximum Service Rates as set forth in Exhibit 1 to this Contract as may be adjusted in accordance with the terms of this Contract.

ARTICLE 12. CITY COLLECTION SERVICES

12.01 CITY Collection Services. CONTRACTOR has offered to donate the following services as corporate good will:

12.01.1 Conditions of Service. CONTRACTOR shall provide CITY Collection Services to all CITY Facilities existing in the Service Area as of the effective date of the Contract where Mixed Materials and Organic Materials are properly placed in Bins, Carts, or Roll-Off Boxes regardless of whether the lid is closed, and where the Bins, Carts, or Roll-Off Boxes are accessible as set forth in Section 12.01.4. All such Mixed Materials and Organic Materials must be generated on City Facilities or on property maintained by CITY. To the extent the number of CITY Facilities being serviced by CONTRACTOR increases disproportionately to the reasonably expected growth in CITY Collection Services provided during the term of the Contract, the parties agree to meet and confer in good faith to discuss appropriate service levels as well as compensation for additional services. If the parties are unable to agree upon the appropriate amount of compensation, the parties shall resolve their disagreement through the dispute resolution process as set forth in Article 54.

12.01.2 Size and Frequency of Service. CONTRACTOR shall offer Mixed Materials Carts in 20, 32, 64 and 96 gallon nominal Cart sizes, and Organic Materials Carts in 20, 32, 64 or 96 gallon nominal Cart sizes. CONTRACTOR shall offer Mixed Materials and Organic Materials Bins in 1, 1.5, 2, 3, 4, 6 and 7 cubic yard sizes. CONTRACTOR shall offer Mixed Materials and Organic Materials Roll-Off Boxes in 6, 14, 20, 30 and 40 cubic yard sizes with lids (if desired by CITY). Except for those services that utilize Roll-Off Boxes for Collection, each service shall be provided at least once every week on a scheduled route basis. However, in those instances where the scheduled Collection day falls on a holiday as set forth in Section 6.11 herein, or on a CITY holiday or business closure day, the Collection day may be adjusted in a manner agreed to between CITY and CONTRACTOR as long as service is received a minimum of one (1) time per week. The size of the Container and the frequency (above the minimum) of Collection shall be determined between CITY and CONTRACTOR. However, size and frequency shall be sufficient to provide that no Mixed Materials or Organic Materials need be placed outside the Container on a regular basis. For those services utilizing Roll-Off Boxes for Collection, the frequency of Collection shall be on a regular or irregular basis as determined solely by the needs of CITY.

12.01.3 Manner of Collection. CONTRACTOR shall provide CITY Collection Services with as little disturbance as possible and shall leave any Container an upright position, with the lid secure, at the same point it was Collected without obstructing
Mixed Materials and Organics Collection Services Contract

alleys, roadways, driveways, sidewalks or other public areas. CONTRACTOR shall close or lock, as appropriate, Container enclosures that were opened by CONTRACTOR as part of the Collection process.

12.01.4 Accessibility. CONTRACTOR shall Collect all Mixed Materials and Organic Materials Containers that are readily accessible to CONTRACTOR’S crew and vehicles and not blocked. However, CONTRACTOR shall provide “push services” and “key services” as necessary during the provision of CITY Collection Services. Push services shall include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location. Push services may include unlocking and relocking the Bin or enclosure. Key services shall include the provision of a master lock and key by CONTRACTOR to the Service Address for the convenience of CONTRACTOR. CONTRACTOR shall not be compensated for providing “push services” and or “key services” to CITY.

12.01.4.1 Notification. CONTRACTOR shall notify CITY daily, by e-mail, of all situations that prevent or hinder Collection from any CITY Facility, unless otherwise directed by CITY.

12.02 Street Litter Container Service. During the term of this Contract, CONTRACTOR shall Collect and maintain those street litter Containers as are set forth in Exhibit 4 to this Contract. CITY may modify Exhibit 4 as needed, by providing written notice to CONTRACTOR, but such modification shall not increase the number of street litter Containers by more than ten (10) per Contract Year. This service shall include daily emptying of street litter Containers including liners and enclosures, and removal of debris atop or around Container, on Monday through Friday, and monitoring and emptying of Containers on Saturday and Sunday, as directed by CITY.

12.02.1 CONTRACTOR shall be responsible for repairing and maintaining all street litter Containers, including liners, doors, locks, and any other attached hardware or mechanisms. Maintenance includes graffiti removal and/or paint-over. Repair to damaged Containers, including removal or paint-over of graffiti, must be completed made within six (6) Work Days of notice from CITY. If CITY requests that more than ten (10) litter containers be repaired or replaced during any week, CONTRACTOR and CITY shall meet to agree on repair schedules.

12.02.2 CONTRACTOR shall be responsible for providing new street litter Containers as needed, replacing irreparably damaged Containers, and maintaining an adequate Container inventory. New street litter Containers shall have separate Garbage and Recyclable Materials capacity integrated into the Container and shall be approved by the Contract Manager. CONTRACTOR shall replace damaged Containers, and place new Containers requested by CITY within six (6) Work Days of CITY request.

12.02.3 CONTRACTOR shall take ownership of CITY street litter Containers owned by CITY upon implementation of Contract (July 1, 2015). CONTRACTOR shall be responsible for Recycling, Disposal or sale of surplus or damaged street litter Containers. At end of Contract, CITY may exercise option to take ownership of any street litter Containers then in use.

12.02.4 CONTRACTOR shall also be responsible for Collection from those street litter Containers placed in conformance with CITY standards by Business
Mixed Materials and Organics Collection Services Contract

2804 Improvement Districts and Community Benefit Districts if notified by CITY. CITY shall provide
2805 CONTRACTOR thirty (30) day notice of such additions to the Collection list and limit such
2806 additions to no more than twenty (20) per calendar year.

2807 12.02.5 CONTRACTOR may petition CITY to remove street litter
2808 containers from problematic or underutilized locations.

2809 12.03 City Council and Mayor Roll-Off Boxes. CONTRACTOR shall provide delivery
2810 and Collection Services for Roll-Off Boxes requested by CITY Council and Mayor for use in the
2811 Service Area. CONTRACTOR shall allocate twelve (12) 20-cubic yard Roll-Off boxes to each of
2812 the eight (8) Council offices and the Mayor, for a total of up to one hundred eight (108) twenty-
2813 cubic yard Roll-Off Boxes each calendar year. Any unused portion of this allocation shall carry
2814 forward to succeeding calendar years, up to a maximum of twenty four (24) additional 20-cubic
2815 yard Roll-Off Boxes that must be provided in any one (1) calendar year. Such services shall be
2816 provided in such a manner that all Collection, Processing and Disposal needs, and related staff
2817 support and public education materials for the event are adequately and properly provided for
2818 by CONTRACTOR.

2819 12.03.1 CONTRACTOR is responsible for managing requests for Roll-Off
2820 Boxes from the offices of CITY Council and Mayor, and for monitoring the allocation and use of
2821 the Roll-Off Boxes. CONTRACTOR shall provide CITY a monthly report that shows the
2822 allocation of Roll-Off Boxes by office, including allocations that were carried forward, and use
2823 to-date for the current calendar year.

2824 12.03.2 CONTRACTOR shall, in response to the written request of the
2825 offices of the City Council or Mayor, deliver and Collect Roll-Off Boxes for use in City Council
2826 and Mayor Roll-Off Box events. The appropriate office of the City Council or Mayor shall notify
2827 CONTRACTOR in writing not less than ten (10) calendar days prior to the date of the need for
2828 the Roll-Off Box. The notice to CONTRACTOR shall specify the date of delivery and Collection
2829 of the Roll-Off Box(es), the location(s) for delivery and the number of the Roll-Off Boxes to be
2830 delivered. CONTRACTOR shall remove the Roll-Off Box no later than the end of the first Work
2831 Day following the event day. CONTRACTOR shall transport and deliver the Collected
2832 materials to a facility as is appropriate for the disposition of the materials and approved by the
2833 Contract Manager.

2834 12.04 CITY Sponsored Events. CONTRACTOR shall deliver and collect up to thirty
2835 (30) Roll-Off Boxes per calendar year in support of CITY sponsored events, as requested by the
2836 Contract Manager. At such events where CONTRACTOR provides Roll-Off Boxes,
2837 CONTRACTOR shall also provide Carts for CITY'S temporary use if requested by the Contract
2838 Manager. CITY may designate Roll-Off Boxes for Mixed Materials, Recyclable Materials or
2839 Organic Materials Collection. CITY shall empty Carts prior to removal by CONTRACTOR.
2840 CONTRACTOR shall remove Roll-Off Boxes and Carts no later than the end of the first Work
2841 Day following the event day. CONTRACTOR shall transport and deliver the Collected materials
2842 to a facility as is appropriate for the disposition of the materials, and as approved by the
2843 Contract Manager.

2844 12.05 CITY-Approved Adopt-a-Spot Mixed Material and Organics Services.
2845 CONTRACTOR shall provide up to One Hundred Fifty (150) 64-gallon Mixed Material or
2846 Organics Carts to CITY Adopt A Spot volunteers for use in cleaning and greening public spaces
2847 in Oakland. CITY shall provide CONTRACTOR with authorized list of Adopt A Spot volunteer
2848 Service Recipients annually. CONTRACTOR shall provide service to such Carts when they are
Mixed Materials and Organics Collection Services Contract

set out for Collection with Service Recipient’s other Containers. CONTRACTOR shall provide
Mixed Material or Organic Carts and services at no additional cost to Customers, Service
Recipients or CITY.

12.06 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide
Temporary Roll-Off Collection Service to all CITY Facilities in the Service Area requesting such
service at no charge to CITY. CONTRACTOR shall respond to requests for service within two
(2) Work Days of receipt of the request.

12.07 CITY Delivered Materials. CONTRACTOR shall accept up to seven thousand
five hundred (7,500) Tons of material (the “Tonnage allowance”) during the period July 1, 2015
through December 31, 2015 at no charge to CITY. Beginning calendar year 2016, and each
subsequent calendar year, the Tonnage allowance shall be fifteen-thousand (15,000) Tons. In
any calendar year, CITY shall be allowed to deliver dirt and debris, Garbage, Recyclable
Materials, Organic Materials and Bulky Goods above the Tonnage allowance, but not more than
the unused Tonnage allowance from the prior two (2) calendar years, at no charge to CITY.
Source Separated Recyclable Materials delivered to CONTRACTOR’S facilities shall not count
toward the Tonnage allowance established pursuant to this Section. CITY shall make
reasonable efforts to deliver materials properly separated to facilitate processing where feasible
such as with park landscaping green waste. CONTRACTOR shall be compensated for those
Tons that exceed the Tonnage allowance for any calendar year, except as otherwise provided in
this Section. Such compensation shall be based on the per Ton fee for Disposal at the Disposal
Facility.

12.08 Illegal Dumping Notification and Collection. CONTRACTOR shall direct its
Collection vehicle drivers to note (i) the addresses of any premises at which the driver observes
that Garbage, Mixed Materials, Recyclable Materials, and/or Organic Materials Material is
accumulating; and (ii) the address, or other location description, at which Garbage, Mixed
Materials, Recyclable Materials, and/or Organic Materials has been dumped in an apparently
unauthorized manner. CONTRACTOR shall deliver the address or description to CITY within
three (3) Work Days of such observation. CONTRACTOR shall also provide Collection services
at up to thirty (30) locations per Work Day of up to three (3) cubic yards of such illegally dumped
materials per location provided, however, CONTRACTOR shall not be required to collect
materials not safely accessible by Collection vehicles and/or personnel.

12.09 Provision of Compost. CONTRACTOR shall provide up to five hundred (500)
cubic yards per Contract Year of premium quality compost or other soil amendment or mulch
products delivered to locations in the Service Area and in amounts as directed by the Contract
Manager. Should CITY require greater amounts of these products than five hundred (500)
cubic yards per Contract Year CONTRACTOR shall provide such at a preferential price. For
deliveries of twenty (20) cubic yards or less, CITY must schedule the delivery at least three (3)
days in advance. For deliveries over twenty (20) cubic yards, delivery dates are subject to
CONTRACTOR’s available inventory.

12.10 Disposal and Processing Facilities.

12.10.1 Mixed Materials Processing Facility and Disposal Facility. All
Mixed Materials Collected as a result of CITY Collection Services shall be transported and
delivered to the Disposal Facility or the Mixed Materials Processing Facility.

12.10.1.1 Residue From Mixed Materials Processing. An amount of

City of Oakland
Mixed Materials and Organics Collection Services Contract

Residue equal to the Residue generated as a result of Processing the Mixed Materials Collected during the performance of CITY Mixed Material Collection Service under the terms of this Contract shall be delivered to the Disposal Facility.

12.10.2 Organic Materials Processing Facility. All Organic Materials Collected as a result of performing CITY Collection Services shall be delivered to the Organic Materials Processing Facility. All expenses related to Organic Materials Processing and marketing will be the sole responsibility of CONTRACTOR.

