



CITY OF
DELMAR

**Franchise Agreement
between
the City of Del Mar

and
EDCO Disposal Corporation

for
Solid Waste Collection Service**

February 22, 2022

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Exhibit 1 - Initial Rates

Exhibit 2 – Example Rate Adjustment Method – Residential and Commercial

Exhibit 3 – Example Rate Adjustment Method – Roll-off

**AGREEMENT FOR
SOLID WASTE COLLECTION SERVICE**

This **AGREEMENT FOR SOLID WASTE COLLECTION SERVICE** ("Agreement") is entered into this 22 day of February, 2022, by and between the **City of Del Mar ("City")**, a Charter City and California municipal corporation, and **EDCO Disposal Corporation ("Contractor")**, a California corporation, for the collection, transportation, recycling, processing, composting, and disposal of solid waste, recyclables and organic materials.

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (Act) (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require cities to make adequate provisions for solid waste collection within their jurisdiction; and

WHEREAS, Public Resources Code Section 40059 authorizes the cities to determine (i) all aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste handling service; and (ii) whether the services are to be provided by means of non-exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding, or if, in the opinion of its governing body, the public health, safety and well-being so require by partially exclusive or wholly exclusive franchise, contract, license, permit or otherwise, either with or without competitive bidding; and

WHEREAS, Senate Bill 1383 (SB 1383) establishes regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities to support achievement of State-wide organic waste disposal reduction targets; and

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

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WHEREAS, Public Resources Code Section 40900 et. seq. establishes a solid waste management process that requires cities and other local jurisdictions to implement plans for source reduction, reuse, and recycling as integrated waste management practices; and

WHEREAS, the City is obligated to protect the public health and safety of the residents and businesses of the City of Del Mar, and collection of solid waste should be undertaken in a manner consistent with the exercise of the City's obligations for the protection of public health and safety; and

WHEREAS, the City is a member of the Regional Solid Waste Authority, a joint powers agency formed in 1999 and comprised of the cities of Del Mar, Encinitas, Escondido, National City, Poway, Solana Beach, and Vista; and

WHEREAS, the City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of solid waste, including but not limited to California Public Resources Code Section 40000 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq. and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq.; and

WHEREAS, the City and Contractor desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3) and that it is Contractor, an independent entity, and not City, which shall collect from premises in the City of Del Mar, transport and dispose of solid wastes (which may contain small amounts of consumer products with the characteristics of hazardous substances); and collect, transport, and recycle and/or compost organic waste and recyclable solid wastes collected from premises in the City of Del Mar; and

WHEREAS, City and Contractor are mindful of new laws adopted by the State of California intended to divert recyclables and organic materials from being landfilled. Assembly Bill 341 (AB 341) mandates that commercial waste generators arrange for recycling services. Assembly Bill 1826 (AB 1826) mandates that commercial waste generators recycle their organic waste. Assembly Bill 1594 (AB 1594) will end the practice of excluding organic material used as Alternative Daily Cover (ADC) from the calculation of a jurisdiction's total per capita amount of waste disposed. SB 1383 allows the Department of Resources Recycling and Recovery (CalRecycle) to implement new regulations on local jurisdictions if significant progress has not been made in certain waste reduction goals by 2020; and

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WHEREAS, Contractor represents and warrants to City that it has the experience, responsibility and qualifications to: 1) conduct recycling programs, 2) provide City with information sufficient to meet the City's reporting requirements under all applicable laws and regulations including Assembly Bill 939, AB 341, AB 1826, and SB 1383, 3) collect, transport and dispose of solid waste in a safe manner which will minimize the adverse effects of collection vehicles on air quality and traffic, and 4) has the ability to indemnify the City against liability under CERCLA; and

WHEREAS, the City Council of the City of Del Mar determines and finds pursuant to California Public Resources Code Section 40059(a)(1), that the public health, safety, and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles, and the protection of the City against CERCLA liability, justify awarding to contractor a contract for collection, recycling and disposal of solid waste from premises in the City of Del Mar; and

WHEREAS, the City's primary goals in entering into this Agreement are to ensure that 1) collection services are of the highest caliber, 2) customer satisfaction remains at the highest level, 3) the environment is protected, 4) maximum diversion levels are achieved, 5) Del Mar does its part to reduce greenhouse gas (GHG) emissions generated from waste collection and disposal as part of Del Mar's implementation of federal, state, and local efforts to address climate change, and 6) that materials collected are put to the highest and best use.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the parties hereby agree as follows:

1 Definitions

The terms used in this Agreement shall have the meaning set forth in this section. In the event a term is not defined in this section, then it shall have the meaning set forth in the Del Mar Municipal Code or in Division 30, Part 1, Chapter 2 of the California Public Resources Code (with precedence given to definitions in the Del Mar Municipal Code over conflicting definitions contained in the Public Resources Code).

1.1 AB 341

‘AB 341’ means” means Assembly Bill 341, that State law adopted in 2011, as it may have been amended since, that requires Commercial businesses that meet specified waste generation thresholds to arrange for Recycling services.

1.2 AB 939

‘AB 939’ means the California Integrated Waste Management Act of 1989, codified in part at Public Resources Code section 40000 et. seq., as it may be amended from time to time and as implemented by the regulations of the California Department of Resources Recycling and Recovery (CalRecycle), or its successor agency.

1.3 AB 1826

‘AB 1826’ means Assembly Bill 1826, that State law adopted in 2015, as it may have been amended since, that requires commercial businesses that meet specified waste generation thresholds to arrange for Organic Waste Recycling services.

1.4 Abandoned Items

‘Abandoned Items’ means items abandoned in the public right-of-way, and on public premises including but not limited to Bulky Waste items and Yard Waste, to be Collected by Contractor pursuant to Section 5.5.4

1.5 Affiliate

‘Affiliate’ means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to the Contractor by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Contractor and included within the term "Affiliates" as used in this Agreement. An Affiliate shall include a business in which the Contractor owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the Contractor and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in the Contractor for purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of

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the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a) (5) (C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

1.6 Back-haul

‘Back-haul’ means transporting Recyclable Materials or Organic Waste to a destination owned and operated by the Waste Generator using a vehicle or trailer that was originally used to deliver products or finished good to the Waste Generator’s location.

1.7 Backyard Service

‘Backyard Service’ means that the Contractor moves all Collection Carts, Green Waste bundles and Refuse Cart overages from a Cart Customer’s designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

1.8 Bin

‘Bin’ means a Container with hinged lids and a capacity from two (2) to six (6) cubic yards, which is typically emptied by a front-loading Collection vehicle.

1.9 Bin Collection Service

‘Bin Collection Service’ means using Bins to provide Solid Waste Collection Services to Residential, retail, Commercial, and industrial facilities that require Bin Collection service on a regular, ongoing, and indefinite basis.

1.10 Blue Container

‘Blue Container’ or ‘Blue Cart’ means a Container used for storage and Collection of Source Separated Recyclables Materials or Source Separated Blue Container Organic Waste. A Blue Container means a Container where either: 1) the lid of the container is blue in color, or, 2) the body of the Container is blue in color and the lid is either blue, gray, or black in color.

1.11 Bulky Items

‘Bulky Items’ means Solid Waste that cannot or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters,

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dishwashers, plumbing, small household appliances and other similar items, commonly known as ‘white goods’); Electronic Waste (including stereos, televisions, laptop computers, computers and computer monitors, microwaves and other similar items discarded from Premises; fluorescent bulbs; household batteries; and clothing. Bulky Items include tree trunks and large branches that do not exceed two (2) feet in diameter or four (4) feet in length. Bulky Items do not include Green Waste that is bundled and placed for Collection. Bulky Items do not include car bodies, auto parts, tires, Construction and Demolition Debris, or items requiring more than two persons to remove.

1.12 C&D

‘C&D’ means Construction and Demolition Debris.

1.13 C&D Processing Facility

‘C&D Processing Facility’ means any facility that is designed, operated, and legally permitted for the purpose of receiving and Processing Construction and Demolition Debris.

1.14 CalRecycle

‘CalRecycle’ means the California Department of Resources Recycling and Recovery, which is authorized to implement and enforce State Laws related to waste and Recycling.

1.15 Cart

‘Cart’ means a plastic Container with wheels and a hinged lid with a capacity from 32 to 101 gallons, which is typically emptied by an automated side-loading Collection vehicle.

1.16 Cart Collection Service

‘Cart Collection Service’ means Collection service using Carts. This includes service provided to Single-family Residential Premises (excluding those single-family Residential Customers that elect to use Bin Collection Service), Customers on Commercial Premises that generate small quantities of waste and elect to use Cart Collection Service, and Customers on Multi-family Residential Premises with individual storage capacity to store Carts with access to curbside service from side-loading Collection vehicles.

1.17 City

‘City’ means the City of Del Mar, California, a Charter City and municipal corporation, and all the territory lying within the municipal boundaries of the City as it currently exists over which the City has jurisdiction, or as such boundaries may be adjusted.

1.18 City Manager

‘City Manager’ means the City Manager or the person designated by the City Manager to administer this Agreement.

1.19 Collect or Collection

‘Collect’ or ‘Collection’ means the act of taking physical possession of discarded materials at Residential or Commercial Premises within the City and Transporting it to a Facility for reuse, salvage, Recycling, Processing, Composting, Transfer, Disposal, or Transformation.

1.20 Commercial Customer

‘Commercial Customer’ means any Person owning or occupying a Commercial Premises and receiving Solid Waste Collection Services from Contractor within the City pursuant to this Agreement.

1.21 Commercial Edible Food Generators

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

1.22 Commercial or Commercial Premises

‘Commercial or ‘Commercial Premises’ means a firm, partnership, joint venture, sole proprietorship, joint-stock company, corporation, or association (whether for-profit or nonprofit). Commercial premises include a retail outlet, warehouse, office building, strip mall, manufacturing plant, factory, storage yard, industrial facility, or similar type of property. Commercial premises also include Multi-family Residential Premises with five (5) or more dwelling units, or as otherwise defined in 14 CCR section 18982(a)(6), as may be amended from time to time. Commercial premises excludes residential premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations but are not the primary use of the property. For purposes of this Chapter, the following types of properties are commercial premises: assisted living facilities, convalescent homes, dormitories, extended stay motels, group residential facilities, group care facilities, hostels, hotels, motels, and any other businesses in which residency is transient in nature. A Multi-family Residential dwelling that consists of fewer than five (5) units is not a Commercial Premises.

1.23 Community Composting

‘Community Composting’ means any activity that Composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the

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total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet.

1.24 Compactor

‘Compactor’ means any Bin or Roll-off Box that has a compaction mechanism, whether stationary or mobile.

1.25 Complaint

‘Complaint’ means a communication received by Contractor from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

1.26 Compost or Composting

‘Compost’ or ‘Composting’ has the same meaning as in 14 CCR section 17896.2(a)(4), as may be amended from time to time, and means the product resulting from the controlled biological decomposition of organic solid wastes that are source separated from the municipal solid waste stream, or that are separated at a centralized facility.

1.27 Construction and Demolition Debris

‘Construction and Demolition Debris’ or ‘C&D Debris’ means any solid waste generated at a Premises that is directly related to construction or demolition activities. These activities include, but are not limited to, construction, demolition, remodeling, grading, land clearing, or renovation on any residential, commercial, institutional, or industrial building, road, driveway, walkway or other structure. C&D debris includes but is not limited to, concrete, asphalt paving, asphalt roofing, lumber, gypsum board, rock, soil, and metal.

1.28 Container

‘Container’ means any Cart, Bin, Roll-off Box, or other approved receptacle used or intended to be used for holding Solid Waste for Collection.

1.29 Contamination Fee

‘Contamination Fee’ shall mean an amount charged by Contractor to Customers to offset Contractor’s additional costs or diminished revenue due to contamination of Refuse, Recyclable Materials, Organics, or Green Waste placed in Containers.

1.30 Contractor

‘Contractor’ means, EDCO Disposal Corporation, the corporation and its officers, directors, employees, agents, companies, and subcontractors.

1.31 Contractor Compensation

‘Contractor Compensation’ means the revenue received by the Contractor from billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.32 CPI

‘CPI’ means the Consumer Price Index, Series ID: CUURS49ASA0, All items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted (U.S. Department of Labor, Bureau of Labor Statistics).

1.33 Customer

‘Customer’ means the Person who voluntarily subscribes to the Contractor’s Collection services and to whom the City or Contractor submits its billing invoice and collects payment from for Collection services provided to a Premises. The Customer may be either the occupant, Owner, or operator of the Premises.

1.34 Disaster

‘Disaster’ means a sudden regional, statewide, nationwide, or worldwide event, such as an accident or a natural catastrophe, that causes great damage or loss of life, and that significantly stops, or impacts the normal ongoing operations of Solid Waste Collection in the City. Disaster does not include Labor Unrest as described in Section 12.5.

1.35 Disposal

‘Disposal’ means the final deposition of Solid Waste at a permitted Landfill that is in full compliance with all laws and regulations.

1.36 Disposal Site

‘Disposal Site’ means the place, location, tract of land, area, or Premises in use, intended to be used, or which has been used, for the Disposal of Solid Waste.

1.37 Diversion

‘Diversion’ (or any variation thereof, including ‘divert’) means activities which reduce or eliminate discarded materials from Disposal including, but not limited to, reuse, salvage, Recycling, and Composting, provided such activities are recognized by CalRecycle as Diversion in its determination of the City's Diversion targets and compliance with AB 939.

1.38 Duplex

‘Duplex’ means any Residential Premises in the City with two (2) Dwelling Units each used by one (1) family living independently of each other. The two Dwelling Units may be attached or separate.

1.39 Dwelling Unit

‘Dwelling Unit’ means a building or a portion thereof, designated for Residential occupation by one person or a group of two or more persons living together as a domestic unit. Types of dwellings include Single-family Residential dwellings, Duplexes, Multi-family Residential dwellings, mobile homes, condominiums, and townhouses.

1.40 Edible Food

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

1.41 Effective Date

‘Effective Date’ means the date on which the Agreement becomes binding upon the parties, which is the date when all the conditions set forth below in Section 3.4 have been met, and both parties have properly executed the Agreement.

1.42 Electronic Waste or E-Waste

‘Electronic Waste’ or ‘E-Waste’ means discarded electronic equipment and includes, but is not limited to, stereos, televisions, CRTs, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, video game consoles, other items with electric plugs that are banned from landfilling, and other similar items commonly known as ‘brown goods.’

1.43 Environmental Laws

‘Environmental Laws’ means all federal and State statutes, county, local and City ordinances concerning public health, safety and the environment applicable to the City including, by way of example and not limitation, The National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.;

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the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as subsequently amended, and all rules and regulations promulgated thereunder.

1.44 Excluded Waste

‘Excluded Waste’ means Hazardous Substance, Hazardous Waste, Infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that approved/designated facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, Transfer, Processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III Landfills or accepted at the facility by permit conditions, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or jurisdiction to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-family Residential or Multi-family Residential Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include used motor oil and filters, household batteries, Universal Wastes, and/or latex paint when such materials are defined as allowable materials for Collection through this Agreement and the Waste Generator or Customer has properly placed the materials for Collection pursuant to instructions provided by the City or Contractor as set forth in this Agreement.

1.45 Facility

‘Facility’ means any properly permitted plant or site, owned, or leased and maintained, operated, or used by the Contractor for purposes of performing under this Agreement.

1.46 Food Recovery

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

1.47 Food Recovery Organization

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

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

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

1.48 Food Recovery Service

‘Food Recovery Service’ means a Person or entity that collects and Transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery.

1.49 Food Scraps

‘Food Scraps’ means discarded food that will decompose and/or putrefy and is segregated for Collection and Recycling. Food scraps includes, but is not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

1.50 Food-Soiled Paper

‘Food-Soiled Paper’ means Compostable paper material that has come in contact with food or liquid, such as, but not limited to, Compostable paper plates, paper coffee cups, napkins, and pizza boxes.

1.51 Food Waste

‘Food Waste’ means Food Scraps and Food-Soiled Paper.

1.52 Franchise

‘Franchise’ means the exclusive right and privilege to provide Solid Waste Collection Services within the City granted by City to Contractor pursuant to the City’s authority

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under Article 11, Section 7 of the State of California Constitution, and Section 40059 of the Public Resources Code.

1.53 Franchise Fee

‘Franchise Fee’ means the fee paid by Contractor to City pursuant to Section 9.1 of this Agreement as consideration for the exclusive right and privilege to Collection Solid Waste Services in the City.

1.54 Garbage

‘Garbage’ means all putrescible waste that generally includes, but is not limited to, animal, vegetative, food or any other waste that is attendant with, or results from the storage, preparation, cooking or handling of food materials attributed to normal activities of a service unit. Garbage does not include those items defined in this Agreement as Food Waste or Excluded Waste.

1.55 Gray Container

‘Gray Container’ or ‘Gray Cart’ means a Container used to store and collect Refuse, mixed waste, Gray Container Waste. A Gray Container means a Container where either: 1) the lid of the Container is gray or black in color, or 2) the body of the Container is gray or black in color and the lid is gray or black in color.

1.56 Gray Container Waste

‘Gray Container Waste’ means Refuse or mixed waste that is Collected in a Gray Container that is part of a Collection service that prohibits the placement of Recyclable Materials or Organic Waste in the Gray Container.

1.57 Green Container

‘Green Container’ or ‘Green Cart’ means a Container used to store and collect Source Separated Green Container Organic Waste. A green Container means a Container where either: 1) the lid of the Container is green in color, or 2) the body of the Container is green in color and the lid is either green, gray, or black in color.

1.58 Green Waste

‘Green Waste’ means non-contaminated material composed of organic matter or plant matter that is the result of seasonal variations or landscape and gardening activities. Green Waste includes, without limitation, grass clippings, shrubbery, leaves, tree trimmings, branches, flowers, plant stalks, wood, and other plant material. Green Waste does not include yucca, cactus, palm fronds, or stumps or branches exceeding six inches (6”) in diameter or four feet (4’) in length.

1.59 Gross Receipts

‘Gross Receipts’ means any and all revenue or compensation in any form derived directly or indirectly by Contractor, its Affiliates, subsidiaries, parents and any Person or entity in which Contractor has a financial interest, from the Collection, Transportation, Processing, Disposal and other services with respect to Solid Waste collected within the City of Del Mar, including Recyclable Materials, Food Waste and Green Waste, pursuant to this Agreement. ‘Gross Receipts’ include, but are not limited to, monthly Customer fees for Collection of Solid Waste, including recyclable Solid Waste, Food Waste and Green Waste, special pickup fees, Roll-off Box Container rental and Collection fees and fees for redelivery of Roll-off Box Containers without subtracting Franchise Fees or any other cost of doing business, but excludes any grant revenues, and revenues from the sale of Recyclable Materials.

1.60 Hauler Route

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

1.61 Hazardous Substance

‘Hazardous Substance’ means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as ‘Hazardous Substances’, ‘hazardous materials’, ‘Hazardous Waste’, ‘toxic waste’, ‘pollutants’ or ‘toxic substances’ or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, 25316, 25501 and 25501.1; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any substances defined, regulated or listed by any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or subsequently enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl’s (‘PCBs’), petroleum, natural gas and synthetic fuel products, and by-products.

1.62 Hazardous Waste

‘Hazardous Waste’ means a waste, or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may do either

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of the following: (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (2) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of or otherwise managed. 'Hazardous Waste' includes all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes, or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or Solid Waste, the term 'Hazardous Waste' shall be construed to have the broader, more encompassing definition.

1.63 Holiday

'Holiday' means New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas and any additional official holidays declared in the future by the State or federal government that apply to municipalities.

1.64 Household Hazardous Waste

'Household Hazardous Waste' means Hazardous Waste generated at a Single-family Residential and Multi-family Residential Premises.

1.65 Household Sharps Waste

'Household Sharps Waste' shall mean home-generated sharps, as defined in Section 117671 of the California Health & Safety Code, including hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications, which are generated by a Single-family Residential or Multi-family Residential Customers. 'Household Sharps Waste' does not include any waste generated in the course of operating a business concern at a residence, business generated waste, or medical waste not described in this Agreement

1.66 Landfill

'Landfill' means a 'Solid Waste landfill' defined by Public Resources Code Section 40195.1.

1.67 Large Event

'Large Event' means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location

that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event.

1.68 Large Venue

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

1.69 Local Education Agency

‘Local Education Agency’ means a school district, charter school, or county office of education that is not subject to the control of City or county regulations related to Solid Waste.

1.70 Material Recovery Facility

‘Material Recovery Facility’ means a facility licensed or permitted in accordance with AB 939 which separates Recyclable Materials and processes them for sale to brokers and end users.

1.71 Mulch

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

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

- b) A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7; or
- c) A Solid Waste Landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.

1.72 Multi-family Residential

‘Multi-family Residential’ means of, from, or pertaining to Residential Premises with five (5) or more dwelling units. Multi-family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial businesses.

1.73 Organic Waste

‘Organic Waste’ or ‘Organics’ means Green Waste, Food Waste, manure, and any other Organic Waste material which is acceptable to be delivered to an organics Processing facility such as an anaerobic digester, or Composting facility.

1.74 Owner

‘Owner’ means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.75 Person

‘Person’ means any individual, firm, association, organization, partnership, corporation, business trust, or joint venture.

1.76 Premises

‘Premises’ means any land or building in the City where Solid Waste is generated or accumulated.

1.77 Process, Processed, or Processing

‘Processing’ means the controlled separation, recovery, volume reduction, conversion, digestion, or Recycling of Solid Waste including, but not limited to, organized, manual, automated, or mechanical sorting; the use of vehicles for spreading of waste for the purpose of recovery; and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment.

1.78 Prohibited Container Contaminants

‘Prohibited Container Contaminants’ means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City’s Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable Source Separated Organic Waste for the City’s Green Container; (iii) Discarded Materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and Organic Materials to be placed in City’s Green Container and/or Blue Container ; and (iv) Excluded Waste placed in any Container.

1.79 Putrescible Waste

‘Putrescible Waste’ means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.80 Rate Year

‘Rate Year’ means the twelve-month period from July 1st to June 30th, each year of the Agreement.

1.81 Recyclables or Recyclable Materials

‘Recyclables’ or ‘Recyclable Materials’ means those materials which are capable of being Recycled and which would otherwise be processed or disposed of as Garbage. Recyclable Materials include those materials defined by the City, including newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); steel including ‘tin’ cans, aerosol cans (empty, non-toxic products) and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; #1-7 plastics regardless of form or mold (including but not limited to plastic containers, bottles, wide mouth tubs, film plastic, and polystyrene), aseptic containers, aluminum foil and pans; and those materials added by Contractor from time to time.

1.82 Recycle or Recycling

‘Recycle’ or ‘Recycling’ means the process of collecting, sorting, cleaning, treating and reconstituting materials that would otherwise become waste and returning those materials to the economic mainstream in the form of raw materials for new, reused or reconstituted products that meet the quality standards to be used in the marketplace.

Recycling does not include Transformation as defined in Public Resources Code Section 40201.

1.83 Refuse

‘Refuse’ means Putrescible and non-putrescible wastes, including Garbage, trash, rubbish, and mixed waste.

1.84 Renewable Natural Gas (RNG)

‘Renewable Natural Gas’ or ‘RNG’ means gas derived from Organic Waste that has been diverted from a Landfill and Processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recover Organic Waste.

1.85 Residential

‘Residential’ means of, from, or pertaining to Single-family or Multi-family Premises used for human shelter, irrespective of whether such Dwelling Units are rental units or are owner-occupied, excluding hotels, motels, or other similar Premises.

1.86 Residential Premises

‘Residential Premises’ means Premises upon which Dwelling Units exist including, without limitation, Single-family and Multi-family Premises, apartments, boarding or rooming houses, condominiums, mobile homes, efficiency apartments, and second units. Premises upon which the following uses are occurring shall not be deemed to be Residential Premises, and rather shall be deemed to be Commercial Premises: assisted living facilities, convalescent homes, dormitories, extended stay motels, group residential facilities, group care facilities, hostels, hotels, motels, and any other businesses in which residency is transient in nature.

1.87 Roll-off Box

‘Roll-off Box’ means an open top metal Container with a capacity from ten (10) to forty (40) cubic yards, which is designed to be pulled onto a Roll-off vehicle.

1.88 Roll-off Collection Service

‘Roll-off Collection Service’ means providing Solid Waste Collection Services using Roll-off Boxes or Roll-off Compactors.

1.89 Roll-off Compactor

‘Roll-off Compactor’ means an enclosed metal Container equipped with a hydraulic packing ram with a capacity from fifteen (15) to thirty-five (35) yards, which is designed to be pulled onto a Roll-off vehicle.

1.90 Route Review

‘Route Review’ means a visual Inspection of containers along a Hauler Route for the purpose of determining Container contamination, and may include mechanical Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR section 18982(a)(65), as may be amended from time to time.

1.91 SB 1383

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

1.92 SB 1383 Regulations

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

1.93 Scavenging

‘Scavenging’ means the unauthorized removal of Recyclables that have been set out for Collection.

1.94 Self-hauler (or Self-haul)

‘Self-hauler’ or ‘Self-haul’ means a Person who hauls Solid Waste, Organic Waste, or recovered material they have generated to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-hauler also includes a Person who Back-hauls waste.

1.95 Service Level

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

1.96 Single-family Residential

‘Single-family Residential’ means a detached building used exclusively for occupancy by one family (including their guests, servants, and employees) and containing one Dwelling Unit.

1.97 Solid Waste

‘Solid Waste’ means all Putrescible and non-putrescible solid, semisolid wastes, including Garbage, trash, Refuse, paper, Rubbish, ashes, industrial wastes, Construction and Demolition Debris, discarded home appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. ‘Solid Waste’ includes Recyclable Materials, Organics, Green Waste, Construction and Demolition Debris, and Bulky Items. Solid Waste does not include Hazardous Waste, or untreated medical waste.

1.98 Solid Waste Facility

‘Solid Waste Facility’ means a Solid Waste transfer or Processing station, a Composting facility, a gasification facility, a Transformation Facility, or a Disposal Site.

1.99 Solid Waste Collection Services

‘Solid Waste Collection Services’ means the service to provide integrated Solid Waste management including Collection, Transfer, Transport, Recycling, Processing, Diversion and Disposal.

1.100 Source Separated Blue Container Organic Waste (SSBCOW)

‘Source Separated Blue Container Organic Waste’ or ‘SSBCOW’ means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes and non-organic Recyclables.

1.101 Source Separated Green Container Organic Waste (SSGCOW)

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

1.102 State

‘State’ means the State of California

1.103 Term

‘Term’ means the Term of this Agreement, including any agreed upon extension periods, as provided for in Section 3.3.

1.104 Tier One Commercial Edible Food Generators

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

- a) Supermarket.

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- b) Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- c) Food Service Provider.
- d) Food Distributor.
- e) Wholesale Food Vendor.

1.105 Tier Two Commercial Edible Food Generators

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

- a) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- b) Hotel with an on-site food facility and 200 or more rooms.
- c) Health facility with an on-site food facility and 100 or more beds.
- d) Large Venue.
- e) Large Event.
- f) A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- g) A Local Education Agency with an on-site food facility.

1.106 Temporary Bin Service

‘Temporary Bin Service’ means Solid Waste Collection Services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a Roll-off Box or Bin.

1.107 Transfer

‘Transfer’ means the act of transferring Solid Waste Collected by Contractor from Contractor’s Collection vehicles into larger vehicles at a Transfer Facility for Transport to other Facilities for Processing or Disposing of such materials.

1.108 Transportation or Transport

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

1.109 Transformation

‘Transformation’ means incineration, pyrolysis, distillation, or biological conversion other than Composting. ‘Transformation’ does not include Composting, or biomass conversion.

1.110 Transformation Facility

‘Transformation Facility’ means a facility whose principal function is to convert, combust, or otherwise Process Solid Waste by incineration, pyrolysis, distillation, or biological conversion other than Composting. A ‘Transformation Facility’ does not include a Composting facility or a biomass conversion facility.

1.111 Universal Waste

‘Universal Waste’ means those hazardous wastes identified as universal wastes in 22 CCR section 66261.9, as may be amended from time to time, including but not limited to: fluorescent bulbs and tubes; household batteries (e.g. D, AA, button-type, etc.); non-empty aerosol cans; electronic devices (e.g. televisions, computer monitors, cell phones, radios, video cassette recorders, etc.); and mercury containing devices (e.g. thermometers, thermostats, gauges, etc.), and generated by a Single-family or Multi-family Residence. "Universal Waste" does not include any waste generated in the course of operating a business concern at a residence or business generated waste.

1.112 Waste Evaluation

‘Waste Evaluation’ means a procedure in which representative samples of waste and recyclables are taken from vehicle loads and sorted at a permitted facility to determine the degree to which the material is contaminated.

1.113 Waste Generator

‘Waste Generator’ means any person whose act or process produces solid waste as or whose act first causes Solid Waste to become subject to regulation.

1.114 Work Day

‘Work Day’ means any day, Monday through Saturday, which is not a Holiday designated as set forth in Section 7.3 of this Agreement.

1.115 Yard Trimmings

‘Yard Trimmings’ means types of Source Separated Green Container Organics Waste (SSGCOW) resulting from normal yard and landscaping installation, maintenance, or removal that the Waste Generators Source Separate and set out in Green Containers for Collection for Processing by the Contractor.

1.116 Zero Waste

‘Zero Waste’ means a focus on reducing Landfill tonnage by reducing consumption, minimizing waste, reducing packaging, maximizing reuse, repair, and Recycling, ensuring products are made to be reused, repaired, or recycled back into nature or the marketplace. Allowing the City to achieve the Climate Action Plan goals of a 95 percent waste Diversion rate and a Landfill gas capture rate of 80 percent by 2035.

2 Representation and Warranties of Contractor

Contractor hereby covenants, represents, and warrants the following in order to induce City to enter into this Agreement, all of which shall be true as of the Effective Date of this Agreement and remain so throughout the Agreement, except as may be excused in writing by City.

The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in its proposal to the City, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct, and complete in all material respects on and as of the Effective Date of this Agreement.

2.1 Corporate Status

The Contractor represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California, has and will maintain a City of Del Mar business license in good standing, and has the power to provide services as required by this Agreement.

2.2 Corporate Authorization

The Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners/joint venturers of the Contractor (or the shareholders, if applicable) have taken all actions required by law to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of the Contractor have authority to do so. Contractor shall authorize one employee as a single point of contact for the City for issues arising under this Agreement as described in Section 13.16. City may accept that this employee's actions are taken on behalf of and with the full approval of the Contractor.

2.3 Agreement Will Not Cause Breach

There is no action, suit or other proceeding as of the Effective Date of this Agreement, at law or in equity, or to the best of the Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against the Contractor which may result in an unfavorable decision, ruling or finding which would in any way adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby, or which could in any way adversely affect the ability of Contractor to perform its

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obligations under this Agreement or which would have any adverse effect on the financial condition of Contractor.

Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations in this Agreement: (1) conflicts with, violates or results in a breach of any applicable law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

2.4 No Litigation

Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Solid Waste Collection Services required by this Agreement.

Contractor has no knowledge of any applicable law, administrative regulation or order, in effect as of the date of this Agreement that would prohibit the performance by Contractor of any of the services or obligations contemplated under this Agreement.

3 Terms of Agreement

3.1 Grant of Exclusive Rights

This Agreement grants to the Contractor for the Term of this Agreement during which Solid Waste Collection Service is to be provided, the exclusive right and privilege to Collect, Transport, Process, Recycle, Compost, retain and dispose of Solid Waste Collected from Single-family Residential, Multi-family Residential, Commercial, and Roll-off Customers, as defined in this Agreement, produced, generated and/or accumulated within the City, except as otherwise provided below. No other services shall be exclusive to the Contractor.