12.10.3 Residue From Organic Materials Processing. An amount of Residue equal to the Residue generated as a result of Processing the Organic Materials Collected during the performance of CITY Organic Material Collection Service under the terms of this Contract shall be delivered to the Disposal Facility.

12.11 Modification of CITY Collection Services. CITY may from time to time direct modifications of CITY Collection Services. Any such modification which materially increases or decreases the cost of CONTRACTOR providing CITY Collection Services shall be handled pursuant to the procedures set forth in Article 30.

ARTICLE 13. COLLECTION ROUTES

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

13.02 Subsequent Collection Route Changes. In the event a Residential Collection route change will change the Collection day of ten (10) percent or more of the Service Addresses on that route, CONTRACTOR shall provide a written plan, which is subject City approval, not less than sixty (60) days before the proposed date of implementation. CONTRACTOR shall coordinate implementation of route changes with the Residential Recycling Contractor and shall notify affected Service Addresses of the Collection route changes in the manner set forth in Exhibit 15 to this Contract.

13.02.1 In the event a Residential Collection route change will change the Collection day of less than ten (10) percent of the Service Addresses on that route, CONTRACTOR shall provide written notification to the affected Service Addresses and the Contract Manager not less than two (2) weeks prior to the new Collection day. CONTRACTOR shall coordinate implementation of route changes with the Residential Recycling Contractor in the manner set forth in Exhibit 15 to this Contract.

13.03 Route Map Update. CONTRACTOR shall revise the Customer route maps to show the addition of Customers added due to construction / occupancy and shall provide such revised maps to the Contract Manager upon request.

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

13.05 Coordination with Street Sweeping. CITY AND CONTRACTOR acknowledge that CONTRACTOR may have to modify Collection days to accommodate CITY’s street sweeping schedule.

ARTICLE 14. COLLECTION EQUIPMENT

14.01 General Provisions. All equipment used by CONTRACTOR in the performance of Collection Services under this Contract shall be of a high quality. The vehicles shall be designed and operated so as to prevent Collected materials from escaping from the vehicles. Hoppers shall be closed on top and on all sides with screening material to prevent Collected materials from leaking, blowing or falling from the vehicles. All trucks and Containers shall be watertight and shall be operated so that liquids do not spill during Collection or in transit.

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

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

14.04 Bulky Goods. Vehicles used for Collection of Bulky Goods containing Freon or other gases shall not use compactor mechanisms or mechanical handling equipment that may release Freon or other gases from pressurized appliances.

14.05 Global Positioning Systems (GPS). CONTRACTOR shall provide all route Collection vehicles equipped with fully functioning on-board GPS with direct and real-time linkages to CONTRACTOR’S Customer service system.

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

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

**14.08 Vehicle Signage and Painting.** Collection vehicles shall have signage in letters of contrasting color on each side and the rear of each vehicle that clearly states that the Collection vehicle is servicing the City of Oakland, provides CONTRACTOR’S name, CONTRACTOR’S Customer service telephone number and other signage approved by CITY. CONTRACTOR shall repaint all vehicles (including vehicles striping) during the term of this Contract on a frequency as necessary to maintain a positive public image as reasonably determined by CITY.

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

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

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

**14.12 Maintenance Log.** CONTRACTOR shall maintain a maintenance log for all Collection vehicles. The log shall at all times be accessible to CITY for physical inspection upon request of Contract Manager, and shall show, at a minimum, each vehicles’ 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.

**14.13 Equipment Inventory.** On or before July 1, 2015, and annually thereafter, CONTRACTOR shall provide to CITY an inventory of Collection vehicles and major equipment used by CONTRACTOR for Collection or transportation and performance of services under this Contract. The inventory shall indicate each Collection vehicle by CONTRACTOR-assigned
Mixed Materials and Organics Collection Services Contract

identification number, DMV license number, the ages of the chassis and body, type of fuel used,
the type and capacity of vehicle body, the date of acquisition, the decibel rating, the
maintenance status, and the number of vehicles by type. CONTRACTOR shall submit to the
Contract Manager, by web, cloud or e-mail, an updated inventory annually, or more often at the
request of the Contract Manager. Each vehicle inventory shall be accompanied by a
certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this
Contract.

14.14 Reserve Equipment. CONTRACTOR shall have available to it, at all times,
reserve Collection equipment that can be put into service and operation within one (1) hour of
any breakdown. Such reserve equipment shall correspond in size and capacity to the
equipment used by CONTRACTOR to perform the contractual duties.

14.15 Covering of Loads. All loads not in covered body trucks shall be tarped or
restrained to prevent spilling.

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

14.17 Vehicle Tare Weights. Between the time this Contract is executed and July 1,
2015, CONTRACTOR shall have the Disposal Contractor weigh and determine the unloaded
("tare") weight of each of CONTRACTOR'S vehicles that will be used to deliver Mixed materials
and other materials to the Disposal Facility. CONTRACTOR shall, at least every two (2) years,
have the Disposal Contractor reweigh and revise tare weights for all CONTRACTOR'S vehicles
used to deliver Mixed Materials and other materials to the Disposal Facility.

ARTICLE 15. LOCAL OFFICE

15.01 Oakland Office. During the term of this Contract CONTRACTOR shall maintain
an office in the Service Area. CONTRACTOR'S office shall provide toll-free telephone access
to CITY residents, and shall be located where Customers can pay their bills or make service
requests or inquires in person. The office shall be open and staffed from 8:00 a.m. to 6:00 p.m.
on Work Days, except for designated holidays. The office shall have a responsible person in
charge who is familiar with the specific Collection Services provided by CONTRACTOR to CITY.
CONTRACTOR shall equip the office with a direct terminal connection to the customer service
system operated at CONTRACTOR'S call center.

ARTICLE 16. CUSTOMER SERVICE

16.01 Customer Service Program. CONTRACTOR shall develop, implement and
maintain a customer service program approved by CITY to ensure that all services provided
under this Contract are high quality. CONTRACTOR'S customer service plan is set forth as
Exhibit 9, which is attached to and included in this Contract.

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

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

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

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

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

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

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

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

16.03 Telephone Access to the Residential Recycling Contractor. CONTRACTOR shall provide a local telephone number that allows callers to be automatically transferred to the Residential Recycling Contractor, as appropriate. It shall be CONTRACTOR’S responsibility to ensure that transferred callers experience no changes in volume or clarity from that associated with direct calls to CONTRACTOR. The Residential Recycling Contractor shall reasonably determine the appropriate volume for call transfers.

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

16.05 Website. CONTRACTOR shall develop and maintain a state-of-the-art website dedicated to services provided in CITY, which is accessible by the public. The website shall include answers to frequently asked questions, rates for Collection Services, listing and description of Mixed Materials, Recyclable Materials and Organic Materials, Collection Service
schedules and maps, and other related topics. However, the website is not required to provide a description of Commercial Non-Exclusive Recyclable Materials. The website shall also have a link to CITY’S website and a link to the Recyclable Materials Collection Contractor’s website. CONTRACTOR shall arrange for CITY’S website to include an e-mail link to CONTRACTOR and a link to CONTRACTOR’S website. CONTRACTOR’S website shall provide the public the ability to e-mail comments inquiries and request services or service changes to CONTRACTOR.

ARTICLE 17. COMMUNITY OUTREACH SERVICES

17.01 Community Outreach Services. CONTRACTOR shall be required to implement, at its own expense, CONTRACTOR’S Community Outreach Strategy set forth in Exhibit 7 to this Contract. The Community Outreach Strategy will provide an overview of the Contractor’s plans to engage the community in full use of the Collection Services and the Diversion goals of the Contract.

17.01.1 Transitional Outreach Plan. CONTRACTOR shall prepare and implement, at its own expense, a transitional outreach plan consisting of a community outreach campaign that makes aware and fully informs SFD, MFD and Commercial Customers of the Collection Services, highlighting changes to the current services, relevant to the Customer experience, which will occur through execution of the Contract. The transitional outreach plan will be consistent with and informed by CONTRACTOR’S Community Outreach Strategy as set forth in Exhibit 7. The transitional outreach plan will be implemented beginning January 2015, or with execution of the Contract, whichever is later. The transitional plan will cover all CONTRACTOR’S community outreach services in calendar year 2015. The budget for the transitional plan shall be not more than One Million Dollars ($1,000,000).

17.01.2 Annual Outreach Plan. CONTRACTOR, at its own expense, shall prepare, submit and implement an annual outreach plan that is consistent with and informed by CONTRACTOR’S Community Outreach Strategy as set forth in Exhibit 7. CONTRACTOR shall submit the initial annual outreach plan for CITY approval no later than September 1, 2015, and subsequent annual outreach plans no later than September 1 each year thereafter. CITY shall review and respond to the proposal within forty five (45) days. Implementation of the annual outreach plan would begin on January 1 of each year. The annual outreach plan must include specific steps designed to increase Diversion and Customer participation in the Collection Services, and measure the effectiveness of these efforts. The annual outreach plan should target specific materials or demographic or service sectors where improvements can be maximized. Outreach targets should be based on measured trends and patterns in recycling and disposal activities, participation, and tonnages by service sector, within the Service Area and within identified Service Area localities, as indicated by information obtained by both the Contract Manager and CONTRACTOR’S staff.

17.01.3 Community Outreach Budget. CONTRACTOR shall be required to allocate or spend no more than One Million Dollars ($1,000,000) in the first calendar year of the Contract, to implement the transitional outreach plan, and not more than Five Hundred Thousand Dollars ($500,000) per calendar year thereafter to implement the annual outreach plan. All such expenditures require prior approval from CITY unless included in outreach plan. CITY and CONTRACTOR may mutually agree to perform joint Public Outreach activities using all or some of the annual Public Outreach budget. Public relations activity costs cannot be applied to the Public Outreach budget. At the end of the calendar year, any funds in the approved annual outreach budget that remain unspent shall be carried forward to the following calendar year. However, in the event CONTRACTOR has unspent funds at the end of three
Mixed Materials and Organics Collection Services Contract

(3) consecutive calendar years, the unspent funds shall be deposited in the Rate Stabilization Fund.

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

17.02 CITY Approval Required. All marketing, messaging or other mass communications, including but not limited to print, outdoor media, broadcast, web-based, e-mail, and telephone voice messages, directed to Customers or Service Recipients, must be approved by the Contract Manager prior to execution or delivery to the Customer or Service Recipient, regardless of whether these communications relate to the Collection Services. All public relations, press and community outreach activities that involve the Collection Services, or that are targeted to the Service Recipients or Customers, must have prior written approval from the Contract Manager, whether or not they are being paid for from the Community Outreach budget. CONTRACTOR shall not perform any work on Community Outreach materials or activities without prior written approval from the Contract Manager. All materials shall be submitted in writing for review and approval. Written authorization by the Contract Manager is required prior to final production of any Community Outreach materials. National marketing efforts by corporate affiliates of CONTRACTOR are outside the scope of this Article 17; however, any national efforts which are to be targeted directly to Oakland or East Bay customers shall require reasonable prior notification to the Contract Manager.

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

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

17.03.2 Include CITY’S Oakland Recycles logo and CITY’S recycling hotline phone number;

17.03.3 Include four (4) languages whenever possible and/or needed;

17.03.4 Be made accessible to those with disabilities, in accordance with all applicable federal, state and local laws and regulations.

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

17.05 Annual Collection Service Notice. Each full or partial calendar year during the term of this Contract, CONTRACTOR shall publish and distribute separate notices to all SFD Customers and Service Recipients regarding the SFD Collection Service, to all MFD Customers and Service Recipients regarding MFD Collection Service, and to all Commercial Customers regarding Commercial Collection Service. To the extent appropriate, based on the category of Customer receiving the notice, it shall contain at a minimum: definitions of the materials to be Collected, procedures for setting out the materials, Collection and Disposal options for unacceptable materials such as Hazardous Waste, maps of the Service Area indicating the day of the week that Collection Service will be provided, and CONTRACTOR Customer service phone number, email address and website address. The notice shall be provided in English, Spanish, Vietnamese and Chinese (Cantonese) and such other languages as reasonably may be directed by CITY in accordance with its Equal Access Program requirements, and shall be distributed by CONTRACTOR no later than June 1, 2015 for the first partial calendar year and by November 15, 2016 and annually thereafter for the remaining term of the Contract.

17.06 Bill Inserts. CITY may provide educational and other material to CONTRACTOR for inclusion in the invoices provided by CONTRACTOR to SFD, MFD and Commercial Customers for Collection Services. CONTRACTOR shall not charge CITY for the inclusion of up to three (3) 8 1/2” by 11” pages per billing. To the extent CITY provides the insert material in an electronic format, CONTRACTOR shall ensure that such materials are delivered or made available to Customers utilizing electronic billing options provided by CONTRACTOR. In the case of bill inserts developed jointly by CITY and CONTRACTOR, the cost of bill insert development and production shall be allocated to the annual community outreach budget.

17.07 Bulky Goods Collection Service. Outreach requirements for the Bulky Goods Collection Service program include an annual announcement sent to all residential Service Addresses, a mid-year reminder notice to all service addresses, and an appointment confirmation notice sent to Service Recipients following the scheduling of an appointment. These materials are described in the Bulky Services Agreement, attached as Exhibit 14, which may be modified as needed by agreement of CONTRACTOR and CITY.

17.08 CONTRACTOR'S Website. CONTRACTOR shall maintain a website that uses graphics and statistics illustrating CITY progress toward becoming a Zero Waste Community, and provides resources the community can use to support Zero Waste and Sustainability efforts, the Collection Services and other programs as requested by CITY. CITY shall review and approve CONTRACTOR'S website content that is related to this Contract.

17.09 News Media Relations. CITY shall oversee all press activities including press releases, press conferences, press kits, press packets and general press inquiries regarding the Program. CONTRACTOR shall notify the Contract Manager by e-mail or phone of all requests for news media interviews related to the Collection Services program within twenty-four (24) hours of CONTRACTOR'S receipt of the request. Before responding to any news media inquiries involving controversial issues or any issues likely to affect participation or Customer perception of services, CONTRACTOR will discuss CONTRACTOR'S proposed response with the Contract Manager. However, notwithstanding anything to the contrary in this Section 17.09, there may be instances of unannounced media visits where CONTRACTOR responses would be beneficial, in CONTRACTOR's reasonable judgment. In such cases, CONTRACTOR will not be obligated to obtain CITY consent to media communication, but will summarize such communication to CITY as soon as practicable. Copies of draft news releases or proposed
3240 trade journal articles shall be submitted to CITY for prior review and approval at least five (5)
3241 Work Days in advance of release. Copies of articles resulting from media interviews or news
3242 releases shall be provided to CITY within five (5) Work Days after publication.

3243 17.10 Compost for CITY Residents. CONTRACTOR shall make available a total of
3244 eighty (80) cubic yards per calendar year of pre-bagged compost for distribution to Oakland
3245 residents at two (2) annual compost give-back events within the jurisdictional limits of CITY
3246 during each of the first two (2) years of the Contract. CONTRACTOR shall work with CITY to
determine the dates and locations of the give-back events.

3248 17.10.1 CONTRACTOR shall be responsible for all aspects related to
3249 planning, managing and staffing of the compost give-back event. Residents shall be required
3250 to show proof of residency to receive the compost product. No later than ten (10) Work Days
3251 following the compost give-back event, CONTRACTOR shall submit to CITY a written report
3252 identifying the number of residents who accepted materials; the number of bags given away;
3253 the total Tonnage of material given away; a summary of feedback and suggestions provided by
3254 residents; and any suggestions CONTRACTOR proposes for the next compost give-back
3255 event(s).

ARTICLE 18. EMERGENCY SERVICE PROVISIONS

3257 18.01 Emergency Services. CONTRACTOR shall provide emergency services (i.e.,
3258 special collections, transport, processing,) at CITY’S request in the event of a declared local,
3259 State or federal state of emergency, major accidents, disruptions or natural calamities.
3260 CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours
3261 of notification by CITY, or as soon thereafter as is reasonably practical in light of the
3262 circumstances. An emergency contact person designated by CONTRACTOR shall be
3263 accessible during the term of this Contract twenty-four (24) hours per day for the Contract
3264 Manager or other CITY Administrator designee to contact CONTRACTOR. CONTRACTOR
3265 shall receive additional compensation, above the normal compensation contained in this
3266 Contract, to cover the costs of rental equipment, additional personnel, overtime hours and other
3267 documented expenses based on the rates set forth in Exhibit 1 to this Contract provided
3268 CONTRACTOR has first secured written authorization and approval from CITY through the City
3269 Administrator.

3270 18.02 In the event of an emergency as set forth above, the CITY may grant
3271 CONTRACTOR a variance from regular routes and schedules. As soon as practicable after
3272 such event, CONTRACTOR shall advise the CITY when it is anticipated that normal routes and
3273 schedules can be resumed. The CITY shall make an effort through the local news media to
3274 inform the public when regular services may be resumed.

ARTICLE 19. RECORD KEEPING & REPORTING REQUIREMENTS

3276 19.01 Record Keeping.

3277 19.01.1 Accounting Records. CONTRACTOR shall maintain full,
3278 complete and separate financial, statistical and accounting records, pertaining to cash and
3279 billing, and provision of all Collection Services provided under this Contract, prepared on an
3280 accrual basis in accordance with generally accepted accounting principles. Such records shall
3281 be subject to audit and inspection by CITY. Gross Receipts derived from provision of the
3282 Collection Services shall be recorded as revenues in the accounts of CONTRACTOR. These
records shall be separate and segregated from other records maintained by CONTRACTOR for services outside the scope of this Contract as may be provided by CONTRACTOR. CONTRACTOR shall maintain and preserve all cash, billing and Disposal records for a period of not less than five (5) years following the close of each of CONTRACTOR’S fiscal years.

19.01.2 CONTRACTOR Payments to CITY. CONTRACTOR shall maintain records of all payments made to CITY for all items listed in Section 7.18.7, 7.18.8, 7.18.9, and 7.18.10.

19.01.3 Tonnage Records. CONTRACTOR shall maintain records of the incoming and outgoing quantities, measured in pounds, of (i) Mixed Materials, Recyclable Materials, and Organics Material, and Bulky Materials Collected, Processed, composted, and Disposed under the terms of this Contract, and (ii) Recyclable Materials and Organic Materials, by material type, sold, donated or given for no compensation, and Residue Disposed.

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

19.01.4.1 CONTRACTOR shall maintain a relational database that includes data from all required reports for the term of this Contract, and provide CITY with access to the database. Database shall be flexible to accommodate changing needs and conditions over the term of this Contract.

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

19.02.1 Monthly Reports. CONTRACTOR shall provide reports that include the following data for each month and year to date.

19.02.1.1 Collection Service Account Data. Number of SFD and MFD buildings and units served; number of Commercial and CITY accounts served. Number of containers in service by Collection Service type, container size, and material type (e.g., Mixed Materials, Organic Materials), and container service location (e.g., curbside placement, Premium Backyard, Exempt Backyard). Number of Non-Collection Notices issued by Collection Service type and by reason for non-collection.

19.02.1.2 Collected Tonnage Data. Tonnage for all materials Collected, by Collection Service type and by material type, e.g., Mixed Material, Organic Materials. Bulky Goods Collection Service, including Collected tonnage, bulky goods item counts, and other data and information per Exhibit 14 of this Contract. Tonnage for all materials delivered to the transfer facility by CITY vehicles and Tonnage and pull data for CITY Roll-Off Boxes serviced by CONTRACTOR.

19.02.1.3 Processed Tonnage Data. Tonnage for all Collected materials that are delivered to Processing facilities by Collection Service type, and by
Processing facilities.

19.02.1.4 Processed Materials Data. Tonnage of each material produced through the Processing of Collected materials at CONTRACTOR’s Processing Facility, e.g., finished compost, old corrugated containers, mixed paper and other recycled commodity grades, feedstock for biomass or refuse derived fuel, and energy products derived from CONTRACTOR’s Processing of Organic materials (should CONTRACTOR produce such energy products). CONTRACTOR shall use a statistically significant method approved by CITY to calculate the Tonnage of finished Processed material, net of Residue, attributable to material Collected under this Contract.

19.02.1.5 Disposal Tonnage Data. Tonnage for all materials Collected that are transferred to the Disposal Facility without Processing, by Collection Service type. Tonnage for all Residue from Processing of Collected materials, by processing facility. CONTRACTOR shall use a statistically significant method approved by CITY to calculate the Tonnage of Residue attributable to material Collected under this Contract.

19.02.1.6 Customer Service Data. Number of Customer and Service Recipient contacts, e.g., phone calls or electronic communications, by date, Collection Service type, and topic including but not limited to the topics listed.

19.02.1.7 Local Hire Requirement Update. CONTRACTOR shall provide monthly updates on its compliance with Local Hire Requirements in Article 55 of this Contract.

19.02.1.8 Roll-Off Box Report. CONTRACTOR shall provide a City Council and Mayor Roll-Off Box report that shows the allocation of Roll-Off Boxes by office, including allocations that were carried forward, and use to-date for the then current calendar year in compliance with Section 12.03.1.

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

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

19.02.2.2 Processing and Marketing Activities. Report on Recyclable Materials and Organic Materials Processing and marketing issues or conditions, if any, occurring during the previous quarter.

19.02.2.3 Customer Service Activities. Report on customer service and Call Center issues or conditions, if any, occurring during the previous quarter.

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

19.03 Annual Reports. CONTRACTOR shall provide the following data and information each year.
Mixed Materials and Organics Collection Services Contract

19.03.1.1 Customer and Collection Services Data. List of all Customers serviced under this Contract including and sortable by Collection Service type, Customer name, Service Address (street number, street name, Zip Code), number of Containers billed for by Collection Service type, Container size, and material type, e.g., Mixed Material, Organic Material.

19.03.1.2 [reserved]

19.03.1.3 Local Hire Requirement Annual Report. CONTRACTOR shall provide an annual report on its compliance with Local Hire Requirements in Article 55 of this Contract.

19.03.1.4 Gross Receipts. CONTRACTOR shall provide a summary of the prior year's Gross Receipts received, by Collection Service type.

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

19.03.1.6 Business Tax Certificate. Copy of current business tax certificate.

19.04 Additional Reporting and Access to Information.

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

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

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

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

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

19.05 Except as provided in Article 30, nothing in this Article 19, or elsewhere in this Contract, shall be construed to require CONTRACTOR to provide cost (other than the weight of costs for purposes of calculating RRI) or profit information.

City of Oakland
ARTICLE 20. NONDISCRIMINATION

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

ARTICLE 21. SERVICE INQUIRIES AND COMPLAINTS

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

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

21.01.2 Response Requirements. For those complaints related to missed Collections that are received by 12:00 noon on a Work Day, CONTRACTOR will return to the Customer address and Collect the missed Carts or Bins by 12:00 noon on the following Work Day. For those complaints related to missed Collections that are received after 12:00 noon on a Work Day, CONTRACTOR shall have until the end of the following Work Day to resolve the complaint. For those complaints or service requests related to Carts or Bins for new Customers, or repair, replacement or exchange of Carts or Bins, the appropriate Articles of this Contract shall apply.

21.01.3 Missed Collections. CONTRACTOR agrees that it is in the best interest of CITY that all Mixed Materials, Recyclable Materials, Organic Materials and Bulky Goods be Collected on the scheduled Collection day. Accordingly, missed Collections will normally be Collected as set forth herein regardless of the reason that the Collection was missed. However, in the event a Service Address reports missed Collection Services more than two (2) times in any consecutive two (2) month period the Contract Manager will work with CONTRACTOR to determine an appropriate resolution to that situation. In the event CONTRACTOR believes any complaint to be without merit, CONTRACTOR shall notify the Contract Manager, by e-mail. The Contract Manager will investigate all disputed complaints and render a decision.
ARTICLE 22. QUALITY OF PERFORMANCE OF CONTRACTOR

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

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

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

22.04 Liquidated Damages. The parties further acknowledge that consistent and reliable Collection Services are of utmost importance to CITY, and that CITY has considered and relied on CONTRACTOR’S representations as to its quality of service commitment in awarding the Contract. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY, and CITY’S residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY’S right to treat such non-performance as an event of default under Article 29, the parties agree that the liquidated damages amount defined in this Article represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the effective date of this Contract, including the relationship of the sums to the range of harm to CITY, Customers, Service Recipients, and the community as a whole, which reasonably could be anticipated, and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Contract was made.

CITY (Initial Here) ______________________  CONTRACTOR (Initial Here)____________________

CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the following amounts:
ARTICLE 22. QUALITY OF PERFORMANCE OF CONTRACTOR

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

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

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

22.04 Liquidated Damages. The parties further acknowledge that consistent and reliable Collection Services are of utmost importance to CITY, and that CITY has considered and relied on CONTRACTOR’S representations as to its quality of service commitment in awarding the Contract. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY, and CITY’S residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY’S right to treat such non-performance as an event of default under Article 29, the parties agree that the liquidated damages amount defined in this Article represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the effective date of this Contract, including the relationship of the sums to the range of harm to CITY, Customers, Service Recipients, and the community as a whole. which reasonably could be anticipated, and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Contract was made.