3.2 Limitations to Scope of Exclusive Agreement

The exclusive Franchise, right and privilege to provide Solid Waste Collection Services at Premises within City granted to Contractor by this Agreement specifically excludes the following services, which services may be provided by Persons other than Contractor, or which may be the subject of other permits, licenses, franchises, or agreements issued or entered by City:

- a) The sale or donation of source-separated Recyclable Material by the Waste Generator or Customer to any Person other than Contractor; provided, however, to the extent permitted by law, if the Waste Generator or Customer is required to pay monetary or nonmonetary consideration for the Collection, Transportation, Transfer, or Processing of Recyclable Material, then it shall not be considered a sale or donation.
- b) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Waste Generator, and which is Transported personally by such Waste Generator (or by his or her full-time employees) to a Processing Facility or Disposal Site in a manner consistent with all applicable laws and regulations.
- c) Recyclable Materials, Organic Waste or Bulky Items that are source separated at any Premises by the Waste Generator and donated to youth, civic or charitable organizations.
- d) Recyclables delivered to a Recycling center or drop-off station by the Waste Generator for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et seq.

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- e) Bulky Items removed from a Single-family Residential Premises by a property cleanup or maintenance company as an incidental part of the total cleanup or maintenance service offered by a company rather than as a hauling service.
- f) Green Waste removed from a Premise by a gardening, landscaping, or tree trimming Contractor, utilizing its own equipment, as an incidental part of a total service offered by that Contractor rather than as a hauling service.
- g) The Collection, Transfer, Transport, Recycling, and Processing of animal by-products, fats, oils, or grease to be rendered and used as tallow.
- h) The Collection, Transfer, Transport, Recycling, Processing, and Disposal of byproducts of sewage treatment, including sludge, sludge ash, grit, and screenings.
- i) The Collection, Transfer, Transport, Recycling, Processing, and Disposal of Hazardous Substances, Hazardous Waste, untreated medical waste, and radioactive waste regardless of its source.
- j) Construction and Demolition Debris that is removed by a duly-licensed construction or demolition Contractor (e.g., with a state contractor license type C-21) or as part of a total service offered by said licensed Contractor or by the City, where the licensed Contractor utilizes its own loaders and dump trucks.
- k) The Collection, Transfer, Transport, Recycling, Processing, and Disposal of Solid Waste by City through City officers or employees in the normal course of their City employment.
- l) Solid Waste Collection Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste.
- m) Self-hauled materials. A Commercial business Owner or resident may dispose of Recyclable Materials, and Organic Waste, generated in or on their own Premises with their own vehicle.
- n) Edible Food. Edible Food which is collected from a Waste Generator by other Person (s), such as a Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or which is Self-hauled by the Customer to another Person(s), such as a Person from a Food Recovery Organization, for the purposes of Food Recovery, regardless of whether the

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Customer donates, sells, or pays a fee to the other Person(s) to collect or receive the Edible Food.

- o) Food Scraps for animal feed. Food Scraps that are separated by the Customer and used by the Customer or distributed to other Person (s) for lawful use as animal feed.
- p) On-site or Community Composting. Organic Waste Composted or otherwise legally managed at the site where it is generated (e.g., backyard Composting, or on-site anaerobic digestion) or at a Community Composting site.

The exclusive Franchise, right and privilege to provide Solid Waste Collection Services within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable State and federal laws, now in effect and adopted during the Term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law, future enactments or developing legal trends limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth in this Agreement, the scope of this Agreement shall be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor resulting from any change in law.

3.3 Effective Date, Term, and Extension of this Agreement

The 'Effective Date' of this Agreement shall be the date upon which all the conditions set forth below in Section 3.4 have been met, and both parties have properly executed the Agreement. Contractor shall provide Solid Waste Collection Services and Disposal Services in accordance with this Agreement for a period of ten (10) years beginning July 1, 2022 through midnight on June 30, 2032 (the 'Term'), unless this Agreement is terminated sooner pursuant to Section 12 of this Agreement. The City shall have the sole right and option to extend the Term of this Agreement for an additional five (5) years beginning July 1, 2032. If the City desires to extend the Term, it shall notify the Contractor in writing of its intent to extend the Term no later than June 30, 2030. If the City does not notify the Contractor in writing by June 30, 2030, of its intent to extend the Term, it shall lose its right to extend the Term.

3.4 Conditions to Effectiveness of Agreement

The satisfaction of each and all the conditions set out below, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this

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Agreement, and a condition of Contractor's continued right to the benefits conveyed in this Agreement:

- a) Accuracy of Representation - All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this Agreement and shall remain true throughout its Term, including any extension, unless waived by the City.
- b) Absence of Litigation - There shall be no litigation or administrative proceedings pending in any court or venue challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance, bond, and letter of credit - Contractor shall have furnished, and shall maintain in good standing throughout the Term and any extension, the evidence of insurance, letter of credit, and performance bond required by this Agreement.
- d) Effectiveness of City Council Action - City Council's resolution approving this Agreement shall have become effective pursuant to California law and the time for any legal challenge shall have expired.
- e) Administrative Fee - Contractor shall have paid to the City the Administrative Fee pursuant to Section 9.2 of this Agreement.
- f) Notification - City has notified Contractor in writing that all conditions to effectiveness have been met and notified Contractor of Effective Date.

3.5 Enforcement of Exclusive Rights

Contractor shall be responsible for enforcing the exclusive rights in this Agreement. City shall reasonably assist Contractor in its efforts to enforce the exclusivity of this Agreement. In addition, City shall in its sole discretion adopt such ordinances or other regulations as it deems to be necessary or desirable to protect the exclusive rights granted in this Agreement. City shall have the right, but not the obligation, to enforce the exclusivity in this Agreement, including by instituting appropriate legal proceedings, and/or to request that Contractor do so. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. Contractor shall reimburse City for its reasonable legal costs, extraordinary administrative costs (including

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staff time), or other expenses incurred in connection with City's actions to either enforce the exclusivity in this Agreement, or to assist Contractor in doing so.

4 General Agreements

4.1 Responsibility for Materials

Once Solid Waste, Recyclable Materials, and Organic Waste are placed in the Contractor's Containers and at the Collection location, the responsibility for their proper handling shall transfer directly from the Customer to Contractor, except for Excluded Waste if the Contractor can identify the Waste Generator. Once Recyclable Materials, Organic Waste, and/or Solid Waste are deposited by Contractor at the appropriate approved Facility, such materials shall become the responsibility of the Owner or operator of the approved Facility except for Excluded Waste. Responsibility for Excluded Waste that has been inadvertently Collected by the Contractor shall remain with the Contractor if it cannot identify the Waste Generator, and Contractor shall assume all responsibility for its proper Disposal.

4.2 Subcontracting

The Contractor shall not engage any companies or subcontractors for Collection, Transfer, Processing, Recycling or Disposal of Solid Waste without the prior written consent of the City, which consent shall not be unreasonably withheld.

4.3 City-Directed Change in Scope

City may direct Contractor to perform additional services (including new Diversion programs and additional public education activities), eliminate programs, or modify the manner in which it performs existing services. Changes in law, changes in the minimum Diversion requirement set forth in this Agreement, direction of waste to a Disposal Site other than that originally selected by the City, direction of Recyclable Materials, Food Waste or Green Waste to a Processing facility other than that designated at the start of this Agreement pursuant to Section 6.1, pilot programs and innovative services, which may entail new Collection methods, targeted routing, different kinds of services, different types of Collection vehicles, and/or new requirements for Customers are included among the kinds of changes which City may direct. Contractor and City shall be entitled to an increase or decrease in Contractor's compensation for providing such additional or modified services, or for eliminating programs. Contractor shall not be reimbursed for the preparation of its proposal to perform such services. Any such upward adjustments to rates due to City-directed changes shall require a notice and hearing pursuant to Proposition 218. Contractor will not be responsible for the cost of the Proposition 218 compliance.

4.4 New Diversion Programs

The Contractor shall present, within thirty (30) calendar days of a request to do so by the City, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:

- a) Collection methodology to be employed (equipment, staffing, etc.); and
- b) Equipment to be utilized (vehicle number, types, capacity, age, etc.); and
- c) Labor requirements (number of employees by classification); and
- d) Type of Containers to be utilized; and
- e) Provision for program publicity/education/marketing; and
- f) Three-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.

4.5 Marketing and Sale of Recyclable Materials

The Contractor shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Contractor shall retain proceeds from sales of Recyclable Materials, except to the extent that source separated Recyclable Materials are purchased from Customers and revenues from their sale is remitted, or credited, to Customers. City Council reserves the right to prohibit Contractor from marketing Recyclable Materials to vendors that export Recyclable Materials to countries that disregard the health and safety of recycling workers, or that do not recognize basic human rights.

5 Scope of Service

5.1 General

5.1.1 Overall Performance Obligations.

The scope of services to be performed by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform all requirements of the Agreement. The scope of services to be performed by Contractor pursuant to this Agreement shall be accomplished in a manner so that Customers are provided reliable, courteous, and high-quality Collection services and other services described in this Agreement at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner generally provided in this Article for the delivery of services, whether such other aspects are enumerated elsewhere in the Agreement or not. Contractor shall not knowingly Collect from Blue, Green, or Gray Containers that include Prohibited Container Contaminants. Contractor shall not comingle in a vehicle any of: Gray Container Waste, Source Separated Blue Container Waste, or Source Separated Green Container Waste.

5.1.2 Name Under Which Contactor Does Business

Contractor shall do business in the City under its own legal name, or under the dba name in effect at the beginning of this Agreement. If Contractor, or any of its Affiliates, desires to operate under a new fictitious business name, it shall obtain the City's prior written approval.

5.1.3 Ownership of Solid Waste.

Through the City's membership in the Regional Solid Waste Management Association (RSWA), the City has committed one hundred (100) percent of its Refuse that is controlled through this Agreement to the Transfer or Disposal facility directed to be used by RSWA. Green Waste, Organics Waste and any Recyclable Materials are not required to be committed through the RSWA Agreement. Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to the Contractor by operation of this Agreement.

Subject to the Contractor's objective to meet the source reduction and recycling goals which apply to the City and the City's right to direct the Contractor to Process and dispose of Refuse at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site as required by the City's agreement with RSWA, the Contractor is hereby granted the right to retain, Recycle, Process, Dispose of, and

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otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Contractor. Subject to the provisions of this Agreement, the Contractor shall have the right to retain any benefit resulting from its right to retain, Recycle, Process, Dispose of, or reuse the Solid Waste, Recyclable, and Organic Waste that it Collects.

Solid Waste, or any part thereof, which is disposed of at a Disposal Site or Sites (whether Landfill, Transformation Facility, transfer station, Processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Contractor. The City may obtain ownership or possession of Refuse placed for Collection upon written notice of its intent to do so; however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Contractor.

5.2 Residential Cart Collection System

5.2.1 Three-Cart Collection Program

Contractor shall provide a three-Cart Collection program for the separate Collection of:

- a) Gray Container Waste (Refuse) in a Gray Cart; and
- b) Source Separated Recyclable Materials and Source Separated Blue Container Organic Waste in a Blue Cart; and
- c) Source Separated Green Container Organic Waste in a Green Cart.

Contractor shall Collect these materials on the same day each week that they are properly set out at the curb for Collection by all Single-family Residential Customers, and Multi-family Residential Customers with curb access that do not receive Bin Collection Service. If the designated Collection location of Carts is disputed, the City shall make the final determination. Contractor shall furnish each Residential Cart Customer with:

- a) One (1) each new 35, 64, or 96-gallon Gray Cart; and
- b) One (1) each new 35, 64, or 96-gallon Blue Cart; and
- c) One (1) each new 35, 64, or 96-gallon Green Cart.

Contractor may charge each Customer based on each Customer's size and number of Gray Carts according to the monthly rate schedule in Exhibit 1. Upon Customer request, Contractor shall provide Customers with additional 35-gallon, 64-gallon and 96-gallon Gray Carts for an additional charge per Cart per month in accordance with the rates in

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Exhibit 1. To receive an additional Gray Cart, Customers must have at least 64-gallon Gray Cart Collection Service.

Upon Customer request, Contractor shall furnish additional 35-gallon, 64-gallon and 96-gallon Blue Carts for Customers that regularly generate more Recyclable Material or Source Separated Blue Container Organic Waste than will fit into their existing Blue Cart(s).

Upon Customer request, Contractor shall furnish additional 35-gallon, 64-gallon and 96-gallon Green Carts for Customers that regularly generate more Source Separated Green Container Organic Waste than will fit into their existing Green Cart(s).

Upon Customer request, Contractor shall exchange Customer's Carts, and replace Customer Carts, according to Sections 7.8.2 and 7.8.3, and according to the rates in Exhibit 1.

The parties agree that accepted types of materials may be added to or removed from the three-cart Collection program from time to time only upon written approval from the City, and such approval shall not be unreasonably withheld.

5.2.2 Cart Contamination Fee

Contractor may charge Customers the Cart Contamination Fee shown in Exhibit 1 for Customers that repeatedly place Prohibited Container Contaminates in their Carts. Prior to charging a Cart Contamination Fee, for each incident of contamination, Contractor must tag the Customer's Cart with written notice about: 1) the Collection day on which the Container was contaminated, 2) the nature of the contamination (e.g., which type of Container was contaminated, etc.), 3) information regarding the Customer's obligation to properly source separate materials in the appropriate Containers, and 4) the consequences of further contamination. If feasible, the notice should include photographic evidence of the contamination.

If the Contractor observes Prohibited Container Contaminants in a Customer's Cart on more than two (2) occasions during a thirty (30) calendar day period and has provided written notices on each of those two (2) occasions, Contractor may charge a Cart Contamination Fee to that Customer.

5.2.3 Kitchen Caddies

Upon Customer request, Contractor shall provide each Single-family Residential Customer that receives Green Cart Collection Service with one (1) a Food Waste receptacle (kitchen caddy) that Customers can use for in-home storage of Food Waste. Kitchen caddies shall be approximately three (3) gallons with a hinged and tight-fitting lid. Contractor shall

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deliver Food Waste receptacles within five (5) days of Customer request. The manufacture, model, color, and labeling of kitchen caddies shall be subject to the approval of the City.

5.2.4 Cart Overage

Contractor shall Collect material from outside the Gray, Blue, or Green Carts that is occasionally set out by Customers. Residential Customers are entitled to two (2) such Collections (taking place on the regular Collection day) of Solid Waste that does not fit in the Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags of material. Contractor shall instruct Customers to call in for Cart overage pickups. Each time a no-charge Cart overage pickup is made, Contractor shall leave a notice for the Customer indicating a Cart overage Collection was made.

For all Cart overage pickups in excess of two (2) per year, Contractor may charge Customer the Cart overage fee shown in Exhibit 1. Each time a Customer receives a Cart overage pickup in excess of two (2) per year, Contractor shall leave a notice for the Customer indicating a Cart overage fee will be charged.

In addition to the two (2) free Cart overage pickups, Contractor shall Collect all additional Solid Waste placed out for Collection in the Residential Customer's own Containers (bags, barrels, etc.) at no additional charge for two (2) weeks beginning each December 26. This service is limited to material that could otherwise be placed in a Cart, and not Bulky Items that are Collected in accordance with Section 5.2.9.

5.2.5 Exemption from Automated Cart Service – Manual Service

Customers may request an exemption from automated Cart service only if automated service is infeasible due to service characteristics, or space limitations. Upon City approval of Customer request, Contractor shall provide manual service to these Customers at the rate for manual service shown Exhibit 1.

5.2.6 Backyard Service

Upon Customer request, Contractor shall provide Residential Customers with Backyard Service at the rate shown in Exhibit 1. Contractor shall provide disabled Customers with Backyard Service at no additional charge other than the rate for standard service shown in Exhibit 1. To qualify as a disabled Customer, Customers must provide Contractor with written confirmation from a medical professional that the Customer is unable to wheel Carts to and from the curb. Written confirmation from the medical professional must indicate the length of the disability. Contractor may limit Backyard Service for this time. If an able-bodied person resides with the disabled Customer, the Customer will not qualify

for free Backyard Service. Contractor may require annual confirmation that the disability continues and that no able-bodied Person resides at the Premises.