CITY (Initial Here)_________________ CONTRACTOR (Initial Here)_________________

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

City of Oakland
Page 81
<table>
<thead>
<tr>
<th></th>
<th>Failure to timely submit or make available to CITY documents and reports as required under the provisions of this Contract (Various Sections).</th>
<th>$100 per incident per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Failure to correct identified billing errors as required in (Article 7).</td>
<td>$10 per incident per billing cycle capped at $100,000 per billing cycle</td>
</tr>
<tr>
<td>3</td>
<td>Failure to pay the amount due to the Residential Recycling Contractor within the time period set forth herein. (Section 7.14).</td>
<td>$1,000 per incident per day</td>
</tr>
<tr>
<td>4</td>
<td>Failure to remit the Franchise Fee and other payments to CITY as set forth in Section 7.18 herein.</td>
<td>$500 per incident per day</td>
</tr>
<tr>
<td>5</td>
<td>Failure to provide timely transition documents or meet transition requirements (Section 6.19).</td>
<td>$300 per item per day</td>
</tr>
<tr>
<td>6</td>
<td>Failure to notify CITY daily of all situations that prevent or hinder Collection from any CITY Facility, unless otherwise directed by CITY (Article 12).</td>
<td>$100 per day</td>
</tr>
<tr>
<td>7</td>
<td>Failure to Collect or otherwise recover within the time set forth in Section 21.01.2 materials that are set out for Collection including materials that have been rejected but where a Non-Collection Notice was not provided which exceeds one (1) such failures per 1,000 services per service category (e.g., Mixed Materials, Organics) per service sector (SFD, MFD, Commercial) per month, or which exceeds twenty-five (25) such failures per 1,000 services per month for Bulky.</td>
<td>$150 per incident per day</td>
</tr>
<tr>
<td>8</td>
<td>Failure to service, repair, maintain or replace street litter Containers (as provided in Section 12.02) which exceeds 5 such failures per week.</td>
<td>$50 per incident per day</td>
</tr>
<tr>
<td>9</td>
<td>Missed or incomplete SFD Residential Collection at the same Service address for: Two consecutive scheduled Collections Three of six scheduled Collections Eight Collections in six months Twelve Collections in twelve months (Article 9).</td>
<td>$50 per incident $250 per incident $500 per incident $1,000 per incident</td>
</tr>
<tr>
<td>10</td>
<td>Failure to repair or replace, deliver, remove or exchange damaged, missing or abandoned Carts or Bins within the time required by this Contract (Sections 6.06.4 through 6.06.9.) which exceeds 10 such failures per week.</td>
<td>$150 per incident per day</td>
</tr>
<tr>
<td>11</td>
<td>Failure to commence clean-up of spills, leaks, or litter caused by CONTRACTOR by end of Work Day, upon notification from CITY (Section 6.15).</td>
<td>$300 per incident</td>
</tr>
<tr>
<td>12</td>
<td>Failure to properly return empty Carts or Bins to the point of Collection, upright with lids closed and locks secured, as required by Section 6.04, which exceeds 50 such failures per month.</td>
<td>$150 per incident per day</td>
</tr>
<tr>
<td>13</td>
<td>Failure to answer a Customer call within five (5) rings (Section 16.02.2). Answer* includes any method of picking up Customer calls, including recorded greetings.</td>
<td>$50 per incident</td>
</tr>
</tbody>
</table>
| 14 | Customer on-hold wait time, based on a weekly average that is:  
• Greater than three minutes and up to four minutes  
• Greater than four minutes and up to five minutes  
• Over five minutes  
(Section 16.02.3). | $1,000 per week  
$2,000 per week  
$3,000 per week |
<p>| 15 | Failure to return a Customer voice message or respond to a Customer e-mail by the close of the Work Day following the day the voice message or e-mail is received (Section 16.02.6) provided it is received by 6:00 p.m. | $150 per incident per day |
| 16 | Failure to make Extra Service Tags available to Customers in the manner set out by this Contract (Section 6.09). | $150 per incident per day |
| 17 | Failure to begin Collection Service within 7 work days for a new Customer account, or receipt of an application for premium backyard Collection, exempt backyard Collection programs or the curbside placement exemption within the time required herein which exceeds 20 such failures per calendar quarter. | $150 per incident per day |
| 18 | Failure to provide delivery of compost within the times required by (Section 12.09). | $150 per incident per day |
| 19 | Failure to maintain Collection vehicles pursuant to Article 14. | $150 per incident per day |</p>
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fine or Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Failure to mark and label Carts, Bins and Roll-Off Boxes; to inspect, clean and maintain metal Bins, Compactors or Roll-Off Boxes in a clean and sanitary manner which exceeds 100 such failures annually (Section 6.06.1, 6.06.2, 6.06.3, and 14.10).</td>
<td>$150 per incident per day</td>
</tr>
<tr>
<td>21</td>
<td>Failure to meet vehicle noise requirements (Section 14.06).</td>
<td>$100 per incident per day</td>
</tr>
<tr>
<td>22</td>
<td>Commingling Mixed Materials, Organic Materials, or Recyclable Materials with other material types prior to delivery to the designated processing facility, except as permitted in the Contract (Section 6.14).</td>
<td>$500 per incident</td>
</tr>
<tr>
<td>23</td>
<td>Failure to ensure that a vehicle operator is properly licensed (Section 33.01.4).</td>
<td>$500 per incident per day</td>
</tr>
<tr>
<td>24</td>
<td>Failure to maintain office and call center hours as required by this Contract (Section 15.01).</td>
<td>$100 per incident per day</td>
</tr>
<tr>
<td>25</td>
<td>Failure to maintain Collection hours and days as required by this Contract (Section 6.02).</td>
<td>$250 per incident per day</td>
</tr>
<tr>
<td>26</td>
<td>Failure to have CONTRACTOR personnel in proper uniform (Section 33.01.3).</td>
<td>$250 per incident per day</td>
</tr>
<tr>
<td>27</td>
<td>Failure to repair damage or compensate CITY for damage to CITY property, including all City structures, public roadways and sidewalks caused by CONTRACTOR or its personnel (Section 26.13).</td>
<td>$500 per incident</td>
</tr>
<tr>
<td>28</td>
<td>Changing Collection day of ten (10) percent or more of the Service Addresses on a Residential Route without proper authorization by the Contract Manager and proper notification to the Service Addresses (Section 13.02).</td>
<td>$5,000 per route per incident</td>
</tr>
<tr>
<td>29</td>
<td>Failure to provide adequate primary and alternate capacity to accept and process Mixed Materials, or Organic Materials (Sections 6.12.3, and 6.12.4).</td>
<td>$500 per day</td>
</tr>
<tr>
<td>30</td>
<td>Failure to provide a transfer station or Processing facility for City Delivered Materials (Section 12.07).</td>
<td>$500 per day</td>
</tr>
<tr>
<td>31</td>
<td>Failure to respond timely to CITY requests for services or information (Article 30).</td>
<td>$150 per incident</td>
</tr>
<tr>
<td>32</td>
<td>Disposal of Recyclable Materials or Organic Materials in the Disposal Facility without first obtaining the required permission of CITY (Sections 6.12.4).</td>
<td>$1,000 per load</td>
</tr>
<tr>
<td>#</td>
<td>Description</td>
<td>Penalty</td>
</tr>
<tr>
<td>----</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>33</td>
<td>Failure to deliver any Collected materials to CITY approved Disposal Facility, Mixed Materials Processing Facility, or Organic Materials Processing Facility, as appropriate, except as otherwise expressly provided in this Contract (Sections 6.12.3, 6.12.4, and Exhibit 14 Section K.1.).</td>
<td>$5,000 per load</td>
</tr>
<tr>
<td>34</td>
<td>Failure or neglect to complete at least ninety percent (90%) of each route on the regular scheduled Collection day (Sections 9.01.2, 10.01.1, 11.01.2 and 12.01.3).</td>
<td>$1,000 for each route not completed</td>
</tr>
<tr>
<td>35</td>
<td>Transferring loads on CITY streets except as otherwise expressly provided in this Contract (Section 6.03).</td>
<td>$150 per incident</td>
</tr>
<tr>
<td>36</td>
<td>Failure to provide Customers the payment methods for billings in the manner set out in this Contract (Section 7.11).</td>
<td>$150 per incident per day</td>
</tr>
<tr>
<td>37</td>
<td>Failure to provide Mayor and City Council Roll-Off Box within 10 calendar days of a request by the Mayor or Council Office (Section 12.03.2).</td>
<td>$150 per incident per day</td>
</tr>
<tr>
<td>38</td>
<td>Changing the Collection day of less than ten (10) percent of the Service Addresses on a Residential Collection route without proper notification to Service Addresses and Contract Manager, as appropriate (Section 13.02.1).</td>
<td>$500 per route per day</td>
</tr>
<tr>
<td>39</td>
<td>Failure to conduct route audits and report results to CITY in a timely manner (Section 13.04).</td>
<td>$150 per audit per day</td>
</tr>
<tr>
<td>40</td>
<td>Failure to maintain the capability of responding to telephone calls in English, Chinese (Cantonese), Vietnamese, Spanish, and such other languages as reasonably may be directed by CITY and TDD Services at all times (Section 16.04).</td>
<td>$150.00 per day</td>
</tr>
<tr>
<td>41</td>
<td>Failure to comply with the public outreach standards in the manner set out in Sections 17.01.2 – 17.09.</td>
<td>$150.00 per incident per day for time-related standards $5,000 per incident for other standards not time-related</td>
</tr>
</tbody>
</table>
Mixed Materials and Organics Collection Services Contract

| 42 | Exclusive of and not in addition to or duplicative of other specific Liquidated Damages listed herein, the failure to cure non-compliance with the provisions of this Contract in the manner and time set forth in the Contract (Various Sections). | $150.00 per incident per day |
| 43 | Failure to comply with 50% local hire preference for Oakland residents provision for new employees (Article 55) herein. | $5,000 per position annually |
| 44 | Failure to comply with worker retention requirements (Article 52) | $5,000 per position |

22.05 Liquidated damages shall apply to service disruptions caused by a CONTRACTOR-initiated lockout or similar CONTRACTOR-initiated work stoppage.

22.06 Procedure for Review of Liquidated Damages. Before assessing liquidated damages pursuant to Items 1, 5, 21, 27, 29, 30, 31, 35, 39, 41, 42, 43, and 44 of this Article 22, CITY and CONTRACTOR shall meet and confer regarding these specific areas of substandard performance. If, despite such meeting, incidents of the type(s) addressed at the meeting continue to occur, CITY may proceed to assess liquidated damages as provided above. The CITY may assess liquidated damages pursuant to this Article 22 on a monthly basis. However, liquidated damages may only be assessed if CONTRACTOR is notified of the event within sixty (60) days of CITY's knowledge of its occurrence. Prior to assessing liquidated damages, CITY shall give the CONTRACTOR written notice of its intention to do so ("Notice of Assessment"). The notice shall include a description of the event of non-performance. The CONTRACTOR may review and make copies (at its own expense) of all non-confidential information in CITY's possession relating to the event of non-performance. During the first ninety (90) calendar days of the Contract, CITY agrees not to assess liquidated damages due to challenges which may occur during implementation of the new Contract. If in the future there shall be an implementation period required to commence a new level or type of service, CITY and CONTRACTOR agree to discuss a similar suspension of liquidated damages for a specified period of time.

22.06.1 The assessment shall become final unless, within thirty (30) calendar days of the date of the Notice of Assessment, CONTRACTOR provides a written request for a meeting with the CITY to present evidence that the assessment should not be made.

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

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

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

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

ARTICLE 23. BILLING AUDIT AND PERFORMANCE REVIEWS

23.01 Billing Audit and Performance Review.

23.01.1 Selection and Cost. CITY may conduct two (2) billing audit and performance reviews ("review") of CONTRACTOR'S performance during the initial term of this Contract. The review will be performed by a qualified firm under contract to CITY. CITY shall have the final responsibility for the selection of the firm but shall seek and accept comments and recommendations from CONTRACTOR. CONTRACTOR shall be responsible for the cost of the reviews up to a maximum of One Hundred Fifty Thousand Dollars ($150,000) per review.

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

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

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

23.01.2.3 Verify CONTRACTOR'S compliance with the reporting requirements and performance standards of the Collection Services Contract.

23.01.2.4 Verify the Diversion percentages reported by CONTRACTOR.

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

23.02 CITY Requested Program Review. CITY reserves the right to require CONTRACTOR to periodically conduct reviews of the SFD, MFD, Commercial, and CITY Collection Services programs to assess performance indicators, including but not limited to: average volume of Recyclable Materials per setout per Service Address, average volume of Organic Materials per setout per Service Address, Collection Services participation levels, contamination levels, etc. Prior to the program review, CITY and CONTRACTOR shall meet to discuss the purpose of the review and the method, scope, time frame for completion and data to be provided by CONTRACTOR. CONTRACTOR shall then prepare and submit to the Contract Manager a written program review plan for review and approval. The Contract Manager shall review and, to the extent necessary at the sole discretion of CITY, modify the program review plan, and return it to CONTRACTOR for implementation.
23.03 Cooperation with Other Program Reviews. If CITY wants to collect program data, perform field work, conduct route audits to investigate Service Recipient participation levels and setout volumes and/or evaluate and monitor program results related to Mixed Materials, Garbage, Recyclable Materials and Organic Materials Collected in the Service Area by CONTRACTOR, CONTRACTOR shall cooperate with CITY or its agent(s), including StopWaste.Org. CONTRACTOR shall also cooperate with any waste generation studies conducted by CITY or its agent(s).