5.2.7 Bin Collection Service – Single-family

Upon Customer request, Contractor shall provide Refuse Bin Collection Service to Single-family Residential Customers. Contractor shall provide Refuse Bin Collection Service to Single-family Residential Customers at the same rates charged to Multi-family Residential Customers at the Bin rates shown in Exhibit 1. Contractor shall provide Blue Cart Collection Service and Green Cart Collection Service to Single-family Residential Customers at no additional charge.

5.2.8 Holiday Trees

Contractor shall collect all holiday trees from Single-family Residential and Multi-family Residential Customers that are properly placed for Collection from the first Work Day after December 25th until the second Saturday in January. Collection shall occur on the regularly scheduled Collection day. Holiday trees placed for Collection must be cut into lengths no longer than six (6) feet, be free of ornaments, garlands, tinsel and flocking, and the stands must be removed. Contractor shall Recycle all holiday trees. Holiday trees set out for pickup that are flocked or contain tinsel or other decorations may be delivered to the Disposal Site at the discretion of the Contractor.

5.2.9 Single-family Bulky Item Collection – On-call

Contractor shall provide up to three (3) on-call Bulky Item pickups per year at no charge to Single-family Residential Customers upon request. Contractor shall Collect Bulky Items on Customer's regular Collection Day. Customers will be required to contact Contractor and arrange for Bulky Item Collection at least two (2) Work Days in advance. Up to five (5) items may be put out for Collection at each pickup. Bulky Item Collections in excess of three (3) per year will be billed in accordance with the rate shown in Exhibit 1.

5.2.10 Household Battery and Cellphone Collection

Contractor shall Collect household batteries and discarded cellphones at no cost if placed in a sealed clear plastic bag on top of the recycling Cart set-out for weekly Collection.

5.3 Commercial and Multi-family Collection- General

Contractor shall provide Bin service to Commercial Customers and Multi-family Residential Customers that uses Cans, Carts, and Bins. Contractor shall Collect and remove all Refuse, Recyclables, and Organic Waste that is placed in Cans, Carts, and Bins from Multi-family Residential and Commercial Customers' Premises. Customers may lease

from Contractor or third parties' compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement.

Contractor shall replace empty Cans, Carts and Bins to their original location with gates or doors of enclosures secured after Collection is completed. A Bin shall be considered properly located for Collection if it is feasibly accessible by Contractor's front-loading Collection vehicles. A Cart shall be considered properly located for Collection if it is feasibly accessible by Contractor's automated side-loading Collection vehicles. If a Customer and Contractor cannot agree upon the designated Collection location, City shall make the final determination.

5.3.1 Bin Collection – Gray Container Waste (Refuse)

Contractor shall collect Gray Container Waste (Refuse) from all Commercial and Multi-family Residential Customers no less frequently than once per week. Contractor shall provide the size and quantity of Bins as requested by Customer. Contractor shall charge the Customer for size and number of Refuse Bins, and number of weekly pickups, according to the approved rate schedule in Exhibit 1.

5.3.2 Commercial Cart Service

Contractor shall Collect commercial Gray Container Waste (Refuse), Source Separated Blue Container Waste, and Source Separated Green Container Waste in Contractor provided 64 or 96-gallon Carts at the Commercial Cart rates shown in Exhibit 1.

5.3.3 Bin Collection – Source Separated Blue Container Waste

Contractor shall provide Source Separated Blue Container Waste Collection Service to all Commercial Customers without a waiver approved by the City. Contractor shall provide Recycling Bins or Carts to Customers in sufficient quantities to meet the recycling needs of each Customer. Contractor shall charge Customers that receive Source Separated Blue Container Waste Collection service at 85% of the rates in Exhibit 1 for a similar Service Level of Refuse Collection service.

5.3.4 Bin Collection – Source Separated Green Container Organic Waste

Contractor shall provide Source Separated Green Container Organic Waste Collection Service to all Commercial Customers without a waiver approved by the City. Contractor shall provide Recycling Bins or Carts to Customers in sufficient quantities to meet the Recycling needs of each Customer. Contractor shall charge Customers that receive Source Separated Green Container Organics Waste Collection service at 85% of the rates in Exhibit 1 for a similar Service Level of Refuse Collection service.

5.3.5 Scout Service

Contractor shall provide scout service to those Customers whose Cart or Bin storage location reasonably precludes safe or feasible access to the Bin by the Contractor's route vehicle. Scout service entails using a heavy-duty service truck to pre-position Bins to the designated Collection location, which is readily accessible to the route vehicle. Once the Bin is emptied by the route vehicle, the Cart or Bin is returned to the Cart or Bin storage location. Contractor shall charge Customers with scout service based on each Customer's number of Carts or Bins, and number of weekly pickups, according to rate shown in Exhibit 1.

5.3.6 Bin Contamination Fee

Contractor may charge Customers the Bin Contamination Fee shown in Exhibit 1 for Customers that repeatedly place Prohibited Container Contaminates in their Bins. Prior to charging a Bin Contamination Fee, Contractor must tag the Customer's Bin with written notice about: 1) the Collection day on which the Container was contaminated, 2) the nature of the contamination (e.g., which type of Container was contaminated, etc., 3) information regarding the Customer's obligation to properly source separate materials in the appropriate Containers, and 4) the consequences of further contamination. If feasible, the notice should include photographic evidence of the contamination.

If the Contractor observes Prohibited Container Contaminants in a Customer's Bin on more than two occasions during a thirty (30) calendar day period and has provided written notices on each of those two occasions, Contractor may charge a Bin Contamination Fee to that Customer.

5.3.7 Bin Overage Fee

If Solid Waste is left beside a Commercial Bin for Collection or Contractor cleans up spilled waste from an overflowing Container, Contractor may charge the Bin overage fee in Exhibit 1 upon the third incident in one calendar year, provided Contractor has provided written warnings for the first two (2) incidents. The written warnings shall include: 1) the Collection day on which the Container was overflowing, 2) information regarding the Customer's obligation to properly fill Bins, and 3) the consequences of further overflowing Bins. If feasible, the notice should include photographic evidence of the overflowing Bin. Contractor may charge the Bin Overage Fee for any and all spilled waste or overflowing Bins that continue to occur in the calendar year.

5.3.8 Multi-family Bulky Item Collection – On-call

Contractor shall provide up to one (1) on-call Bulky Item pickup per Dwelling Unit per year at no charge to Multi-family Residential Customers upon request by the Customer's property manager. The property manager will be required to contact Contractor and arrange for Bulky Item Collection at least two (2) Work Days in advance. Up to five (5) items may be put out for Collection at each pickup. Bulky Item Collections in excess of one (1) per Dwelling Unit per year will be billed in accordance with the rate shown in Exhibit 1.

5.3.9 Temporary Bin Services

Contractor shall provide on-call 3-yard Temporary Bin service to all Customers requesting such service. Contractor shall deliver the requested Bin within forty-eight (48) hours of request. Contractor shall Collect Temporary Bins no later than forty-eight (48) hours of Customer request. Contractor shall place the Bin such to ensure that the flow of traffic is not impeded. If applicable, it shall be the responsibility of the Customer to obtain an encroachment permit from the City if the Bin will be located within the City right-of-way. Contractor shall provide Temporary Bin service at the rate per pickup shown in Exhibit 1.

5.4 Roll-off Collection Service

Contractor shall offer and provide Roll-off Collection Service to Single-family Residential, Multi-family Residential, Commercial, and Construction and Demolition Customers. Contractor shall Collect Solid Waste from all Roll-off Collection Customers using Contractor-furnished Roll-off Boxes or Customer-furnished Roll-off Compactors. Upon Customer request, Contractor shall furnish the size and number of Roll-off Boxes requested by Customer.

Contractor is not obligated to furnish Roll-off Compactors. Contractor may sell or lease Roll-off Compactors to Customers. Any sale or lease of Roll-off Compactors to Customers, and any associated sale or lease compensation to Contractor, shall be outside the scope of this Agreement. However, the Collection service provided to those Customers with Roll-off Compactors, and the associated Gross Receipts, shall be within the scope of this Agreement.

A Roll-off Box or Roll-off Compactor shall be considered properly located for Collection if it is feasibly accessible by Contractor's Roll-off Collection vehicles. If a Customer and Contractor cannot agree upon the designated Collection location, City shall make the final determination.

5.4.1 Regular Roll-off Collection Service

Upon request by Customer, Contractor shall collect Solid Waste from Single-family Residential, Multi-family Residential or Commercial Premises using Roll-off Collection service. Contractor must deliver, exchange, or remove Roll-off Boxes for Customers within one (1) Work Day of request by the Customer. Contractor shall charge the Customer for regular Roll-off Collection service based on each load and the actual weight of each load according to Exhibit 1.

5.4.2 Roll-off Collection- Construction and Demolition Debris

The Contractor shall make reasonable efforts to prevent Construction and Demolition Debris that is suitable for Recycling from being taken to the Landfill by:

- a) Following the City's Construction and Demolition Debris Diversion requirements of the Municipal Code Chapter 23.70, and as required by Part 11 of Title 24 is named the California Green Building Standards Code, which is also called the CALGreen Code; and
- b) Transporting all Construction and Demolition (C&D) Debris loads to a permitted mixed materials C&D Processing Facility where it will be processed for reuse or Recycling, or, if material has been source separated, it may be taken directly to a Facility for reuse; and
- c) Diverting sixty-five percent (65%) percent or more of C&D Debris collected by it from Customers as long as material does not exceed minimum contamination levels; and
- d) Inquiring of all Roll-off Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Debris Customers regarding how to divert such materials, including information on deconstruction options available, and providing a how-to brochure with alternative Processing Facility contact information.

5.5 City Services

5.5.1 City Facilities Collection

Contractor shall Collect and dispose of all Refuse, Recyclable Material, and Organic Waste put in Containers for Collection at all facilities owned, leased, and/or operated by the City at no charge. City facilities include, but are not limited to, the Civic Center, Del Mar Library, Beach Safety Center, Public Works building/yard, and the Del Mar Fire Station. Contractor shall provide the number and size of Containers, and frequency of service at

the City's direction. Service Levels and number of City facilities served may increase during the Term of this Agreement without any additional compensation paid to the Contractor.

5.5.2 City-sponsored Special Events

Upon request by City, Contractor shall provide Solid Waste Collection and Disposal/Processing service for up to ten (10) City-sponsored special events per year at no additional charge, to the City, its ratepayers or event organizers. Contractor shall provide Collection services in such a manner that all Solid Waste and Recycling needs of the event are adequately and properly provided. This shall include providing Containers (Carts, Bins, Roll-off Boxes, and/or clearly labeled cardboard waste boxes with liners) to collect and dispose of, or Process, all Refuse, Recyclables, and Organic Waste.

5.5.3 Zero Waste at City-sponsored Special Events

As part of its Climate Action Plan, the City has adopted a goal to achieve a waste Diversion goal of ninety-five percent (95%) by 2035. One of the City's strategies for meeting this goal is to require all City-sponsored events to be Zero Waste (e.g., use Recyclable and Compostable materials and provide corresponding waste Containers). Upon request by City or event organizers, Contractor shall provide technical assistance to City, community organization, and businesses regarding the promotion, planning and implementation of Zero Waste practices at City-sponsored special events.

5.5.4 Abandoned Items Collection

The Contractor shall collect Abandoned Items in the public right-of-way within 24 hours of notification by City at no additional charge.

5.5.5 Fuel Reduction Program

Contractor shall, at no cost to the City, participate in the City's annual Fuel Reduction Program. In this program, within a single two-week per year period to be designated by the City, Contractor shall provide Roll-off Boxes and 3-yard Green Waste Bins at various locations in the City, as requested by residents and the City's fire department, to accommodate Residential cleanups of weeds, brush, and tree trimming. An individual resident may not request more than two (2) 3-yard Bins. A forty (40)-yard Roll-off Bins may be requested by a community group, or group of residents of not less than eight (8) Single-family Residential dwellings.

5.5.6 Annual Mulch Public Give-away Program

The Contractor shall offer a program in which residents may obtain free Mulch. Contractor shall conduct Mulch Program at least three (3) times per year in the Spring, Summer, and Fall at a location mutually agreed upon with the City.

5.5.7 Mulch Give-away to Contribute to Procurement Goal

SB 1383 Procurement. Contractor agrees that all Compost or Mulch provided through this Agreement shall comply with the municipal procurement requirements of SB 1383, including being generated from California Organic Waste Products, as defined by SB 1383 for each applicable material type.

5.5.8 Del Mar Recycles Recycle Events

Contractor shall, at least twice annually, provide at no cost an event to which City residents and businesses can bring confidential materials for shredding. All shredded materials must be recycled. Customers will be limited to three (3) standard office storage boxes.

5.5.9 Universal Waste Lamp Drop-Off Program

Contractor shall accept and properly dispose of Universal Waste from Del Mar residents at the two (2) annual Del Mar Recycles events.

5.5.10 Unwanted Pharmaceutical Drop-Off Program

To the extent allowed by law, the Contractor shall accept and properly dispose of unwanted pharmaceuticals at the two (2) annual Del Mar Recycles events.

5.5.11 Sharps Drop-Off Program

Contractor shall accept and properly dispose of Household Sharps at the two (2) annual Del Mar Recycles events.

6 Other Services

6.1 Transportation, Disposal and Processing Service

The Contractor shall Transport all Refuse Collected under this Agreement to a fully permitted transfer station, Materials Recovery Facility, or Disposal Site pursuant to applicable law. The City reserves the right to designate each and any Solid Waste Facility (i.e., Landfill, Transfer Station, Processing Facility or Material Recovery Facility) to which Contractor shall deliver material Collected under this Agreement. City and Contractor agree that City is obligated pursuant to its membership in RSWA to deliver Refuse to the Disposal Site or transfer station designated by the RSWA Disposal agreement. At the inception of this Agreement, the Contractor shall deliver material to the following facilities:

Refuse:

EDCO Station, 8184 Commercial St., La Mesa

EDCO Recovery and Transfer, 3360 Dalbergia St., San Diego

Escondido Resource Recovery, 1021 West Mission Avenue, Escondido

Recyclables:

EDCO Recycling, 6670 Federal Blvd., Lemon Grove

Escondido Resource Recovery, 1021 West Mission Avenue, Escondido

Green waste:

Ramona Organics, 324 Maple St., Ramona

Organics:

Escondido Resource Recovery, 1044 W. Washington, Escondido

Construction and Demolition Waste:

SANCO Resource Recovery, 6750 Federal Blvd., Lemon Grove

The City and Contractor agree that the City will adjust the Contractor's rates to reimburse Contractor for any resulting change in the Contractor's operating expenditures as a result of a subsequent re-designation by the City of these facilities.

The Contractor shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste Transported to the transfer station, Material Recovery

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Facility, or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

6.2 Contamination Monitoring

The Contractor shall implement a contamination monitoring program to minimize Prohibited Container Contaminants in a manner that complies with Section 18984.5 of Title 14 of the California Code of Regulations. The Contractor may conduct its contamination monitoring requirements through either Route Reviews or Waste Evaluations, or a combination of the two methods. The Contractor's contamination monitoring program shall include, but not be limited to, the following:

6.2.1 Route Reviews

For routes on which the Contractor conducts Route Reviews (i.e., on-route observations of individual Containers), the routes must be reviewed at least once per year. Upon finding Prohibited Container Contaminates in a Container, Contractor shall notify the Customer of the contamination. The notice of contamination may be left at the Customer's location, or mailed, e-mailed, or electronically messaged to the Customer. The notification shall include information about: 1) the Collection day on which the Container was contaminated, 2) the nature of the contamination (e.g., which type of Container was contaminated, etc.), 3) information regarding the Customer's obligation to properly source separate materials in the appropriate Containers, and 4) the consequences of further contamination. If feasible, the notice should include photographic evidence of the contamination.