23.04 Waste Generation and Characterization Studies. CONTRACTOR acknowledges that CITY must perform waste generation and characterization studies periodically to comply with AB 32, AB 341 and AB 939 requirements. CONTRACTOR agrees to participate and cooperate with CITY and its agents, including StopWaste.Org and to perform studies and data Collection exercises, as needed, to determine weights, volumes and composition of materials generated, Disposed, transformed, Diverted or otherwise processed to comply with AB 32, AB 341 and AB 939.

ARTICLE 24. PERFORMANCE SECURITY

24.01 Performance Bond. A performance bond must be furnished by CONTRACTOR within fifteen (15) calendar days of notification to CONTRACTOR that that the Contract has been executed. CONTRACTOR shall furnish to CITY, and keep current, a performance bond in a form and with language that is acceptable to CITY, for the faithful performance of this Contract and all obligations arising hereunder in an amount of Seven Million Dollars ($7,000,000).

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

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

ARTICLE 25. INSURANCE

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

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

25.02.1 Commercial General Liability: Insurance Services Office (ISO)
Mixed Materials and Organics Collection Services Contract

3599 Occurrence Form CG 0001 or, if approved by CITY, Claims Made Form No. CG0 0002. Automobile Liability: Insurance Services Office Form No. CA 0001, code 1 "any auto."

3601 25.02.2 Workers' Compensation Insurance as required by the State of California and Employers Liability Insurance.

3602 25.02.3 Hazardous Waste and Environmental Impairment Liability Insurance.

3603 25.02.4 Crime Insurance for Employee Dishonesty.

3606 25.03 Minimum Limits of Insurance. CONTRACTOR shall maintain insurance limits no less than:

3608 25.03.1 Commercial General Liability: Twenty Million Dollars ($20,000,000) each occurrence, including products and completed operations coverage.

3609 25.03.1.1 Coverage afforded on behalf of CITY, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance, but only as respects the services provided by CONTRACTOR under this Contract. Any other insurance available to CITY, Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Contract).

3610 25.03.2 Automobile Liability: Ten Million Dollars ($10,000,000) combined single limit per accident for bodily injury and property damage.

3614 25.03.3 Workers' Compensation and Employers Liability: Workers' Compensation insurance as required by the State of California, with statutory limits, and Employers Liability insurance with limits not less than Two Million Dollars ($2,000,000) each accident, Two Million Dollars ($2,000,000) policy limit bodily injury by disease, and Two Million Dollars ($2,000,000) each employee bodily injury by disease.

3621 25.03.4 Hazardous Waste and Environmental Impairment Liability: Ten Million Dollars ($10,000,000.00) each occurrence covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Hazardous Waste and Environmental Impairment Liability will include coverage for all operations of CONTRACTOR, and include all owned, landfills or waste disposal sites and transfer stations. If coverage is on a Claims Made basis, the retroactive date must be shown, and must be before the date of the Contract or the beginning of Contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Contract of work.

3630 If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work. CITY, its Councilmembers, directors, officers, agents, employees and volunteers are to be covered as additional insureds with respect to liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available without involvement of CITY, automatically broaden in its form of coverage to include legislated changes in the definition of waste material and/or irritants, contaminants or pollutants.

3638 25.03.5 Crime Insurance for Employee Dishonesty. Five Hundred Thousand Dollars ($500,000) per occurrence.
25.04 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention shall be for the account of CONTRACTOR and shall be paid entirely by CONTRACTOR without any contribution from CITY.

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

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

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

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

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

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

25.06 Waiver of Subrogation. CONTRACTOR hereby agrees to waive subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of CITY for all work performed by CONTRACTOR, its employees, agents and subcontractors.

25.07 Cancellation. Each insurance policy required by this clause shall be occurrence-based except Pollution/Environmental Impairment which may be written on a claims made basis and each insurance policy, except Workers’ Compensation, shall be endorsed to state that coverage shall not be cancelled by either party, except after sixty (60) days’ prior written notice has been given to CITY. CONTRACTOR shall provide at least sixty (60) days’ written notice to CITY, by certified mail, return receipt requested, of any insurance policy required hereunder being suspended, voided, or reduced in coverage or limits. Any failure to comply with reporting provisions of the policies shall not affect CONTRACTOR’S obligations to CITY, its officers,
3683 officials, employees, agents or volunteers.

3684 25.08 Claims Made Coverage. If General Liability or Hazardous Waste and
3685 Environmental Impairment Liability coverage is written on a claims-made from:
3686
3687 25.08.1 The "Retro Date" must be shown, and must be before the date of
3688 the Contract or the beginning of Contract work.
3689
3690 25.08.2 Insurance must be maintained and evidence of insurance must
3691 be provided for at least five (5) years after completion of the Contract of work.
3692
3693 25.08.3 If coverage is canceled or non-renewed, and not replaced with
3694 another claims-made policy form with a "Retro Date" prior to the Contract effective date,
3695 CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years
3696 after completion of Contract work.
3697
3698 25.08.4 CITY reserves the right to request a copy of the claims reporting
3699 requirements.
3700
3701 25.09 Acceptability of Insurers. Insurance is to be placed with insurers admitted to
3702 transact business in California with a current A.M. Best’s rating of no less than A:\VII. If pollution
3703 and/or Environmental impairment and/or errors and omission coverage are not available from
3704 an admitted" insurer, the coverage may be written with CITY’s permission, by a non-admitted
3705 insurance company. A Non-admitted company should have an A.M. Best’s rating of A:X or
3706 higher.
3707
3709 25.10 Verification of Coverage. CONTRACTOR shall furnish CITY with original
3710 certificates and amendatory endorsements effecting coverage required by this clause. All
3711 certificates and endorsements are to be received and approved by CITY before work
3712 commences. However, failure to obtain the required documents prior to the work beginning
3713 shall not waive CONTRACTOR’S obligation to provide them. CITY reserves the right to require
3714 complete copies of all required insurance policies, including endorsements required by these
3715 specifications, at any time. Such documents shall remain confidential.
3716
3717 25.11 Subcontractors. CONTRACTOR shall include all subcontractors as insureds
3718 under its policies or require and verify that all subcontractors maintain insurance meeting all the
3719 requirements of this Contract.
3720
3721 25.11.1 Proof of insurance shall be mailed to the following address or any
3722 subsequent address as may be directed in writing by CITY.
3723
3724 Contract Manager
3725 Environmental Services Division, OPW
3726 CITY OF OAKLAND
3727 250 Frank Ogawa Plaza, Suite 5301
3728 Oakland, CA  94612
3729
3732 25.12 Modification of Insurance Requirements. The insurance requirements provided
3733 in this Contract may be modified or waived by CITY, in writing, upon the request of
3734 CONTRACTOR if CITY determines such modification or waiver is in the best interest of CITY
3735 considering all relevant factors, including exposure to CITY.
ARTICLE 26. INDEMNIFICATION

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

26.02 Contractor Indemnity Regarding City Approvals. To the maximum extent permitted by law, CONTRACTOR shall defend (with counsel reasonably acceptable to CITY), indemnify, and hold harmless CITY, the Oakland City Council, and their respective agents, officers, employees and volunteers (hereafter collectively called “City Parties”) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys’ fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called “Action”) against CITY to set aside, void or annul this Agreement or any City Approvals approved concurrently herewith or any Subsequent Approval or the implementation of the same based upon an allegation that CITY shall have failed to comply with the California Environmental Quality Act. CITY may elect, in its sole discretion, to participate in the defense of said Action, and CONTRACTOR shall reimburse CITY for its reasonable legal costs and attorneys’ fees. In the event that any Action is based upon allegations that would trigger EBMUD’s obligation to indemnify any City Parties pursuant to Section 26.14, CONTRACTOR shall have no obligation to defend, indemnify or hold harmless the City Parties with respect to such Action.

26.02.1 Within ten (10) calendar days of the filing of any Action as specified in the preceding paragraph, CONTRACTOR shall execute a Joint Defense Letter Agreement with CITY, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of CITY Approval or any Subsequent Approval requested by CONTRACTOR. Failure to timely execute the Letter Agreement does not relieve the CONTRACTOR of any of the obligations contained in this Section or other requirements or Conditions of Approval that may be imposed by CITY.

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

26.04 CONTRACTOR’S Obligation Not Excused. CONTRACTOR’S obligation to
defend, hold harmless, and indemnify shall not be excused because of CONTRACTOR’S
inability to evaluate liability or because CONTRACTOR evaluates liability and determines that
CONTRACTOR is not liable to the claimant. CONTRACTOR must respond within thirty (30)
days to the tender of a claim for defense and indemnity by CITY, unless this time has been
extended by CITY. If CONTRACTOR fails to accept or reject a tender of defense and indemnity
within thirty (30) days, in addition to any other remedy authorized by law, so much of any money
due CONTRACTOR by virtue of this Contract as shall reasonably be considered necessary by
CITY, may be retained by CITY as an offset against its costs and damages until final disposition
has been made or the claim or suit for damages, or until CONTRACTOR accepts or rejects the
tender of defense, whichever occurs first. With respect to third party claims against
CONTRACTOR, CONTRACTOR waives any and all rights of any type to express or implied
indemnity against the indemnitees.

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

26.05.1 This provision is in addition to all other provisions in this Contract
and is intended to survive the end of the term of this Contract. CONTRACTOR’S Guaranty
shall extend to the indemnification obligation hereunder.

26.06 Maximum Service Rates.

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

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

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

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

26.07.1 This provision is in addition to all other provisions in this Contract
and is intended to survive the end of the term of this Contract. CONTRACTOR’S Guaranty
shall extend to the indemnification obligation hereunder.

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

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

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

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

26.12 **Exception.** Notwithstanding Sections 26.01, 26.02 and 26.03, CONTRACTOR’S obligation to indemnify, hold harmless and defend CITY, its officers and employees pursuant to this Article 26 shall not extend to any loss, liability, penalty, claim, damage, action or suit to the extent caused by or based on the acts or omissions constituting willful misconduct or active negligence on the part of CITY or any other indemnitee. This Section is not intended to modify in any way the parties’ respective rights and obligations under Section 26.05.

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

26.14 **CONTRACTOR To Require Indemnification Of City By EBMUD.**

In the EBMUD Subcontract, CONTRACTOR shall include and require from EBMUD a provision providing for and requiring the indemnification and defense of the CITY by EBMUD, enforceable by the CITY as third party beneficiary, substantially as follows:

To the maximum extent permitted by law, EBMUD shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City, the Oakland City Council, and its respective agents, officers, employees and volunteers from any liability, damages, claim, judgment, loss (direct or indirect), action, cause of action, or proceeding (including legal costs, attorneys’ fees, expert witness or consultant fees, City Attorney and staff time, expenses or costs) against the City to set aside, void or annul the Subcontract, any other City or EBMUD approvals or decisions of the Subcontract, and/or any subsequent approval or the implementation of the Subcontract (collectively called “Action”), but only if the Action is based upon an allegation of any or all the following:

(a) that EBMUD or the City shall have failed to comply with any law, ordinance or regulation, including without limitation, the California Environmental Quality Act (“CEQA”), or any entitlement, permit or authorization, relating to, arising from or in any manner connected with the Subcontract;

(b) that EBMUD or the City shall have failed to comply with any law, ordinance or regulation, including without limitation, CEQA, or any entitlement, permit or authorization, relating to, arising from or in any manner connected with the City’s inclusion of EBMUD in its Award of Franchise for Mixed Materials and Organics Collection Services, as described in the
September 30, 2014 Notice of Determination/Exemption, as it may be further amended, revised or superseded, filed with the appropriate agencies pursuant to CEQA ("NOD/E");

(c) that EBMUD or the City shall have failed to comply with any law, ordinance or regulation, including without limitation, CEQA, or any entitlement, permit or authorization, relating to, arising from or in any manner connected with the implementation, in whole or in part, of the East Bay Municipal Utility District (EBMUD) Main Waste Water Treatment Plant (MWWTP) Land Use Master Plan for Organic-Rich Materials Preprocessing, as described in the NOD/E;

(d) that EBMUD or the City shall have failed to comply with any law, ordinance or regulation, including without limitation, CEQA, or any entitlement, permit or authorization, to the extent related to and/or resulting from the use, operation, expansion, condition, status and/or performance of the EBMUD MWWTP, including without limitation the Pre-Processing and/or Processing Facility;

(e) that Waste Management of Alameda County, Inc.'s award to EBMUD of the Subcontract or the City's Award of Franchise for Mixed Materials and Organics Collection Services, as described in the NOD/E, resulted in whole or in part from any false or misleading representation or warranty of EBMUD contained in the Subcontract or otherwise; and/or

(f) that Waste Management of Alameda County, Inc.'s award to EBMUD of the Subcontract or the City's Award of Franchise for Mixed Materials and Organics Collection Services, as described in the NOD/E, creates, causes or contributes to the creation, in whole or in part, of a nuisance of any kind, public or private.