6.2.2 Waste Evaluations

For routes on which the Contractor performs Waste Evaluations (i.e., conducting waste characterizations of Collected material at the Processing facility), Waste Evaluations shall be conducted at least twice per year from vehicle loads of Source Separated Blue Container Waste and from Source Separated Green Container Organics Waste, and at least once per quarter from vehicle loads of Gray Container Waste. Waste Evaluations shall include samples of each material type, and samples from different areas of the City, and from different seasons in the year. The Waste Evaluations shall include at least the number of samples required in Section 18984.5 (C)(1)(e) of Title 14 of the California Code of Regulations.

If the sampled weight of Prohibited Container Contaminants in the Waste Evaluations exceeds twenty-five percent (25%) of the measured sample for any Container type, the Contractor shall perform one of the following:

- a) Notify all Customers on the sampled routes of their requirement to properly separate materials into the appropriate Containers. The City may provide this information by placing a notice on the Customer's Container, gate, or door, and/or by mail, e-mail, or electronic message to the Customer; or
- b) Perform a targeted Route Review of Containers on the routes sampled for Waste Evaluations to determine the sources of contamination and notify those Customers of their obligation to properly separate materials. The City may provide this information to these Customers by placing a notice on the Customer's Container gate, or door, and/or by mail, e-mail, or electronic message to the applicable Customers.

6.2.3 Monthly Reporting Requirements

Contractor shall maintain records and report to the City monthly on contamination monitoring activities and actions taken (See Section 8.4.4).

6.3 Education and Outreach

6.3.1 General

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

6.3.2 Program Objectives

Contractor's public education and outreach strategy shall focus on improving Customers' understanding of the benefits of and opportunities for source reduction, Reuse, and Landfill Disposal reduction, and furthering climate goals. In general, Contractor-provided public education and outreach, which shall include all content required by this Section, should:

- a) Inform Customers about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, Reuse, and reduction of Solid Waste Disposal; and
- b) Instruct Customers on the proper method for placing materials in Containers for Collection and setting Containers out for Collection with specific focus on minimizing contamination of Source Separated Recyclable Materials and Source Separated Organic Waste; and
- c) Clearly define Excluded Waste and educate Customers about the hazards of such materials and their opportunities for proper handling; and

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- d) Discourage Customers from buying products if the product and its packaging are not readily reusable, Recyclable, or Compostable; and
- e) Inform Customers subject to Food Recovery requirements under SB 1383 Regulations of their obligation to recover Edible Food and actions they can take to prevent the creation of Food Waste; and
- f) Encourage the use of Compost; and
- g) Encourage Customers to purchase products/packaging made with Recycled-content materials; and
- h) Explain the process by which fines and penalties may be incurred for non-compliance.

The cumulative intended effect of these efforts is to reduce each Customer's reliance on Contractor-provided Gray Container Waste/Mixed Waste service and, ultimately, Disposal.

6.3.3 Contractor Cooperation and Support for City Education Efforts

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

6.3.4 Minimum Content Requirements

Contractor shall include the following education and outreach content to Customers by incorporation of this content into the public education materials.

- a. Information on the Waste Generator's requirements to properly separate materials in appropriate Containers.
- b) Information on methods for: waste prevention, recycling Organic Waste on-site, sending Organic Waste to Community Composting, and any other local requirements regarding Organic Waste.
- c) Information regarding the methane reduction benefits of reducing the Landfill Disposal of Organic Waste, and the methods of Organic Waste recovery.
- d) Information regarding how to recover Organic Waste.
- e) Information related to the public health and safety and environmental impacts associated with the Landfill Disposal of Recyclable Materials and Organic Waste.

- f) Information regarding programs for the donation of Edible Food.

6.3.5 Annual Education Plan

Contractor shall develop and submit to the City an annual public education plan. The annual public education plan shall present the education and outreach activities planned for the upcoming calendar year. This plan shall be submitted with the Contractor's annual report. The public education plan shall specify how Contractor will accomplish the education and outreach program objectives.

The City shall be allowed up to thirty (30) calendar days after receipt to review and request modifications. Contractor shall make any changes to the plan directed by the City. Contractor shall have up to fifteen (15) calendar days to revise the plan in response to any changes directed by the City.

Contractor shall obtain advance approval from the City for any education or outreach activities not included in the annual education plan. The City shall have the right to request that Contractor include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld. The City reserves the right to direct the Contractor to modify the education and outreach program at any time.

6.3.6 Education During Program Implementation

Beginning on the Effective Date of this Agreement Contractor shall conduct an education campaign focused on informing Customers of the Collection program changes that will commence on July 1, 2022. At a minimum, Contractor shall perform the activities listed in this Section.

- a) Prepare and distribute an initial mailer to all Customers explaining the change from the existing hauler to the new Contractor (if applicable), changes from the existing Collection programs to new programs, Hauler Route changes, dates of program implementation, Recycling and Landfill Disposal reduction programs available, special services available, Holiday Collection schedules, proper handling and Disposal of Household Hazardous Waste, and Contractor's contact information. The initial mailer shall be printed and mailed or hand delivered to Customers, and shall also be made available in an electronic format through the Contractor's website. Contractor may provide a Customer with an electronic version of the initial mailer, rather than a printed version, if specifically requested by the Customer.
- b) Prepare a 'how-to' flyer describing how to prepare Source Separated Recyclable Materials, Gray Container Waste, and mixed waste for Collection and describe the

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acceptable materials that can be included in the Blue and Green Containers, as well as non-allowable materials. The flyer should emphasize any new types of Source Separated Recyclable Materials to be included in Blue Containers and the new Food Waste Collection program.

- c) Prepare separate flyers for Single-family Residential, Multi-family Residential, and Commercial Customers addressing their unique service conditions. The flyers shall be printed and distributed to each Customer, as well as made available in an electronic format through the Contractor's website. The Contractor shall provide a sufficient number of flyers to each Multi-family Residential property manager for their distribution to each tenant unit. Contractor may provide a Customer with an electronic version of the flyer rather than a printed version, if specifically requested by the Customer.
- d) Prepare printed signage and posters describing Collection programs and distribute to Multi-family Residential property managers and Commercial Customers for on-site use.
- e) Prepare an instructional packet identifying key transition dates and verifying the Customer's specific current Service Level, which shall be printed and distributed to each Customer and made available in an electronic format on the Contractor's website. Contractor may provide an electronic version of the instructional packet rather than a printed version, if requested by the Customer.
- f) Prepare and distribute public service announcements (PSA) for local newspapers.
- g) Meet with up to four (4) business or non-profit associations (such as the Del Mar Village Association, Rotary Club, Garden Club, and other similar organizations) in separate venues to: educate Customers on the Collection programs, State requirements (including SB 1383 and SB 1383 Regulatory requirements) for the City and Customers; answer questions; and provide service and Rate information.

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

6.3.7 On-going Education Requirements

- a) **Annual Service Guides** - Not less than once per year, Contractor shall prepare and distribute to each of the Single-family Residential, Multi-family Residential, and Commercial Customers in the City a service guide that describes available services, including information about how to place Containers for Collection, which materials should be placed in each Container, Prohibited Container Contaminants,

Collection Holidays, and the Contractor's contact information. The service guide must also include the information specified in Section 6.3.4.

- b) **Website** - Contractor shall develop and maintain a website (with a unique URL specific to the City) that is specifically dedicated to the City to provide Customers with detailed service information. The website or webpage shall be accessible by the public and shall include all education and outreach materials being provided. Contractor shall update the website regularly so that information provided is current.
- c) **Provision of Educational Materials to Non-Compliant Entities** - Contractor shall provide educational materials to non-compliant entities under this Agreement, as further described in Section 6.2.1.

6.3.8 Materials Distribution Methods

Contractor shall use the following methods to provide education information to Customers. All materials are to be approved by the City prior to distribution.

Printed materials. The Contractor shall be responsible for the design, printing, and distribution of these materials, subject to City approval. All Contractor-printed public education materials shall, at a minimum, use recycled paper and/or be made of recycled material. The Contractor will use 100% post-consumer paper and procure printed materials from local businesses.

Electronic materials and website content. Contractor shall provide (to the City for its website content for education and outreach materials, which may include, but are not limited to: digital graphics, digital versions of print materials, social media posts, and blog posts. The Contractor shall be responsible for the design, posting, and electronic distribution of these materials, and for assuring compliances with any applicable copyright rules and for licensing the use of these materials to the City.

Application for Mobile Devices. Contractor shall provide an app for Residential Customers to access on their mobile devices (similar to ReCollect or Recycle Coach) program information including their Collection days, Holidays, Bulky Item pickups, and Recycling guidelines.

6.3.9 Personnel

The Contractor shall designate one or more staff member(s) to serve as Outreach Coordinators. The duties of the Outreach Coordinator(s) shall be focused on public education, community outreach, Commercial Customers and Multi-family Residential site visits, and technical assistance. The Outreach Coordinator(s) shall educate Customers and Customers' employees on the importance of Recycling, Food Recovery, resource

recovery, Landfill Disposal reduction, as well as all State, federal, county, and City mandates, including SB 1383 and SB 1383 Regulations; and shall work with Customers to implement services, increase participation in Source Separated Recyclable Materials and Source Separate Organic Waste Collection programs, and reduce contamination. The Outreach Coordinator(s) shall identify potential organizations and partners involved with Food Recovery and resource recovery. The Outreach Coordinator(s) shall be responsible for implementing the education plans and programs specified in this Section.

6.3.10 Short-Term Vacation Rental Outreach

Contractor shall develop an outreach program specifically to the City of Del Mar's vacation rentals. Contractor acknowledges that vacation rentals represent a transient occupancy that are difficult to reach by conventional methods. Contractor will compile a list of vacation rentals and shall provide information packets to landlords on the proper use of the Refuse and Recyclable Material Containers and regarding what may be recycled in the City's Recycling programs.

6.3.11 Use of 'Del Mar Recycles' Program Name

The program name 'Del Mar Recycles' refers to all Solid Waste management services available to the residents of the City. This name is the exclusive property of the City. Contractor may use 'Del Mar Recycles' as the City may license such use to Contractor to help people identify with the civic pride and environmental benefit of responsibly managing Solid Waste. The Contractor's use of the name does not relieve the Contractor of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Contractor's use of the name is not to be construed as constituting an arrangement by the City for the Disposal of Solid Waste, nor to create an agency relationship.

6.4 Technical Assistance Program

6.4.1 Site Visits and Waste Assessments

No later than two (2) weeks after the Effective Date, Contractor will provide an outreach and technical assistance plan to the City for approval identifying the site visit schedule for which to send a Contractor representative to visit each Multi-family Residential and Commercial Customer's Premises for the purpose of assessing how much Source Separated Recyclable Materials and Source Separated Organic Waste is being disposed; assessing the Source Separated Recyclable Materials and Source Separated Organic Waste Collection Service Levels needed to meet the requirements of SB 1383 Regulations; and encouraging all Customers to establish Source Separated Recyclable Materials and Source Separated Organic Waste Collection service at least four (4) weeks prior to July 1,

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2022 when mandatory service is required. Contractor shall also notify Customers of opportunities to reduce costs by subscribing to Source Separated Recyclable Materials and Source Separated Organic Waste Collection service and reducing Gray Container Waste/Mixed Waste Collection service. Contractor shall contact Multi-family Residential and Commercial Customers and provide site visits according to the City-approved schedule. Contractor will also provide a site visit to any Multi-family Residential or Commercial Customer that requests a site visit, even if it is ahead of schedule.

Beginning July 1, 2022, and annually thereafter, Contractor representative shall follow up with Multi-family Residential and Commercial Customers who are required to participate in Source Separated Recyclable Materials and Source Separated Organic Waste Collection service under applicable law, including but not limited to AB 341, AB 1826, and SB 1383 and corresponding regulations. The Contractor shall ensure that these Customers are participating in the Source Separated Recyclable Materials and Source Separated Organic Waste Collection Service. If the Customer is not in compliance or not participating, the Contractor representative shall assist the Customers with selecting appropriate Containers and Container sizing, identify acceptable Solid Waste Collection services as set forth in the Agreement, and attempt to resolve any logistical barriers to providing Source Separated Recyclable Materials and Source Separated Green Cart Organics Waste Collection service. Contractor shall provide ongoing, on-site training for Commercial Customers' staff, including, but not limited to: management, kitchen staff, service employees, and janitorial staff; and Multi-family Residential Customers' staff, including but not limited to: the property manager, janitorial staff, maintenance, and any other on-site staff members or Contractors that handle Solid Waste.

For each on-site waste assessment conducted by Contractor, Contractor shall include documentation of the items listed below. The City reserves the right to receive Contractor's documentation of additional information and shall authorize the format for required information.

- a) Pictures of material in all Containers; and
- b) Characteristics of the property, business, and Customer type; and
- c) Written recommendations for the appropriate Service Level for each material type; and
- d) Provision of outreach and education materials appropriate to the Customer type; and
- e) Determination of signage placement; and
- f) Determination of any on-going training needs; and

- g) Determination of any access needs; and
- h) Documentation of any special service needs (such as, but not limited to, seasonal Collection service, automated on-call Compactor, etc.); and
- i) Documentation of records of communications with the Customer.

6.4.2 Record Keeping and Reporting Requirements

Contractor shall maintain records of all technical assistance activities and educational materials conducted pursuant to this Section and submit reports to the City.

6.5 Procurement of Products with Recycled and Organic Contents

The Contractor shall comply with the purchasing and recordkeeping requirements described in this Section.

6.5.1 Recycled-Content Paper.

The Contractor shall procure Paper Products and Printing and Writing Paper for invoices, billing statements and inserts, reports, and public education materials, consistent with the requirements of the Public Contract Code (PCC) Sections 22150 through 22154. Additionally, Paper Products and Printing and Writing Paper procured by the Contractor shall be eligible to be labeled with an unqualified recyclable label, as defined in 16 Code of Federal Regulations (CFR) Section 260.12 (2013). Contractor shall state on all materials prepared with post-consumer recycled content the following: 'Printed on Recycled Paper.' In accordance with 14 CCR Section 18993.3(c), the Contractor shall require all businesses from whom it purchases paper products and printing and writing paper to certify in writing:

- a) The minimum percentage, if not the exact percentage, of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the Contractor. The certification shall be furnished under penalty of perjury in a form and manner determined by the Contractor and approved by the City. The City may waive the certification requirement if the percentage of postconsumer material in the paper products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website; and,
- b) That the paper products and printing and writing paper offered or sold to the Contractor are eligible to be labeled with an unqualified recyclable label as defined in 16 CFR Section 260.12 (2013).

6.5.2 Provision of Mulch

Upon City request, Contractor shall procure and provide on the City's behalf up to two hundred and forty-four (244) cubic yards per calendar year of bulk Mulch derived from

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recovered Organic Waste for use in City parks and facilities. Contractor shall deliver Mulch in Roll-off Boxes or via dump truck within thirty (30) calendar days of request to any accessible location within the City limits. Upon request, Contractor shall provide the City with Mulch lab results and specifications. All Mulch provided by Contractor must meet or exceed State requirements for Mulch quality, including those standards regarding Mulch maturity, reduction of pathogens, elimination of weed seeds, and concentrations of physical contaminants such as glass, plastic, metal, and other non-organic Recyclables. All Mulch provided by Contractor must be suitable for use in landscaping, parks, sports fields, and community gardens, and must be suitable for distribution to the general public.

6.5.3 Renewable Natural Gas

If requested by City, Contractor shall provide the name, location, and contact information of each entity, operation, or Facility from whom the Contractor procured Renewable Natural Gas (RNG). If requested by City, Contractor shall provide the total amount of RNG procured by the Contractor for use in Contractor vehicles in the City of Del Mar, in diesel gallon equivalents (DGE), including copies of any receipts, invoices, or other similar documentation.

6.5.4 Recordkeeping Requirements.

Contractor shall maintain records that demonstrate ongoing compliance with these requirements, including, but not limited to, copies of receipts, invoices, or other proof of purchase that describe the products purchased, by volume and type for all products specified in this section; and copies of certifications or other verifications required by this Agreement. Contractor shall submit these records, upon the City request.

6.6 Billings

6.6.1 Billing by City

Unless and until Single-family Residential billing is transferred to Contractor as described in Section 6.6.3, City shall bill all Residential Cart Customers that receive a utility bill from the City pursuant to the monthly recurring rates shown in Exhibit 1. City shall bill for Cart Collection Service on a bi-monthly basis in arrears on its water, sewer and clean water billing. It shall be the responsibility of the Contractor to bill for any additional Residential services such as additional Bulky Item pickups, Cart overage pickups, Cart exchanges, Cart replacements, and Cart Contamination Fees, Temporary Bin Services, Roll-off Box service, or other services provided to Residential Customers.

The Contractor shall be responsible for processing Service Level change requests from Customers and shall inform the City of any changes to Customer Service Levels at least once every 30 (thirty) days.

6.6.2 Contractor Compensation from City Billed Customers

Unless and until Single-family Residential billing is transferred to Contractor as described in Section 6.6.3, City shall pay Contractor on a monthly basis within thirty (30) calendar days of receipt of payments from Residential Cart Customers. Payment will be based on actual funds received from the City's billing for the previous calendar month, and not the amount billed. City shall deduct the amount of Franchise Fees prior to remitting the net amount of Contractor's compensation. With each monthly payment, City shall provide support for the payment amount including a current Customer and Service Level list of Residential Cart Customers, and any other documentation reasonably required by Contractor to confirm the accuracy of the amounts billed. The Contractor shall review this supporting information and must dispute or accept the accuracy of this list within sixty (60) calendar days of receipt.

6.6.3 Transition to Contractor-billing of Single-family Customers

City shall have the right to require Contractor to take over and perform the billing of Single-family Residential Customers at no additional cost to City or to Customers. If the City notifies Contractor of its intent for Contractor take over Single-family billing, Contractor shall meet and confer with City within sixty (60) days of such notification and prepare a billing transition plan. The billing transition plan shall outline all aspects of the billing transition including, but not limited to, public education, accounts receivable balances, payment processing, and schedule. Upon approval of City, Contractor shall implement the billing transition plan according to the schedule in the billing transition plan. The City and Contractor may incorporate the billing transition plan into the transition to new services.

6.6.4 Contractor Billing – General

Upon transition of Single-family Residential billing to Contractor, the Contractor shall be responsible for the billing and Collection of payments for all Collection Services. The Contractor shall charge Customers for all Collection Services pursuant to the rate schedules in Exhibit 1, or as those rates are adjusted under the Terms of this Agreement.

Contractor's invoices must plainly and accurately describe the service provided. Contractor's invoices must itemize the size and number of Containers, the frequency of service and the period in which the service is provided. If a Customer starts or stops service during the billing period, Contractor shall pro-rate Customer's invoice based on the portion of the billing period the Customer receives service.

City shall have the right to approve the format and content of Contractor's invoices. City shall have the right to provide educational and other material to Contractor to include with the invoices sent to Customers. Contractor shall not charge the City to include additional educational or other materials with the invoices.

6.6.5 Contractor Billing - Single-family

Upon transition of Single-family Residential billing to Contractor, the Contractor shall invoice Single-family Residential Customers with Cart Collection service every three (3) months in advance on or about the first day of the three-month period during which service will be provided. Contractor shall be solely responsible for collecting payment from Single-family Residential Customers. Contractor shall invoice any Single-family Residential Customers with Bin or Roll-off Collection service according to the billing method for Commercial Customers or Multi-family Residential Customers with Bins, or according to the method for billing Roll-off Customers.

6.6.6 Contractor Billing – Commercial and Multi-family

Contractor shall bill all Commercial Customers and Multi-family Residential Customers and be solely responsible for collecting payment from Commercial Customers and Multi-family Residential Customers. Billing shall be performed on the basis of services rendered and this Agreement and shall create no obligation on the part of any Person on the sole basis of the ownership of property. Individual contracts between Contractor and a Customer for services provided under this Agreement shall be prohibited unless otherwise approved in writing by the City on a case-by-case basis.

6.6.7 Frequency of Billing – Commercial and Multi-family

Contractor shall bill all Commercial Customers and Multi-family Residential Customers for regular recurring services monthly in arrears of when services are provided. Contractor shall bill Commercial Customers and Multi-family Residential Customers for any on-call or non-recurring services no more frequently than monthly and shall only bill for services provided during the previous billing period.

6.6.8 Frequency of Billing – Roll-off

Contractor may bill all Roll-off Customers up to twice per month in arrears for on-call and non-recurring services provided in the previous billing period.

6.6.9 Bill Format

Contractor shall provide Customers with an option to receive invoices via paper invoices, or electronically using paperless invoices. For either method, Contractor shall include in invoices information about the type of service, the number and size of Containers, and

the frequency of service. For services provided, all applicable amounts shown in Exhibit 1 shall be itemized on the invoice. Invoices for on-call services (including Roll-off) shall be itemized to include the service date, work order number, service description, and amount charged. Contractor shall not itemize any amount for Franchise Fees or any other fees paid to local governments. The format of Customer invoices shall be subject to the City's approval.

6.6.10 Suspension of Service Due to Non-Payment

For Commercial Customers and Multi-family Residential Customers billed by Contractor, once a payment is thirty (30) days past due, Contractor shall send Customers a notice that service may be suspended and the City's code enforcement department may be notified if payment is not made. After receiving this notice, if payment becomes sixty (60) days past due, Contractor shall send another past due notice and make a phone call to Customer and inform Customer that service will be suspended and the City's Code enforcement department notified if payment is not received in thirty (30) days. Service may only be suspended after these minimum time periods, notice, and phone call are made. Contractor shall have the right to remove Bins for non-payment after ninety (90) calendar days. Contractor may charge Bin redelivery fee in Exhibit 1 to return Bins once Customer has paid and Customer's account has been brought current. City will make its best efforts to conduct code enforcement activities but is not obligated to do so. City will not be responsible for, or assist with, the Collection of Contractor billed delinquent accounts.

6.6.11 Vacation or Construction Hold on Billing

A Single-family Residential Customers taking an extended vacation, or Customers who's Single-family Residential Premises will be undergoing construction, such that the Customer will not be placing their Carts out for Collection, may request from Contractor a vacation or construction hold on billing. Contractor shall grant vacation or construction billing holds in one-month increments for a period not to exceed six (6) months. After six (6) months, if needed, Customer must renew the vacation hold for another period not to exceed six (6) months. Single-family Residential Customers with Bin Collection Service shall not be eligible for vacation or construction holds on billing. Customers with construction holds on Cart billing shall be required by City to use Contractor services for Construction and Demolition Collection services pursuant to this Agreement.

6.6.12 Billing of Container Contamination Fees

Any Cart Contamination Fees charged to a Residential Customer shall be direct-billed by Contractor to Customer. Any Bin Contamination Fees charged to a Commercial or Multi-

family Residential Customer shall be included and itemized on the Customer's invoice for the billing period in which the Contractor notified the Customer of the assessment of the Contamination Fee.

6.7 Customer Waiver Program Coordination

The City has the authority to grant to individual Customers waivers from the requirement to subscribe to Recyclable Materials and Organic Waste Collection service. These waivers may be granted for de minimis generation, lack of space, or every other week service. The City cannot delegate to a private entity (e.g., Contractor) the authority to grant these waivers. However, Contractor can advise the City in determining which Customers shall qualify for a waiver.

6.7.1 Contractor Waiver Request on Behalf of Customer

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

6.7.2 Waiver Reverification

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

6.7.3 Contractor Recordkeeping of Customer Granted Waivers

Upon Contractor request, no more than four (4) times per year, the City shall provide Contractor an updated listing of waivers approved by the City, including the Customers'

names, mailing address, service address, and type of waiver. Contractor shall maintain waiver-related records and report on waiver verifications.

6.8 Inspections and Enforcement

6.8.1 Annual Compliance Reviews

- a) **General** Contractor shall perform compliance reviews described in this Section commencing July 1, 2022, and at least annually thereafter, unless otherwise noted.
- b) **Commercial Customer Compliance Reviews** The Contractor shall complete a compliance review of all Multi-family Residential and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste, to determine their compliance with: (i) Customer requirements under the City's Solid Waste Collection program; and, (ii) if applicable for the Customer, Self-hauling requirements pursuant to 14 CCR Section 18988.3 and the Municipal Code, including whether a Multi-family Residential or Commercial Customers is complying through Back-hauling Source Separated Recycled and Organics Waste Source Separated Organic Materials. The compliance review may mean a 'desk' review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however, the City may require that the Contractor perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information.

6.8.2 Compliance Review Process

- a) **Number of Reviews.** The Contractor shall conduct enough compliance reviews, Hauler Route Reviews, and inspections of Customers, to adequately determine the Customers' overall compliance with SB 1383 Regulations, AB 1826, AB 341, and the Municipal Code. The number of reviews shall be no less than one (1) per year. The City reserves the right to require additional inspections, if the City determines in its sole discretion that the number of inspections conducted by the Contractor is insufficient. The City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.
- b) **Non-Compliant Entities.** From July 1, 2022, through June 30, 2023, Contractor shall provide educational materials in response to non-compliant Customers. Contractor shall provide these educational materials to the non-compliant Customers within thirty (30) days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or a Route Review. Contractor shall document

the non-compliant Customers and the date and type of education materials provided and shall report such information to the City. Beginning January 1, 2024, the Contractor shall, in addition to providing the education materials described in this subsection, document non-compliant Customers and Customers determined through Contractor's compliance reviews pursuant to Section 6.8 and shall report all Customers and Customers with violations of SB 1383 Regulations to the City. The City shall be responsible for subsequent enforcement action against the Customers.

- c) **Documentation of Inspection Actions.** The Contractor shall generate a written and/or electronic record and maintain documentation for each inspection, hauler Route Review, and compliance review conducted and shall provide copies to the City on request.

6.9 Service Complaints

6.9.1 General

The Contractor agrees to maintain a computer database log of all oral and written Complaints received by Contractor from Customers or other Persons. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer Complaints. Contractor shall maintain a log of all Complaints received including, but not limited to, the date and time of the Complaint, the nature of the Complaint, the person making the Complaint and their contact information, and how and when the Complaint was resolved. Contractor agrees to maintain for a period of at least five (5) years all Complaints registered by Customers and Persons.

6.9.2 SB 1383 Regulatory Non-Compliance Complaints.

For Complaints received in which the Person alleges that a Customer is in violation of SB 1383 Regulations, Contractor shall document the information. The Contractor shall provide this information in a brief Complaint report to the City for each SB 1383 Regulatory non-compliance Complaint within ten (10) working/calendar days of receipt of such Complaint, and a monthly summary report of SB 1383 Regulatory non-compliance Complaints.

6.9.3 Investigation of SB 1383 Regulatory Non-Compliance Complaints.

Contractor shall commence an investigation, within thirty (30) days of receiving a Complaint in the following circumstances: (i) upon Contractor receipt of a Complaint that an Customer may not be compliant with SB 1383 Regulations and if City determines that

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the allegations against the Customer, if true, would constitute a violation of SB 1383 Regulations; and, (ii) upon City request to investigate a Complaint received by the City, in which the City determines that the allegations against the Customer, if true, would constitute a violation of SB 1383 Regulations. Contractor is required to investigate Complaints against Customers and Customers, but not against Food Recovery Organizations, or Food Recovery Services.

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

- a) Reviewing the Service Level of the Customer that may not be compliant with SB 1383 Regulations; and
- b) Reviewing the waiver list to determine if the Customer has a valid de minimis, physical space constraint, or Collection frequency waiver; and
- c) Reviewing the Self-haul registration list to determine if the Customer has registered and reviewing the Customer's reported Self-haul information; and
- d) Inspecting Premises of the Customer identified by the complainant, if warranted; and/or
- e) Contacting the Customer to gather more information, if warranted.

6.9.4 Reporting

Within ten (10) working/calendar days of completing an investigation of an SB 1383 Regulatory non-compliance Complaint, Contractor shall submit an investigation Complaint report that documents the investigation performed and recommends to the City on whether or not the Customer investigated is in violation of SB 1383 Regulations based on the Contractor's investigation. The City Manager or his or her delegate shall make a final determination of the allegations against the Customer.

6.10 Report of Abandoned Items or Illegal Dumping

The Contractor shall direct its drivers to note the addresses of any private Premises or the location of any public property at which they observe any Abandoned Items or Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Contractor shall deliver the address or description to the City within five (5) Work Days of such observation. Contractor shall cooperate with City in the

investigation and prosecution of any violations of the Del Mar Municipal Code related to illegal dumping.

6.11 Solid Waste Composition Studies

Contractor acknowledges that City may need to perform Solid Waste generation and Disposal characterization studies occasionally to comply with the requirements of AB 939 and other applicable laws and regulations. Upon City request, but not more than once every two (2) years, Contractor, at its sole expense, shall conduct such studies to satisfy the requirements of AB 939 and other applicable laws and regulations.

6.12 Emergency Services

6.12.1 Preparedness

Upon request, Contractor shall provide its management expertise and contribute to City's emergency preparedness planning efforts at no additional charge to City.

6.12.2 Assistance with Disaster Recovery

In the event of any natural or man-caused emergency or Disaster, Contractor shall Collect and dispose of Solid Waste resulting from the emergency or Disaster. Contractor shall help City and Customers recover from the Disaster in a prompt and cost-effective manner. Contractor shall provide the Collection equipment and personnel normally assigned to the City for the number of Work Days that that equipment and personnel typically work in the City.

6.12.3 Additional Costs; Reimbursement for Disaster Recovery Services

If the emergency or Disaster requires the Contractor to rent additional equipment, employ additional personnel, or work existing personnel overtime to Collect additional Solid Waste resulting from the event, Contractor shall receive additional compensation, above its normal compensation in this Agreement, to reimburse Contractor for its additional costs. The Contractor's additional costs shall be based on the incremental amount of labor and equipment used by Contractor to Collect Solid Waste resulting from the event. For its additional labor and equipment, City shall reimburse Contractor based on the emergency service rates shown on the following page in Table 1. The Rates in Table 1 shall be adjusted each year on July 1st based on the same rate adjustment percent increase calculated pursuant to Section 10.4. Prior to incurring any such additional costs, Contractor shall obtain City's written authorization to incur such costs.

Table 1 – Emergency Service Rates

Labor Position or Equipment Type	Hourly Rate
Helper/Laborer	\$65.00
Driver	\$65.00
Supervisor	\$85.00
Automated Side-loader	\$155.00
Front-loader	\$155.00
Roll-off	\$125.00

6.12.4 City-wide Effort to Manage Disaster Debris

If the City decides to oversee a coordinated effort to manage the Collection and Recycling of Disaster-related Solid Waste on a City-wide basis, Contractor shall provide City with its management expertise, including a full-time recycling coordinator with the background, knowledge, and capability to assist in such an effort. Contractor shall provide this individual at no additional cost to City or its Customers.

6.12.5 Record Keeping and Reimbursement

Contractor shall assist the City and Customers in obtaining any applicable Disaster reimbursement and/or insurance claims by providing accurate records regarding the cost of services it provided during the aftermath of the Disaster, and the amount of Solid Waste resulting from the Disaster.

7 Standard of Performance

7.1 General

Contractor shall always comply with applicable law and regulations as the same exist at the time and provide services in a manner that is safe to the public and the Contractor's employees.