The City may elect, in its sole discretion, to participate in the defense of said Action, and EBMUD shall fully reimburse the City for its reasonable legal costs and attorneys' fees. Within ten (10) calendar days of the filing of any Action as specified in the preceding paragraph, EBMUD shall execute a Joint Defense Letter Agreement with the City, in form and substance reasonably acceptable to the City, which memorializes the above obligations. These obligations and the Joint Defense Letter Agreement shall survive termination, extinguishment, or invalidation of the city approval or any subsequent approval requested by EBMUD. Failure to timely execute the Joint Defense Letter Agreement does not relieve EBMUD of any of the obligations, requirements or conditions of approval that may be imposed.

If an Action giving rise to EBMUD's obligations to defend, indemnify and hold harmless is alleged or contained in within a lawsuit or proceeding that also alleges or contains allegations, claims, or causes of action other than the Action giving rise to EBMUD's obligations, then EBMUD's obligations to defend, indemnify and hold harmless shall apply only to the Action giving rise to EBMUD's obligations and not to the other allegations, claims or causes of action within the lawsuit or proceeding and shall be proportionally limited in extent.

26.14.1 The EBMUD Subcontract shall also include the following language: "The City's right to a defense is triggered and due immediately upon City's tender of the defense and indemnity to EBMUD. In the event EBMUD disputes whether it has an obligation to defend, indemnify and hold the City harmless under the provisions of the EBMUD Subcontract set forth in this Section, EBMUD nevertheless shall defend the City as required under this Section, subject to a reservation of rights to reimbursement."

26.14.2 The EBMUD Subcontract shall also include reasonable general indemnity provisions as are customary to commercial contracting for the waste processing industry and other reasonable protections in favor of CONTRACTOR to address the
responsibilities of EBMUD in development, siting, approval and operation of the EBMUD Facility
and the inclusion of by CITY of the requirement for CONTRACTOR to subcontract with EBMUD.

26.14.3 In the event EBMUD fails or refuses to agree to include the
indemnity and defense provisions required by this Section 26.14 in the Subcontract,
CONTRACTOR shall be excused from its obligation to enter into the subcontract with EBMUD.

ARTICLE 27. DEFENSE OF CONTRACTOR’S RIGHTS

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

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

ARTICLE 28. OBLIGATION TO PROVIDE SERVICE

28.01 CITY and CONTRACTOR agree, as more fully set forth in the Recitals to this
Contract, that proper Collection of Mixed Materials and Organic Materials is fundamental to the
protection of the public health, safety and the well-being of the residents of CITY. CITY’S
responsibility for ensuring the adequacy of these sanitation services in part provides the
justification for the granting of an exclusive franchise to CONTRACTOR. This exclusive grant
creates an obligation, subject to the terms and conditions of the Contract, that Collection
Services are continued to be provided even under difficult or adverse circumstances, such as
but not limited to, natural disaster, labor unrest, and any period where legal actions impact the
effectiveness of portions of this Contract.
28.02 Specifically, with reference to any Maximum Service Rates Lawsuit as defined in Section 26.06.1, such legal actions shall not be considered a Change in Law or Force Majeure event excusing CONTRACTOR'S performance, except as otherwise excused as set forth below.

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

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

28.02.1.2 CONTRACTOR shall provide basic Collection Services. For the purposes of this Article 28, basic Collection Services are those minimum services necessary to protect human health and the environment within CITY as agreed to by and between CITY and CONTRACTOR. In the event CITY and CONTRACTOR are unable to agree on basic Collection Services within a period not to exceed two (2) weeks from that date on which a court of competent jurisdiction or other regulatory agency with authority reduces Maximum Service Rates, CONTRACTOR shall have the authority to make adjustments in services to mitigate against any revenue impacts resulting from a Maximum Service Rates lawsuit. CONTRACTOR shall also have the right to implement all lawful "self-help" actions in order to receive payment for providing basic Collection Services. CITY shall continue to provide nuisance abatement and may also take other urgency actions as necessary to facilitate CONTRACTOR'S continuation of basic Collection Services and ability to obtain compensation from Customers therefor. The intent of this provision is to ensure that CONTRACTOR continues to receive compensation, including its rate of return, consistent with that specified in the Contract for the level of services provided. If certain services are reduced and/or eliminated as a result of a Maximum Service Rates Lawsuit, CITY agrees that during the term of the elimination of said services it shall not contract with any other company or party to provide these services and will contract only with CONTRACTOR to restore said services either during or after the conclusion of the Maximum Service Rates Lawsuit. If CITY finds it necessary to procure eliminated services, it shall do so from CONTRACTOR at commercially reasonable rates.

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

28.02.1.4 CONTRACTOR shall not be obligated to refund Customers
for any amount of previously collected fees or charges later set aside or invalidated by a court.

CONTRACTOR and CITY deem the Maximum Service Rates to fix the actual reasonable cost
of service to Customers as these rates and the escalation methodology set forth in this Contract
are the result of a multi-year open competition for CITY's franchise Collection Services. Any
CITY fees or charges set aside by any court or CITY during the pendency of any Maximum
Service Rates Lawsuit shall, to the extent they are collected from Customers, be paid into an
escrow account established by CITY, which shall be made available for use pursuant to order of
the court, or in the absence of such order to address CONTRACTOR's losses, if any, consistent
with CITY's obligations set forth below.

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

28.02.3 Nothing herein is intended to imply that California Constitution
Articles XIII(C) or (D) apply to the Maximum Service Rates provided for under this Contract.
The foregoing paragraphs are merely intended as a contractual allocation of risks in the event
of an unanticipated event affecting the ability to impose or collect Maximum Service Rates.
Furthermore, nothing herein is intended to abrogate CONTRACTOR's rights under Sections
7.12 and 7.13.

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

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

28.03.2 Within two (2) hours of notification to CONTRACTOR by labor
that a Labor Disruption has been authorized, CONTRACTOR shall notify the Public Works
Director and Contract Manager by telephone and or electronic communication and follow up
with confirmation to the CITY Administrator within twelve (12) hours of such notice.

28.03.3 From the outset of any Labor Disruption, CONTRACTOR shall
take all commercially reasonable actions to minimize disruptions to service, focusing initially on
the Collection of putrescible waste to protect public health and safety.

28.03.4 Within three (3) Work Days of notice of a Labor Disruption, if
CONTRACTOR is not providing Collection Services in accordance with normal scheduled pick-
ups, CONTRACTOR shall meet with CITY to develop any agreed upon modifications to the
General Contingency Plan which may be required to successfully carry out the plan's
objectives.

28.03.5 CONTRACTOR will bring in alternate work forces within three (3)
Work Days of the commencement of a Labor Disruption for the purpose of providing Essential
Collection Services (i.e., collection of putrescible waste as needed and at least once per week
from public facilities, such as hospitals, airports, ports and certain government facilities, where
a failure to so collect would impede critical public services) in accordance with this Contract
and to implement the General Contingency Plan. In this regard, it is recognized that
CONTRACTOR would not be able to provide CITY with priority over other priority type services
required in governmental jurisdictions receiving services from CONTRACTOR and likewise
affected by such Labor Disruption, but other such jurisdictional limits are not to receive priority
with regard to Essential Collection Services over CITY.

28.03.6 In addition to providing Essential Collection Services within three
(3) Work Days of a Labor Disruption, within ten (10) Work Days of a Labor Disruption,
CONTRACTOR shall bring in an alternative work force to provide Basic Collection Services
(i.e. residential and commercial garbage and organics) in accordance with the typical collection
intervals (i.e. weekly, twice weekly) as set forth in this Contract, unless the schedules and
volumes set forth in the General Contingency Plan, as modified with the agreement of CITY,
alter the above. In this regard, CITY is not to receive priority over other governmental
jurisdictions receiving services from CONTRACTOR and likewise affected by such strike, but
other such jurisdictional limits are not to receive priority over CITY with regard to the
promptness and/or quality of service provided to CITY.

28.03.7 Within twelve (12) Work Days of a Labor Disruption,
CONTRACTOR shall provide Bulky Waste Service and provide for active cleanup of any
accumulated waste which has been set out for collection and not properly picked up during the
Labor Disruption. These services shall be in addition to the provision of Essential Collection
Services and Basic Collection Services; however failure to do so shall not be a material breach
of this Protocol.

28.03.8 In the event CONTRACTOR'S alternate work force is unable to
provide Collection Services in accordance with the schedules, volumes and routing set forth in
this Contract, or the schedules, volumes and routing in the General Contingency Plan, CITY
shall have the right, but not the obligation, to bring in outside forces to provide Collection
Services which are not being provided by CONTRACTOR and charge CONTRACTOR for the
reasonable direct and indirect expenses (including administrative and overhead) incurred by
CITY in this regard.
28.03.9 In the event CITY retains its own forces to provide full or partial Collection Service in accordance with Section 28.03.8 above, CONTRACTOR agrees that the materials Collected by those forces can be taken directly from CITY to the landfill of CONTRACTOR at Altamont, California in the event the Davis Street Transfer Station owned by CONTRACTOR is not operational. In the event neither the CONTRACTOR’s Davis Street Transfer Station nor Altamont Landfill are operational during the period of such Labor Disruption, CONTRACTOR agrees that the materials Collected by those forces retained by CITY can be taken directly from CITY to such other landfill and/or transfer station as selected by CITY.

28.03.10 If after thirty (30) days from the commencement of a Labor Disruption there is a continuing CONTRACTOR failure to materially perform the services set forth in this Section, such failure to perform shall be considered a default under Section 29.01 and CITY may cancel this Contract. In such an event, CITY shall not waive its right to seek damages from CONTRACTOR for any increase in cost of Collection incurred by CITY as a result of the breach of this Contract by CONTRACTOR and the consequential election by CITY to cancel the Contract and move forward with alternate collection alternatives.

28.03.11 CONTRACTOR may not be able to ensure that Organic Materials are Source Separated from Mixed Materials. Therefore, for the purposes of a Labor Disruption only, CONTRACTOR may commingle Organic Materials and Mixed Materials during Collection, and CONTRACTOR shall take commercially reasonable actions to prevent the commingled Organic Materials from being delivered to any Disposal Facility.

28.03.12 Liquidated Damages for Labor Disruptions.

28.03.12.1 If CONTRACTOR fails to provide Essential Collection Services within three (3) Work Days of the Labor Disruption or Basic Collection Services within ten (10) Work Days of the Labor Disruption, then CITY may begin to impose liquidated damages under Section 22.04 for such failure, no earlier than five (5) Work Days for Essential Collection Services or fifteen (15) Work Days for Basic Collection Services, after CONTRACTOR provides notice of the Labor Disruption to CITY, subject to the limitations in 28.03.13.

28.03.12.2 If CONTRACTOR fails to provide any other services, including, but not limited to, Bulky Waste Services within twelve (12) Work Days of any Labor Disruption, then CITY may begin to impose liquidated damages under Section 22.04 for such failure, no earlier than fifteen (15) Work Days after CONTRACTOR provides notice of the Labor Disruption to CITY, subject to the limitations in 28.03.13.

28.03.13 A claim for liquidated damages may not be sought unless the Labor Disruption is caused by a dispute between CONTRACTOR and the employees employed at facilities covered by this Contract. The following limitations shall also apply with regard to application of liquidated damages:

28.03.13.1 In the event the application of the liquidated damage is conditioned upon CONTRACTOR’s failure to complete a certain percentage of a task, that percentage shall be multiplied by eighty percent (80%).

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

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

ARTICLE 29. DEFAULT OF CONTRACT

29.01 CITY Termination.

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

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

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

29.01.1.3 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) calendar days; or

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

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

29.01.1.6 CONTRACTOR has failed or refused to perform or observe the terms, conditions or covenants in this Contract not otherwise addressed in this Section 29.01, the service levels prescribed herein, or any of the rules and regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Manager relative thereto; provided that said default is not cured within thirty (30) calendar days of receipt of written notice from CITY to do so, or if by reason of
the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the remedy of such default within said thirty (30) calendar days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof. In any dispute concerning failure to remedy or diligence in pursuing a cure, CONTRACTOR shall have the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time.

29.01.1.7 Except in the event of a Labor Disruption, CONTRACTOR has failed or refused to provide Essential Collection Services for a period of three (3) consecutive Work Days, on the fourth (4th) Work Day CITY may secure CONTRACTOR’S equipment, records and other property used or useful in providing Collection Services under this Contract in order to provide interim Essential Collection Services until such time as the matter is resolved and CONTRACTOR is again able to perform pursuant to this Contract; provided, however, if CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) calendar days all liability of CITY under this Contract to CONTRACTOR shall cease and this Contract may be deemed terminated by CITY, and CITY shall retain equipment, records and other property used in providing Collection Services on an interim basis until CITY has made other suitable arrangements for the provision of Collection Services, which may include award of the Contract to another contractor. Notwithstanding any other provision in this Contract to the contrary, CITY’S right to take interim possession of, or make use of, any of CONTRACTOR’S equipment, including, without limitation, vehicles, Carts, Bins and Containers, shall not allow CITY to assign ownership of such vehicles, Carts, Bins and Containers to another contractor and CITY acknowledges that CONTRACTOR’S lender has a security interest in such equipment. For purposes of clarity, this Section 29.01.1.7 shall not apply where the failure to perform is caused by a Force Majeure event; or

29.01.1.8 In the event of a Labor Disruption, CONTRACTOR has failed to meet the obligations by the time periods set forth in Section 28.03; or

29.01.1.9 CONTRACTOR has failed or refused to remit payment to the Residential Recycling Contractor in accordance with the requirements of Section 7.14 and the Memorandum of Understanding (Exhibit 15) successively for three (3) months or longer.

29.01.2 In the event that CONTRACTOR’S annual Diversion percentage for any calendar year, as calculated on Table B to Exhibit 8 of this Contract, is more than five (5) percentage points lower than the minimum annual Diversion requirement for that calendar year as set forth in Table A to Exhibit 8 of this Contract, CITY and CONTRACTOR shall meet and confer to implement a corrective action plan for CONTRACTOR to achieve compliance. Failure to meet the agreed-upon corrective action plan may result in liquidated damages not to exceed One Hundred Fifty Dollars ($150.00) for each Work Day until compliance is met.

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

29.01.4 Repetitive Compliance Issues. Notwithstanding CONTRACTOR’s timely cure of previous breaches, in the event that CONTRACTOR’S record of performance shows that it has regularly and frequently failed to meet a particular material Contract obligation, despite written notices from CITY and beyond what is common by industry
standards, CITY and CONTRACTOR agree to meet and confer, in good faith, regarding
operational changes necessary to resolve the issue. If the parties cannot agree on necessary
operational changes, then the matter will be mediated pursuant to Article 54. Once the
operational changes have been agreed upon, CONTRACTOR shall be responsible for their
implementation.

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

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

29.03 CONTRACTOR Termination.

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

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

29.03.1.2 CITY has failed or refused to perform or observe the terms,
conditions or covenants in this Contract not otherwise addressed in this Section 29.03; provided
that said breach is not cured within thirty (30) calendar days of receipt of written notice from
CONTRACTOR to do so, or if by reason of the nature of such breach, the same cannot be
remedied within thirty (30) calendar days following receipt by CITY of written demand from
CONTRACTOR to do so, CITY fails to commence the remedy of such breach within thirty
(30) calendar days following such written notice or having so commenced shall fail thereafter to
continue with diligence the curing thereof. In any dispute concerning failure to remedy or
diligence in pursuing a cure, CITY shall have the burden of proof to demonstrate (a) that the
breach cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with
diligence to cure said breach, and such breach will be cured within a reasonable period of time.
In the event that CITY fails to cure any breach pursuant to this provision, CONTRACTOR shall
have the right to terminate this Contract. CONTRACTOR shall provide written notice of
termination to CITY upon CITY’s failure to cure and this Contract shall terminate one (1) year
after service of such notice.
29.04 **Termination Cumulative.** A party’s right to terminate this Contract is cumulative to any other rights and remedies provided by law or by this Contract.

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

**ARTICLE 30. CONTRACT MODIFICATIONS, CHANGES IN SCOPE**

30.01 **Contract Modifications and Changes in Law.**

30.01.1 **Contract Modifications.** CITY and CONTRACTOR understand and agree that during the term of the Contract, modifications may be required to address material changes in circumstances requiring modifications in some of the terms, conditions or obligations under this Contract in order to continue provision of the services envisioned under this Contract or to implement new or different services deemed by the CITY to be necessary in order to meet its Zero Waste goals. Should the EBMUD Subcontract referenced in Section 11.06 not be executed or later terminated, which may require the selection of an Organic Materials Processing Facility other than the EBMUD Facility, then CITY and CONTRACTOR agree that such selection constitutes a contract modification subject to this Article 30.

30.01.2 **Changes in the Law.** CITY and CONTRACTOR also understand and agree that the California Legislature has the authority to make comprehensive changes in Mixed Materials, Garbage, Recyclable Materials, or Organic Materials management legislation and that these and other changes in law in the future that mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Contract. CONTRACTOR agrees that the terms and provisions of CITY’S Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Contract and the Customers of CONTRACTOR located within the Service Area, provided, however, that CITY will not amend CITY’S Municipal Code in a way that is inconsistent with the Contract unless compelled to do so by federal or State law. In the event any Change in Law, modifications to CITY’S Municipal Code, or directed changes by CITY materially alters the obligations of CONTRACTOR, then the affected compensation as established under this Contract shall be adjusted. Nothing contained in this Contract shall require any party to perform any act or function contrary to law.

30.01.3 **Compensation Adjustments.** CITY and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Contract, which may be required in order to implement changes in the interest of the public welfare, or due to necessity occasioned by a material change in contractual circumstances, CITY directed changes in scope, or due to Change in Law. Changes may also be directed by CITY pursuant to Section 30.02 below. When such modifications are made to this Contract, CITY and CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of CONTRACTOR due to any modification in the Contract under this Section 30.01. In the event of a Change in Law or regulations of any governmental agency that will require additional or different services to be provided by CONTRACTOR which are not otherwise covered by this Contract, CONTRACTOR shall provide CITY with a written rate increase request for additional compensation to CONTRACTOR based on such additional or different services. CITY and CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment. The rate increase request shall include but not be limited to the information set forth in Sections 30.02.4.1
through 30.02.4.9 below. If the proposed rate increase exceeds five (5) percent and CITY does not agree with such rate increase, CITY, in addition to negotiating with CONTRACTOR may submit the matter to non-binding mediation as set forth in Article 54.

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

30.02.1 All sums that appear in this Section 30.02 are expressed in July 2015 dollars and shall be adjusted beginning July 1, 2016 and annually thereafter during the Contract's term, by the same percentage as the percentage used to adjust the Maximum Collection Services Rates for that fiscal year as set forth in Section 7.16, except that in no year shall the adjustment be less than zero (0) percent.

30.02.2 Implementing Changes in Service of $250,000 or Less. If changes in service will cumulatively affect CONTRACTOR'S costs by Two Hundred Fifty Thousand Dollars ($250,000) or less over the term of the Contract, then CONTRACTOR is not required to submit a proposal under Section 30.02.4 and shall implement the changes in accordance with a schedule directed by the Contract Manager. CITY shall determine the amount by which the rates should be adjusted. If the parties do not agree on the rate adjustment amount, CONTRACTOR may challenge the adequacy of the rates pursuant to Article 54.

30.02.3 Implementing Changes in Service Greater than $250,000. If changes in service will cumulatively affect CONTRACTOR'S costs by greater than Two Hundred Fifty Thousand Dollars ($250,000) over the term of the Contract, then CONTRACTOR shall submit a proposal to perform such services pursuant to Section 30.02.4 below. CITY shall consider CONTRACTOR'S proposal and shall determine the amount by which the rates should be adjusted. CONTRACTOR shall implement the changes in accordance with the schedule directed by CITY, regardless of whether the parties agree on the rate adjustment amount. If the parties do not agree on the rate adjustment amount, CONTRACTOR may challenge the adequacy of the rates pursuant to Article 54.

30.02.4 Service Proposal. Within sixty (60) calendar days of receipt of a request for a service change from CITY under Section 30.02.3, CONTRACTOR shall submit a proposal to provide such service. At a minimum, the proposal shall contain a complete description of the following:

30.02.4.1 Collection methodology to be employed (equipment,
manpower, etc.);

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

30.02.4.3 Labor requirements (number of employees by classification);

30.02.4.4 Type of Carts or Bins to be utilized;

30.02.4.5 Provision for program publicity, outreach, and marketing;

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

30.02.4.7 Advantages and disadvantages of the change;

30.02.4.8 A recommendation as to whether the change should be implemented; and

30.02.4.9 An implementation schedule.

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

30.04 New Technology. In the event that technological advancements in the Collection, transportation, Processing, handling or Disposal of Mixed Materials, Recyclable Materials, and/or Organic Materials are made, and which if implemented alone or in conjunction with another technology would cumulatively reduce the initial rates established by this Contract by approximately ten (10) percent or more, CONTRACTOR shall so notify the Contract Manager, and CITY may require CONTRACTOR to utilize or implement said new technology and new rates shall be mutually agreed upon and established. CONTRACTOR shall retain the ability to propose changes to CITY in its Mixed Materials and Organic Materials Collection Service for the purpose of maximizing efficiency. Said changes will not be implemented without the prior written approval of CITY.

30.05 Monitoring and Evaluation. If CITY requests, CONTRACTOR shall meet with CITY to describe the progress of each new program and other service issues. If applicable, CONTRACTOR shall document the results of the new programs on a monthly basis, including at a minimum the Tonnage Diverted by material type, the end use or processor of the Diverted materials, the cost per Ton for transporting and Processing each type of material, and other such information requested by CONTRACTOR and/or CITY necessary to evaluate the performance of each program.
30.05.1 At each meeting, CITY and CONTRACTOR shall have the opportunity to discuss revisions to the program. CITY shall have the right to terminate a program if, in CITY’s sole discretion, CONTRACTOR is not cost effectively achieving the program’s goals and objectives. Prior to such termination, CITY shall meet and confer with CONTRACTOR for a period of up to ninety (90) calendar days to resolve CITY’S concerns.

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

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

30.08 Changes in Recycling Commodities Markets. In the event of a material change in a recyclable or organic material commodity market (e.g., a market becomes unavailable or economically non-viable), and such event affects the ability of CONTRACTOR to comply with the provisions of Article 8 or significantly increases CONTRACTOR’S costs, CITY or CONTRACTOR may request that the parties enter into good faith negotiations regarding modifications to this Contract in order to provide CONTRACTOR relief from such material change. For purposes of this Section, reasonably foreseeable fluctuations in the market price of recyclable or organic materials will not be deemed material changes in such commodity market. CITY and CONTRACTOR agree to negotiate in good faith a reasonable modification to the provisions of Article 8 (e.g., disposal of a material instead of Diversion) and/or adjustments to CONTRACTOR’s compensation if Article 8 modifications are not desired by CITY or do not adequately compensate CONTRACTOR for the material market change. CITY and CONTRACTOR shall not unreasonably withhold agreement to such modification.

ARTICLE 31. LEGAL REPRESENTATION

31.01 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 Contract and, accordingly, the rule that a contract or Contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

ARTICLE 32. FINANCIAL INTEREST

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

ARTICLE 33. CONTRACTOR'S PERSONNEL

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

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

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

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

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

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

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

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

ARTICLE 34. UNACCEPTABLE WASTE

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

ARTICLE 35. INDEPENDENT CONTRACTOR

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

ARTICLE 36. LAWS TO GOVERN

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

ARTICLE 37. CONSENT TO JURISDICTION

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

ARTICLE 38. ASSIGNMENT

38.01 CITY Right to Terminate in Event of Assignment. CONTRACTOR
acknowledges that this Contract involves rendering a vital service to CITY’S residents and
businesses, and that CITY has selected CONTRACTOR to perform the services specified
herein based on (1) CONTRACTOR’S experience, skill and reputation for conducting its
operations in a safe, effective and responsible fashion, at all times in keeping with applicable
environmental laws, regulations and best management practices for the provision of Collection
Services and (2) CONTRACTOR’S financial resources to maintain the required equipment and
to support its indemnity obligations to CITY under this Contract. CITY has relied on each of
these factors, among others, in choosing CONTRACTOR to perform the services to be
rendered by CONTRACTOR under this Contract. Any assignment by CONTRACTOR, either
directly or indirectly, in whole or in part, of its rights or any interest it may have in this Contract
including any transfer of its stock or assets to a third party shall give CITY, in its sole discretion,
the basis for terminating this Contract in whole or in part upon the giving of a thirty (30) day
written notice to CONTRACTOR. In the event such notice of termination is given as authorized
by this Article, CONTRACTOR shall continue, for up to six (6) months following notice of
termination, to provide any or all of the services it is obligated to perform under this Contract if
requested by CITY in writing. CITY’s right to terminate the Contract in whole or in part shall
expire unless exercised within sixty (60) days of receiving written notice from CONTRACTOR as
provided herein of an assignment by CONTRACTOR. “Assignment” or “Assign” as used in this
Contract shall include, but not be limited to, (i) a sale, exchange or other transfer of substantially
all of CONTRACTOR’S assets dedicated to any or all of the services to be provided under this
Contract to a third party (ii) a sale, exchange or other transfer of outstanding common stock of
CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of
control of CONTRACTOR or any sale, exchange or transfer of the common stock of
CONTRACTOR which results in the effective transfer of control of substantially all of
CONTRACTOR’S assets dedicated to any or all of the services to be provided under this
Contract to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-
capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow
arrangement, liquidation or other transaction to which results in a change of ownership or
control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or
bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution
being levied against this Contract, appointment of a receiver taking possession of
CONTRACTOR'S property, or transfer occurring in the event of a probate proceeding; and (v)
any combination of the foregoing (whether or not in related or contemporaneous transactions)
which has the effect of any such transfer or change of ownership, or change of control of
CONTRACTOR, or substantially all of the assets used for providing any of the services under
this Contract to a third party. For purposes of this Contract, an "assignment" shall not include a
sale, transfer or exchange with USA Waste of California, Inc. or any of its subsidiaries,
successors or assigns, provided such affiliated entity has financial capabilities and
management, available locally, equal to or greater than CONTRACTOR.