7.2 Operating Hours and Schedule

To preserve peace and quiet, no Refuse, Recyclables or Organic Waste shall be collected between the hours of 7:00 A.M. and 6:00 P.M. Site and route-specific exemptions may be made to this limitation by the City Manager, or the City Manager's designee. The Contractor shall adjust the early morning start point of Collection routes to address and minimize service Complaints when warranted and as practicable. If the regularly scheduled Collection day falls on a Holiday, alternate Collection shall be performed on the following Work Day, with Collection delayed for one Work Day for the remainder of the calendar week. The contractor shall give advance notice to all customers affected by delay in their regular service due to a Holiday reschedule. One exception shall be that Customers with seven (7) day per week service will continue to be serviced on all Holidays. All other Collection days falling on a legal Holiday (other than those defined in Section 1.63) shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a Holiday.

For example, a Wednesday Holiday would delay Wednesday, Thursday, and Friday Collection each to the following Work Day. Friday Residential Collection would be permitted on Saturday. Saturday service would only be provided to seven (7) days per week Customers. Sunday service would be uninterrupted as Sunday service is typically provided to seven (7) days per week Customers.

The Contractor shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials collected under this Agreement with the City once annually upon thirty (30) calendar days written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of Complaints. If the plan is determined to be inadequate by the City, the Contractor shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

7.3 Holidays

Contractor shall not Collect Solid Waste on the following Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. In

any week in which one of these Holidays falls on a weekday, Collection services for the Holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week. Friday Collection services shall be performed on Saturday.

7.4 Complaints for Missed Collections

In the case of a Complaint for a missed Collection received on a Collection day, Contractor shall make the Collection not later than 5:00 P.M. if it has been notified by noon, or on the first Collection day after the Complaint is received, if the Complaint was received after noon.

7.5 Missed Pick-ups

When notified of a missed pick-up, the Contractor shall Collect the Refuse, Recyclable Materials, and Organics Waste the same Work Day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following Work Day, unless the Contractor can provide documentation that Container(s) was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

7.6 Collection Standards

Contractor shall provide commercial Collection service with as little disturbance as possible and shall leave any Cart in an upright position and leave Cans, Carts, and Bins at the same point it was Collected without obstructing alleys, roadways, driveways, sidewalks, or mailboxes.

7.7 Collection Vehicle Requirements

7.7.1 General

Contractor shall provide vehicles that are sufficient in number and capacity to efficiently perform the work required by this Agreement. Contractor shall always own and maintain reserve Collection equipment which can be put into service within one (1) hour of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by Contractor to perform its regular Collection services.

The City has several narrow, windy roads and alleys that can be difficult to navigate with a standard Collection route vehicle. Contractor shall provide vehicles and equipment that can safely navigate all City roads, streets, and alleys, both public and private.

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Contractor shall equip vehicles to prevent Solid Waste from being blown or otherwise escape from the vehicle. Contractor shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes its vehicles.

No vehicles shall be utilized if it is leaking fluids. Contractor shall clean up any leaks or spills from its vehicles. Contractor shall equip all Collection vehicles with absorbent for such cleanups. No fluids shall be washed into storm drains at any time.

7.7.2 Appearance

Contractor shall paint each vehicle periodically (including performing all necessary body work), as frequently as necessary to maintain a positive public image. Contractor shall mark the rear, and both sides of each vehicle with the Contractor's name, telephone number, and a vehicle number in letters not less than six (6) inches in height. Contractor shall maintain each vehicle in a clean and sanitary condition both inside and out.

7.7.3 Maintenance

Contractor shall perform all scheduled maintenance functions upon Collection vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall repair, or arrange for the repair of, all its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall keep accurate records of all Collection vehicles maintenance and repair, recorded according to date and mileage, including signed verifications that repairs and maintenance has been properly performed, and shall make such records available to City upon request.

7.7.4 Emissions

Contractor's Collection vehicles shall comply with all rules and regulations of the San Diego Air Pollution Control District, the Air Resource Board, and any other air-quality regulatory body that may be in authority during the Term of this Agreement.

7.7.5 Noise

Contractor's vehicles using compaction mechanisms during the stationary compaction process shall not exceed a noise level of seventy-five (75) decibels (dB) twenty-five (25) feet from the Collection vehicle measured at an elevation of five (5) feet above ground level. Contractor shall submit to City, upon City's request, a certificate of vehicle noise level testing, by an independent testing entity, for any Collection vehicle which City or Contractor has received more than one Complaint regarding excessive noise in a twelve-month period.

7.7.6 Safety

Contractor shall equip each vehicle with appropriate safety equipment, including any new safety related technologies that become standard in the waste industry during the Term of this Agreement. Collection vehicles shall be well marked and highly visible. At a minimum, Collection vehicles shall have a back-up warning alarm, and a video back-up system, or its equivalent.

7.7.7 Vehicles Used for Bulky Items

Vehicles used for Collection of Bulky Items shall not use Compactor mechanisms or mechanical handling equipment that may damage reusable goods or release Freon or other gases from pressurized appliances. Contractor may use vehicles with mechanical packing mechanisms if used for the purpose of collecting Bulky Items that are not deemed Recyclable or reusable or do not contain Freon or other gases.

7.7.8 Inspection of Vehicles

Contractor shall inspect each Collection vehicle daily to ensure that all equipment is operating properly. Collection vehicles that are not operating properly shall be removed from service until repaired and operating properly.

Contractor shall regularly inspect each Collection vehicle to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Contractor shall provide to the City copies of its Biannual Inspection of Terminal ('BIT') inspection reports to City within thirty (30) days of its receipt of such reports. Contractor shall make all records related to its vehicles available to City upon request by the City Manager.

City may cause or require any Collection vehicle used in performance of this Agreement to be inspected and tested at any time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of this Agreement.

Upon request, Contractor shall furnish City a written inventory of all equipment, including Collection vehicles, used in providing service pursuant to this Agreement. This inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

Any Collection vehicles that the City Manager deems inappropriate for use in City for any reason (including its appearance) shall be removed from service in City, until such time as the City Manager determines the issue regarding said Collection vehicle is corrected.

7.7.9 Litter Abatement

- a) **Minimization and Reporting of Spills.** The Contractor shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or Transportation process. If any Refuse, Recyclables, Organic Waste, or fluids leak or are spilled during Collection, the Contractor shall promptly clean up all such materials. Each Collection vehicle shall always carry a broom and shovel for this purpose.

Contractor shall notify City within thirty (30) minutes of spill of any material with the potential to reach the storm drains, including all liquids. Upon direction by City, Contractor shall notify the San Diego Regional Water Quality Control Board of any such spills with the potential to reach storm drains.

The Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by the City.

- b) **Clean Up.** During the Collection or Transportation process, the Contractor shall clean up litter in the immediate vicinity of any Refuse, Recyclables or Organic Waste storage or Collection area whether the Contractor has caused the litter. The Contractor shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Contractor has already attempted to do so without success.

7.8 Containers

7.8.1 Carts

Contractor shall provide Cart Collection Customers with Carts during the Term of this Agreement. Carts and Cart lids must meet color, size, uniformity, and quality requirements of the City. Contractor shall provide and maintain Carts and Cart lids with consistent colors and in good condition. Contractor shall maintain all Carts in good repair. If a Cart is broken or damaged, Contractor shall repair or replace such Carts by the next regularly scheduled Collection day provided that the Customer notifies the Contractor two (2) Work Days in advance of the next Collection day.

Carts shall be marked or labeled to include the Contractor's name and phone number, and information about what materials should and should not be placed in each type of Cart. Cart markings and labels shall be subject to City approval.

7.8.2 Cart Exchange

Upon notification to the Contractor by the City or a Customer that a change in the size or number of Carts is required, the Contractor shall deliver such Carts to such Customer by the next regularly scheduled Collection day provided that the Customer notifies the Contractor two (2) Work Days in advance of the next Collection day. Customers may request one Cart size exchange at no charge each year. One Cart exchange shall consist of all Cart adjustments requested at one time, and multiple Carts and Cart types (Refuse, Recycling, Yard Trimmings) may be exchanged. For exchanges that exceed one (1) exchange per year, Contractor may charge Customers the Cart exchange fee shown in Exhibit 1.

7.8.3 Cart Replacement

Any Cart damaged by the Contractor shall be replaced by the Contractor, at the Contractor's expense. If a Cart is lost, stolen or damaged beyond repair through no fault of the Contractor, the Contractor shall deliver replacement Cart to Customer by the next regularly scheduled Collection day provided that the Customer notifies the Contractor two (2) Work Days in advance of the next Collection day. Each Cart Customer shall be entitled to the replacement of one (1) lost, destroyed, or stolen Refuse Cart, one (1) lost, destroyed, or stolen recycling Cart, and one (1) lost, destroyed, or stolen organics Cart during the initial Term of this Agreement at no cost. For replacements of more than one (1) lost, destroyed, or stolen Cart of each type during the initial Term, Contractor may charge Customer the Cart replacement fee shown in Exhibit 1.

7.8.4 Additional Kitchen Caddies

In addition to the one (1) upon Customer request, Contractor shall sell to Customer additional and replacement kitchen caddies (or replace to Customers at Contractor's cost per unit) and deliver any purchased kitchen caddies to Customer at no additional charge.

7.8.5 Ownership of Carts

Contractor shall own all Carts provided under this Agreement. In the event this Agreement is not extended or renewed, Contractor shall remove all Carts in service from the City within thirty (30) days after termination of this Agreement.

7.8.6 Bins

Contractor shall provide Bin Collection Customers with Bins required during the Term of this Agreement. The size and quantity of Bins shall be determined by mutual agreement between the Customer and Contractor and shall be subject to City approval. The Contractor shall maintain Bins in a clean condition and free from Putrescible residue. Bins

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shall be watertight, and constructed of heavy metal, or other durable material. Bins shall be well painted and maintained in good repair.

Contractor shall mark each Bin with the name of Contractor and phone number in letters not less than three (3) inches high. Bins shall be labeled to include instructions on what materials should and should not be placed in the Bin. All Bins shall be painted a uniform color to comply with the Container color requirements of 14 CCR Section 18984.1 and Section 18984.7.

7.8.7 Bin Replacement

Upon Customer or City request, or if required to maintain the Bins in a clean condition, Contractor shall replace all Bins once per year at no additional charge. Contractor shall provide replacement Bins more frequently if directed by City to prevent a nuisance caused by odors or vector harborage. Contractor shall remove graffiti from any Container within two (2) Work Days of request by City or Customer.

7.8.8 Locking Bins

Contractor shall provide locking Bins upon Customer request. Contractor shall be entitled to the monthly charge for locking Bins shown in the approved rate schedule.

7.8.9 Roll-off Boxes

Contractor shall provide Roll-off Boxes to Customers sufficient to meet Customer demand throughout the Term of this Agreement. Contractor shall keep all Roll-off Boxes clean, well-painted free from graffiti, and in good repair. Contractor shall display the name and phone number of Contractor in letters not less than three (3) inches high on Roll-off Boxes. Colors and labelling shall be approved in advance by the City.

7.8.10 Roll-off Compactors

Maintenance of Customer-owned Roll-off Compactors shall be the responsibility of the Customer, and not the Contractor. Contractor may sell, or lease Roll-off Compactors to Customers. Any such sale or lease shall be outside the scope of this Agreement. Any proceeds to Contractor from the sale or lease of Roll-off Compactors are not included in Gross Receipts.

7.9 Personnel

The Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical, and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and

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must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

The Contractor also agrees to establish and vigorously enforce an educational program that will train the Contractor's employees in the identification of Hazardous Waste. The Contractor's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Waste at the Processing Facility or Disposal Site.

Contractor shall provide suitable operational, health, and safety training for all its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

7.9.1 Conduct

Contractor's employees shall conduct themselves in a competent, thorough, and courteous manner. Upon direction by the City, Contractor shall transfer out of the City any employee who materially violates any provision in this Agreement, or who is negligent, careless, or discourteous in the performance of their duties. Contractor's field operations personnel shall wear a clean uniform with the employee and Contractor's name. Contractor's employees, who normally meet the public, shall bear a Contractor photo identification card. Contractor's employees shall not in any way represent themselves as employees of City.

7.9.2 Fees and Gratuities

Contractor shall not, nor shall it permit any officer, agent, or employee to, request, solicit, demand, or accept, either directly or indirectly, any fee or gratuity for the performance of services required under this Agreement.

7.9.3 Drug and Alcohol Testing

Contractor shall prescreen all applicants seeking employment that would result in the applicant, if hired, driving Contractor's vehicles within City. The prescreening shall include drug and alcohol testing by a certified independent testing laboratory. Contractor shall reject any applicant for employment within City who tests positively for any prohibited substance. In addition, Contractor shall conduct unannounced random drug and alcohol testing of all employees performing driving duties within City pursuant to the regulations administered by the Federal Motor Carrier Safety Administration (49 CFR, Part 40). The random testing shall be conducted by a certified independent testing laboratory. Any employee who tests positive for prohibited substances or alcohol shall be immediately and permanently removed from any assignment to perform duties under this Agreement.

7.9.4 Service Supervisor

Contractor has designated a supervisor to oversee the Collection service within the service area. At least thirty (30) calendar days prior to replacing the designated supervisor Contractor shall notify City in writing of the name and qualifications of the new service supervisor. Contractor shall ensure that such replacement is an individual with like qualifications and experience. The supervisor shall be available to the City by mobile phone at all times that Contractor is providing Collection Services. In the event the supervisor is unavailable due to illness or vacation, Contractor shall designate an acceptable substitute who shall be available and who has the authority to act in the same capacity as the supervisor, the service supervisor shall provide the City with an emergency phone number where the supervisor can be reached outside of normal business hours.

7.9.5 Service Liaison

Contractor shall designate in writing a field supervisor (i.e., route manager) as 'Service Liaison' who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service-related Complaints and strategize with City on an on-going basis regarding more efficient Collection practices. Service liaison will be available as needed to have daily contact with City staff and will coordinate with the City's Public Works Department to coordinate Collection practices to accommodate City Capital Improvement Projects. City shall have the right to approve the Contractor's choice for a liaison

7.9.6 Non-discrimination

Contractor shall not discriminate against any Person based on such Person's race, sex, color, national origin, religion, marital status, age, disability, or sexual orientation. Contractor shall comply with all applicable local, State, and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

7.9.7 Lockouts

Contractor shall not institute a lockout of any or all of its employees unless Contractor has previously provided an alternate plan of continuing the highest level of services during the entire possible period of such a lockout with ample fully trained substitutes for all such locked-out employees, and City has approved such alternate plan in writing prior to such lockout being instituted by Contractor.

7.10 Hazardous Waste Inspection and Handling

Contractor has the right and obligation to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Household Hazardous Waste or Hazardous Waste. In the event a Customer sets out for Collection any Household

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Hazardous Waste or Hazardous Waste, Contractor shall reject the material, tag the Container with instructions to the Customer for the proper method to discard of Hazardous Waste, and record the event in the Customer's profile in Contractor's billing system.

Contractor shall notify all agencies with the City, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found, or observed in Solid Waste anywhere within the City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Contractor will take a digital photo of the material and Container, and immediately notify the City Manager.

7.11 Refusal to Collect

When Solid Waste is not collected from any Customer, Contractor shall notify its Customer in writing, at the time Collection is not made, using a 'tag' or otherwise, of the reasons why the Collection was not made.

7.12 Load Weight

Contractor shall not load its Collection vehicles such that the vehicle's gross weight (the total weight of the load and the vehicle) exceeds the manufacturer's gross vehicle weight rating (GVWR) or exceeds any other weight limits imposed by State or local laws or regulations.

7.13 Private Streets and Alleys

Contractor shall use its best efforts to prevent damage to alleys and to private streets, alleys, and parking lots over which Collection equipment may be operated and to obtain all required approvals for operation of its Collection vehicles on private streets, parking lots and private alleys.

7.14 Property Damage

If Contractor's employees or subcontractors cause any injury, damage, or loss to public or private property, including but not limited to City streets or curbs, Contractor shall reimburse City or private property for City's 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. Contractor may repair the damage at Contractor's sole cost and expense.

7.15 Route Maps and Changes

Upon request by City, Contractor shall provide the City with maps of Contractor's routes in a format acceptable to the City. Contractor shall submit to the City, in a format acceptable to City, maps of any proposed route changes at least sixty (60) calendar days prior to the proposed date of implementation. Contractor shall not implement any route changes without the prior review of the City. Contractor shall provide Customers with at least thirty (30) calendar days advance notice of any changes in their Collection day.