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

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

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

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

38.03 CONTRACTOR Default. Under no circumstances shall CITY be obliged to
consider any proposed assignment if CONTRACTOR is in default at any time during the period
of consideration.

38.04 CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion,
may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial
assignment, the corporate guaranty provided in Section 1.52 and Exhibit 18 and the
performance security provided in Article 24 shall remain in effect unless CITY in its sole
discretion consents to adequate substitutes by the assignee or to a novation, and absent a
novation CONTRACTOR shall not be released from liability under this Contract.
38.05 **Subcontractor.** The use of a subcontractor to perform services under this Contract shall not constitute delegation of CONTRACTOR'S duties provided that CONTRACTOR has received prior written authorization from CITY to subcontract such services and the Contract Manager has approved a subcontractor who will perform such services. CONTRACTOR shall be responsible for directing the work of CONTRACTOR'S subcontractors and any compensation due or payable to CONTRACTOR'S subcontractor shall be the sole responsibility of CONTRACTOR. CITY shall have the right to require the removal of any approved subcontractor for reasonable cause.

**ARTICLE 39. COMPLIANCE WITH LAWS**

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

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

**ARTICLE 40. PERMITS AND LICENSES**

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

**ARTICLE 41. OWNERSHIP OF WRITTEN MATERIALS**

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

**ARTICLE 42. WAIVER**

42.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term, covenant or condition of this Contract shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies, which may become due from CONTRACTOR to CITY shall not be deemed to be a waiver by CITY of any breach for violation of any term, covenant or condition of this Contract.
ARTICLE 43. POINT OF CONTACT

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

ARTICLE 44. CONFLICT OF INTEREST

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

ARTICLE 45. NOTICES

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

As to the CITY:

City Administrator
Office of the City Administrator
CITY OF OAKLAND
One Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Telephone: (510) 238-3301
E-mail: cityadministrator@oaklandnet.com

With copies to:

Director of Public Works
Oakland Public Works Department
CITY OF OAKLAND
250 Frank Ogawa Plaza, Suite 4314
Oakland, CA 94612
Telephone: (510) 238-4470
E-mail: blevin@oaklandnet.com

City Attorney
Office of the City Attorney
CITY OF OAKLAND
One Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
Telephone: (510) 238-3601
E-mail: info@oaklandcityattorney.org

Director of Finance and Management
Finance and Management Agency
CITY OF OAKLAND
150 Frank Ogawa Plaza, Suite 5215
Mixed Materials and Organics Collection Services Contract

4683 Oakland, CA 94612
4684 Telephone: (510) 238-2220
4685 E-mail: kkasaine@oaklandnet.com

4686 As to CONTRACTOR:
4687 Area Vice President
4688 WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
4689 172 98th Avenue
4690 Oakland, CA 94603
4691 Email: bskolnic@wm.com

4692 With copies to:
4693 Contract Compliance
4694 WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
4695 172 98th Avenue
4696 Oakland, CA 94603
4697 Email: RParnes@wm.com

4698 Assistant General Counsel
4699 WASTE MANAGEMENT
4700 222 S. Mill Avenue, Suite 333
4701 Tempe, AZ 85281

4702 General Counsel
4703 WASTE MANAGEMENT
4704 1001 Fannin Street, Suite 4000
4705 Houston, TX 77002

45.02 Notices shall be effective when received at the address as specified above.
4707 Changes in the respective address to which such notice is to be directed may be made by
4708 written notice with a courtesy copy provided by email. The original of items that are transmitted
4709 by email must also be mailed as required herein.

ARTICLE 46. TRANSITION TO NEXT CONTRACTOR

46.01 In the event CONTRACTOR is not awarded a Contract extension to continue to
provide Collection Services following the expiration or upon early termination of this Contract,
CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a
smooth transition of services described in this Contract. Such cooperation shall include but not
be limited to transfer of computer data, files and tapes; providing routing information, route
maps, vehicle fleet information, and list of Customers; providing a complete inventory of all
Carts and Bins; providing adequate labor and equipment to complete performance of all
Collection Services required under this Contract; coordinating Collection of materials set out in
new Containers if new Containers are provided for a subsequent Contract and providing other
reports and data required by this Contract.
ARTICLE 47. CONTRACTOR’S RECORDS

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

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

47.03 Any records or documents required to be maintained pursuant to this Contract shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Contract Manager, the City Attorney, City Auditor, City Administrator, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at CITY offices when it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR’S address indicated for receipt of notices in this Contract.

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

ARTICLE 48. ENTIRE CONTRACT

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

ARTICLE 49. SEVERABILITY

49.01 If any provision of this Contract or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

ARTICLE 50. RIGHT TO REQUIRE PERFORMANCE

50.01 The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right thereafter to enforce same. Nor shall waiver by a party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.
ARTICLE 51. CORPORATE GUARANTY

51.01 In addition to the performance security required in Article 24, CONTRACTOR is required to obtain a Guaranty, and Guarantor has agreed to guarantee CONTRACTOR'S performance of this Contract, including CONTRACTOR'S indemnification obligations hereunder pursuant to a Guaranty in substantially the form attached as Exhibit 18. The Guaranty is being provided concurrently with CONTRACTOR'S execution of this Contract.

ARTICLE 52. EMPLOYEE RETENTION REQUIREMENTS

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

ARTICLE 53. SUBCONTRACTING

53.01 CONTRACTOR shall not engage any subcontractors to perform any of the services required of it under this Contract without the prior written approval of CITY. CONTRACTOR shall notify CITY no later than ninety (90) days prior to the date on which it proposes to enter into a subcontract, providing CITY with all information it requests with respect to the proposed subcontractor. CITY may approve or reject any proposed subcontract and/or subcontractor in its sole discretion if the proposed subcontract replaces essential services to be performed by CONTRACTOR pursuant to Article 9, Article 10, Article 11, and Article 12 of this Contract. CITY'S consent to a subcontract and/or subcontractor shall not be unreasonably withheld as to other aspects of this Contract that are not deemed to involve essential services to CITY. CONTRACTOR acknowledges that CITY has directed CONTRACTOR to enter into subcontracts with Civicorps and EBMUD for performance of certain services hereunder.

ARTICLE 54. DISPUTE RESOLUTION

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

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

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

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

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

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

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

54.01.3 Binding Arbitration. This Section only applies to disputes over
"Valuation Items," which are defined herein as disputes over a specific amount of money or
compensation that is due or owed by either party, and the dispute arises under one of the
following provisions of this Contract: Articles 7 and 8 and Sections 12.01.1, 17.01.3, 18.01,
30.01, 30.02, 30.07, and 30.08. Except as provided in Section 54.01.3.1 below, disputes
relating to Valuation Items shall be referred to binding arbitration upon mutual written approval
of the disputing parties. If the disputing parties do not mutually agree in writing to binding
arbitration, a party may commence an adversarial proceeding before any court of competent
jurisdiction in the County of Alameda.

54.01.3.1 Valuation Items in Section 7.12 and Section 7.13 and its
subsections are not subject to and are excluded from, mandatory binding arbitration
requirements in this Contract.

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

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

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

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

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

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

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

ARTICLE 55. LOCAL HIRE COMPLIANCE
shall be administered by JAMS and conducted in the County of Alameda. If the parties are unable to select an arbitrator within twenty (20) days after delivering written notice requesting arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the parties may mutually designate another arbitration organization with similar procedures to serve as the provider of arbitration. If the parties cannot agree on the arbitration organization, the Presiding Judge of the Alameda County Superior Court shall designate such an organization upon the petition of either party.

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

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

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

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

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

CITY OF OAKLAND

CONTRACTOR

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

ARTICLE 55. LOCAL HIRE COMPLIANCE
55.01 CONTRACTOR represents and warrants that at least fifty (50) percent of all new hires in their workforce will be Oakland residents (i.e., for every two (2) new hires, one (1) will be a resident of Oakland). A compliance baseline will be determined on October 1, 2015. The baseline calculation will be total number of full-time equivalent employees with a verified Oakland address assigned to this Contract divided by the total number of full-time equivalent employees assigned to this Contract. CONTRACTOR shall provide documentation for the number of employees used in the baseline and employees that are used in the calculation as Oakland residents. Compliance with this Section 55.01 is subject to requirements of CONTRACTOR collective bargaining agreements.

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

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

ARTICLE 56. RELIGIOUS PROHIBITION

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

ARTICLE 57. POLITICAL PROHIBITION AND CAMPAIGN CONTRIBUTIONS

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

ARTICLE 58. BUSINESS TAX CERTIFICATE

58.01 CONTRACTOR shall obtain and provide proof of a valid CITY business tax certificate. Said business tax certificate will be valid prior to and to the conclusion of this Contract. A copy of the business tax certificate for 2015 is attached hereto and incorporated herein as Exhibit 19. A copy of subsequent business tax certificates shall be sequentially numbered and attached hereto.

ARTICLE 59. ATTORNEYS FEES
59.01 In any dispute between the parties, whether or not resulting in litigation or any appeal therefrom, the prevailing party shall be entitled to recover from the other party all reasonable costs, including, without limitation, reasonable attorneys' fees. "Prevailing parties" shall include without limitation (i) a party who dismisses an action in exchange for sums allegedly due such party; (ii) the party which received performance from the other party of an alleged breach of a covenant or a desired remedy where such performance is substantially equal to the relief sought in an action; or (iii) the party determined to be the prevailing party by a court of law.

ARTICLE 60. LIMITATION OF FELONY DISCLOSURE ON JOB APPLICATION

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

ARTICLE 61. COMPETITIVE WAGES AND BENEFITS

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

61.02 Competitive Wages and Benefits. CONTRACTOR shall pay Competitive Wages and Benefits defined as the wages and benefits under collectively bargained contracts in use in Alameda County. CONTRACTOR shall provide CITY evidence of compliance with this provision at CITY'S request.

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

ARTICLE 62. VALIDITY OF CONTRACTS

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

ARTICLE 63. EQUAL BENEFITS ORDINANCE

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

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

ARTICLE 64. LABOR PEACE

64.01 General. CITY has determined that the level of vulnerability of the proposed
Contract to labor disputes is sufficient to warrant that labor peace is essential to the property
interests of CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of
CONTRACTOR'S Employee Labor Relations Plan set forth in Exhibit 17 to this Contract.

ARTICLE 65. AMENDMENT

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

ARTICLE 66. ALL PRIOR CONTRACTS SUPERSEDED

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

ARTICLE 67. HEADINGS

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

ARTICLE 68. LEGAL REPRESENTATION

68.01 Each of the parties has received the advice of legal counsel prior to signing this
Contract. The parties agree no provision or provisions may be subject to any rule of
construction based upon any party being considered the party "drafting" this Contract.

ARTICLE 69. EXHIBITS

69.01 Each Exhibit referred to in this Contract forms an essential part of this Contract.
Mixed Materials and Organics Collection Services Contract

Each such Exhibit is a part of this Contract and each is incorporated by this reference. In the event that any conflict exists between the language of this Contract and that contained in an Exhibit, the Contract language shall take precedence.

ARTICLE 70. EFFECTIVE DATE

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

ARTICLE 71. COUNTERPARTS

This Contract may be executed in counterparts with each counterpart being interpreted as an original, and all of which, taken together, shall constitute one and the same instrument. IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Contract on the day and year first written above.

CITY OF OAKLAND

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

By: John A. Flores
Interim City Administrator

By: Barry Skolnick
President

2-20-2015

Date

City of Oakland Business License Number

The foregoing Contract has been reviewed and approval is recommended:

Ordinance No. 13258 C.M.S.

Approved by City Council

APPROVED AS TO FORM:

By: Celso Ortiz
City Attorney

Date
Mixed Materials and Organics Collection Services Contract

Each such Exhibit is a part of this Contract and each is incorporated by this reference. In the event that any conflict exists between the language of this Contract and that contained in an Exhibit, the Contract language shall take precedence.

ARTICLE 70. EFFECTIVE DATE

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

ARTICLE 71. COUNTERPARTS

This Contract may be executed in counterparts with each counterpart being interpreted as an original, and all of which, taken together, shall constitute one and the same instrument. IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Contract on the day and year first written above.

CITY OF OAKLAND

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

By: __________________________
John A. Flores
Interim City Administrator

By: __________________________
Barry Skolnick
President

Date: 2/20/2015
City of Oakland Business License Number 1335669

The foregoing Contract has been reviewed and approval is recommended:

Ordinance No. 13258 C.M.S.

Approved by City Council

APPROVED AS TO FORM:

______________________________
Celso Ortiz
City Attorney

Date