7.16 Change in Collection Schedule

The Contractor shall notify the City thirty (30) calendar days prior to, and Residential Customers not later than fifteen (15) calendar days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Contractor will not permit any Customer to go more than seven (7) calendar days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably. Any changes in the Collection schedule shall require the prior approval of the City.

7.17 Route Audits

If the City receives repeated Complaints by Customers, or if the City believes that Contractor has not routed the City efficiently, or if Contractor has received repeated Complaints about missed Collections, the City reserves the right to conduct audits of Contractor's routes using a third party at Contractor's expense. Contractor shall cooperate with the City in connection with any such audit, including permitting City employees or agents, designated by the City, to ride in the Collection vehicles to conduct the audits. Contractor shall have no responsibility or liability for the salary, wages, benefits, or worker compensation claims of any City employees or agents designated by the City to conduct such audits.

7.18 Dedicated Routes

Given the small size of the City of Del Mar, the City does not require that routes be dedicated entirely to the City. However, the City does expect accurate and fully transparent tracking in the allocation of tonnage to the City of Del Mar for accurate Disposal reporting purposes. As a small city, for whom even small Disposal reporting errors can have a negative impact, vigilant accuracy in Disposal tracking is imperative.

7.19 Diversion Requirements

Should the City not significantly exceed the City-wide AB 939 Diversion minimum or that of any subsequent State requirements (e.g., AB 1826 or SB 1383 or other new

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laws) for its entire waste stream (excluding Fairgrounds), and if the City determines that the Contractor has not maximized Diversion from the services and programs contemplated under this Agreement, the Contractor agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement.

8 Record Keeping and Reporting

8.1 Record Keeping

Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational, and other records related to its performance as shall be necessary to provide reporting required by this Agreement and applicable laws, and to demonstrate compliance with this Agreement and applicable laws (such as, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations). Contractor shall maintain adequate records, and corresponding documentation, of information required by Sections 8.2 and 8.4 of this section, such that the Contractor is able to produce accurate monthly, quarterly, and annual reports, and is able to provide records to verify such reports. Contractor will make these records available and provide to the City any record or documentation necessary for the City to fulfill obligations under applicable law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations; and, other current or future federal, State, or local statutes and regulations, as amended. Upon request by the City, the Contractor shall provide access to Contractor's requested records in a timely manner, not to exceed ten (10) business days from the time of the City's request to Contractor.

8.1.1 Record Retention and Security

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports. Contractor's records shall be stored in one central location, physical or electronic, that can be readily accessed by the Contractor. The City reserves the right to require the Contractor to maintain the records required in this Agreement through the use of a City-selected web-based software platform, at Contractor's expense. Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination.

Records and data shall be in chronological and organized form and readily and easily interpreted. Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and records shall be protected and backed-up. To the extent that Contractor utilizes its computer systems to comply with record keeping and reporting requirements under this Agreement, Contractor shall, on a monthly basis, save all system-generated reports supporting those record keeping and reporting requirements in a static format in order to provide an audit trail for all data required.

8.1.2 Billing Records

The Contractor shall maintain records of billings and receipts for a period of five (5) years after the date of service for inspection by the City upon request at no cost.

8.1.3 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be of utmost importance. The Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the tonnage reports required in Section 8.4 for twenty-five (25) years after the Term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. The Contractor agrees to notify the City at least ninety (90) days before destroying such records. This provision shall survive the expiration of the Term of this Agreement.

8.1.4 Compilation of Information for State Law Purposes

Contractor shall maintain accurate records for its operation, including, but not limited to, discarded materials quantities Contractor Collected and quantities transported to Contractor or transferred to each approved Facility, listed separately by material type, Customer type, and Facility. Records shall be maintained in such form by methods that facilitate the use of data for the production of reports as needed. Contractor The Contractor will make these records available and provide Contractor to the City any record or documentation necessary for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, AB 1595, and SB 1383 statutes and corresponding regulations; and other current or future local, Federal, or State statutes and regulations, as amended.

8.2 Audit and Performance Reviews

The City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of the Contractor or its Affiliates that the City shall deem, in its sole discretion, necessary to evaluate annual reports, reports to federal, State or local authorities, and compensation applications provided for in this Agreement and the Contractor's performance provided for in this Agreement. Contractor shall cooperate fully

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with any information requests. Failure to make such records readily available shall be deemed a material breach of this Agreement.

City has the option to audit the Contractor's operations, services, and billings provided under this Agreement. Should such an audit disclose that Contractor collectively overbilled its Customers in the City by two percent (2%) or more, or if Contractor underpaid its fees due the City by two percent (2%) or more, or if Contractor had failed or was failing to substantially fulfill its obligations under this Agreement, Contractor shall reimburse the City for the cost of the audit and shall correct any deficiency revealed in the audit.

8.3 Payments and Refunds

Should an audit by the City or Contractor disclose that the Contractor's payments to the City or to Customers were underpaid, or that Customers were overcharged, for any reason, Contractor shall reimburse the City, or Customers, within thirty (30) calendar days following the date of the audit.

8.4 Reporting and Information Transfer

8.4.1 Reports and Data – Purpose and Format

Contractor shall maintain records and data in forms that facilitate preparation of useful reports, and the efficient transfer of needed data. All reports and data shall be adequate to enable the City to:

- a) Meet current and future reporting requirements to CalRecycle, including but not limited to AB 939, AB 341, AB 1826, and SB 1383.
- b) Monitor the individual SB 1383 compliance of the Contractor's Commercial Customers and Multi-family Residential Customers.
- c) Determine and set rates and evaluate the efficiency of operations.
- d) Evaluate progress toward the City's waste Diversion and climate goals.
- e) Evaluate Customer service and Complaints.

The Contractor may propose report formats that are responsive to the City's objectives. The City reserves the right to approve or modify the format of each report. The Contractor will provide a statement with each report that the report is true and correct.

8.4.2 Customer Data Transfer

The Contractor shall submit all reports by electronic means in a format compatible with the City's computers and software. The City reserves the right to require Contractor to periodically transfer Customer data via an Application Program Interface (API) to a City-selected web-based software platform (similar to 'Minerva®' or 'Recyclist'), at Contractor's expense.

8.4.3 Reports – Schedule

Contractor shall submit monthly reports within thirty (30) calendar days after the end of each month. Contractor shall submit annual reports before February 15 following the reporting year. If requested by the City, the Contractor shall submit to the City its Complaint summary, described in Section 6.9, within five (5) days of request.

All reports shall be sent electronically to the City to:

City Manager (or designated representative)
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

8.4.4 Reports - Monthly

Monthly reports shall include, at a minimum, the following information:

- a) The amount in tons of material Collected by the Contractor for the month, sorted by type of material (Refuse, Recycling, Organics, Bulky Item waste, etc.) and type of Customer (Residential, Commercial, Roll-off, etc.).
- b) The number of tons taken during the month to each Facility and where the tons were Processed or disposed.
- c) A summary of Residential Customer information, including:
 - a. The number of Customers subscribed to each Cart size; and
 - b. The number of Bulky Item Collections performed during the month; and
 - c. A summary of the number of missed pickups.
- d) A summary of Commercial and Multi-family Residential Customer information, including for each type of Customer:
 - a. Total number of Commercial and Multi-family Residential Customers; and

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- b. Number of each type of account subject to (i.e., 'covered') under AB 341 and AB 1826; and
 - c. Number of accounts compliant with SB 1383 via participation in Contractor's recycling programs; and
 - d. Number of Customers with waivers by type of waiver (de minimis, physical space, Collection frequency); and
 - e. Number of Customers participating in an Edible Food recovery program; and
 - f. The total number of Containers disposed due to the observation of Prohibited Container Contaminants; and
 - g. Number of Compliance Reviews (pursuant to Section 6.8) conducted during the month with a summary of the results; and
 - h. The number of Customers that received a Notice of Violation.
- e) A Summary of Roll-off Customer information, including:
- a. The number of loads hauled by type of Customer (permanent, C&D), and by material type.
- f) A summary of contamination monitoring activities, including:
- a. Results of Route Reviews (Section 6.2.1) performed during the month; and
 - b. Results of Waste Evaluations (Section 6.2.2) performed during the month; and
 - c. A list of all Customers issued warning notices for contamination; and
 - d. A list of all Customers assessed Contamination Fees, if applicable.
- g) Monthly status of the Contractor's public education and outreach activities.
- h) Narrative summary of any problems encountered (including Scavenging) during the month and actions taken with recommendations for the City, as appropriate.
- i) Any other information requested by the City.

8.4.5 Annual Reports

Contractor shall prepare and submit an annual report that summarizes the information in the monthly reports on an annual basis. In addition to the information in the monthly reports, the annual report shall include, at minimum:

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- a) The Hauler's annual waste Diversion rate calculated as follows: The total amount of Recycled Materials and Organic Waste Collected and diverted from Landfills, divided by the total amount of Solid Waste Collected; and
- b) A recap of key events and accomplishments during the year; and
- c) Copy of Hazardous Waste Diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from Landfilling; and
- d) An inventory of vehicles and summary of the number of routes by type of service; and
- e) A summary of the Contractor's education and outreach accomplishments during the year; and
- f) A summary of information recorded in the Contractor's Complaint log (See Section 6.9); and
- g) A summary of the quantity of recycled-content products and recovered-organic products procured by Contractor pursuant to Sections 6.5 and Section 6.5.1 of this Agreement; and
- h) Contractor's most recent BASIC Score determined by the Federal Motor Carrier Safety Administration; and
- i) Any of Contractor's terminal inspection reports resulting from the California Highway Patrol's Basic Inspection of Terminals (BIT) program; and
- j) A summary of Contractor's Gross Receipts collected from Customers, and all fees paid to the City, during the previous calendar year; and
- k) Any other information requested by the City.

8.4.6 Reports are Subject to Public Records Act

Contractor agrees that any documents provided by the Contractor to the City shall be subject to the California Public Records Act (Government Code Title 1, Division 7, Chapter 3.5 et. seq.) and may be disclosed pursuant to a proper public records request.

8.4.7 Reporting of Adverse Information

Contractor shall provide the City two (2) copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Contractor's performance of services pursuant to this Agreement, submitted by the Contractor to, or received by the Contractor from, the United States or California Environmental

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Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to the City simultaneously with the Contractor filing or submission of such matters with said agencies. The Contractor's routine correspondence to said agencies need not be routinely submitted to the City but shall be made available to the City promptly upon the City's written request.

8.4.8 Failure to Report

The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of the Agreement and shall subject Contractor to all remedies which are available to the City under the Agreement.

The City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of the Contractor or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Contractor's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

9 City Fees

9.1 Franchise Fee

In consideration of the exclusive Franchise granted pursuant to this Agreement, the Contractor shall pay to the City a Franchise Fee equal to ten percent (10%) of the Gross Receipts received by Contractor for all services rendered within the City limits during the Term of this Agreement. Contractor shall pay the Franchise Fee to the City on or before the thirtieth (30th) day of April, July, October, and January throughout the duration of this Agreement based on the Gross Receipts received in the previous calendar quarter. If the Franchise Fee is not paid on or before the thirtieth (30th) calendar day following the end of the quarter, the Contractor shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Contractor shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) calendar day period the Franchise Fee remains unpaid.

9.2 Administrative Fee

The Contractor shall pay to the City an Administrative Fee in a one-time lump sum payment equal to one hundred and fifteen thousand dollars (\$115,000) within seven (7) days of execution of this Agreement to reimburse the City for a portion of its staff time and out-of-pocket costs of awarding this Franchise.

9.3 Program Fee

In addition to the Franchise Fee and Administrative Fee, Contractor shall pay the City each year one hundred and fifty thousand dollars (\$150,000) for SB 1383 related programs in the City. The Contractor shall make payments to the City on or before the thirtieth (30th) day of April, July, October, and January throughout the duration of this Agreement.

9.4 Annual Community Grant Program

The Contractor shall annually pay to the City five thousand dollars (\$5,000), starting July 1, 2022, and on each subsequent July 1st during the Term of the Agreement. The annual grant will be used by the City Council for funding a community grant program. This fund will be dispensed at the discretion of the City Council.

10 Compensation and Rate Adjustments

10.1 General

The Contractor's compensation provided for in this section shall be the full, entire, and complete compensation due to the Contractor pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed. The Contractor will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at the rates shown in Exhibit 1, or as it may be adjusted pursuant to this Agreement.

10.2 Initial Rates

The Contractor Compensation from July 1, 2022, through June 30, 2023 shall not exceed those rates in Exhibit 1. The Contractor acknowledges that such rates are contingent upon the Proposition 218 process.

10.3 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2023, and for all subsequent Rate Years during the Term of this Agreement, Contractor shall be entitled to an annual adjustment to the Contractor's compensation for all rate categories in Exhibit 1. All rate adjustments shall be effective on July 1st. The Contractor shall submit a request for rate adjustment in a form acceptable to City, at least ninety (90) calendar days prior to the start of the new Rate Year based on the method of adjustment described in this Section. Failure to submit a written request at least ninety (90) calendar days prior to the start of the new Rate Year shall result in the Contractor waiving the right to request such an increase for that Rate Year.

10.4 Method of Adjustments

For Rate Year beginning July 1, 2023, Contractor may request an adjustment to Contractor Compensation for all rate categories according to the method described below in this Section.

10.5 Rate Adjustment Percentage

The Rate Adjustment Percentage shall consist of the cost component categories shown in Table 2. Each cost component shall be adjusted by the change in the corresponding index in Table 2 and the rate adjustment steps in this Section.

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Table 2 – Cost Components of Rate Adjustment Percentage

Cost Component	Initial Weightings as of July 1, 2023	Index
Labor	40.0%	Producer Price Index for Waste Collection PCU562111562111
Fuel	5.0%	Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	20.0%	Producer Price Index, PCU336211336211, Heavy duty truck manufacturing
All Other	35.0%	Consumer Price Index, Series ID: CUURS49ASA0, All items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted (U.S. Department of Labor, Bureau of Labor Statistics.
Total	100.0%	Total Service Cost

Table 3 – Weight of Service and Landfill Components

Cost Component	Initial Weightings as of July 1, 2023	Index
Service	65.0%	Weighted Change in Service Components
Landfill	35.0%	Change in Landfill Tipping Fee
Total	100.0%	Total Cost

10.6 Residential and Commercial Rate Adjustment Steps

Residential and Commercial rates will be adjusted using the methodology described below and shown in the example in Exhibit 2.

Step One - Calculate the percentage increase or decrease in each index listed above in Table 2. The increase or decrease in the published indices for fuel, equipment insurance and all other (CPI) will be for the change in the average annual published index between

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the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year.

Step Two - The first set of rate adjustment Service Cost Components as a percentage of total service costs are provided above in Table 2. These are to be used for the rate adjustment effective July 1, 2023. For rate adjustments after July 2023, the components will be recalculated in Step Five of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Five during the previous rate adjustment. Multiply the percentage changes for each rate adjustment cost component by that component's weighting and add these resulting percentages together to derive the weighted change in the Service Component.

Step Three - The weighted Service Cost Component and the Disposal Tipping Fee Component as a percentage of total cost are provided above in Table 3. These are to be used for the rate adjustment effective July 1, 2023. Subsequent Service Cost Components and Disposal components are calculated in Step Five of the rate adjustment. For Step Three of each subsequent rate adjustment, use the Service Cost Component and Disposal components recalculated in Step Five during the previous rate adjustment. Multiply the percentage change for the Service Cost Component and the Disposal Tipping Fee Component by that component's weight and add these resulting percentages together to derive the Rate Adjustment Percent.

Step Four - Multiply the Rate Adjustment Percentage from Step Three by the existing Customer rates to calculate the increase or decrease to the maximum rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted rates.

Step Five - Recalculate Service Cost Component weightings, and Service Component and Disposal component weightings for the following year based upon these changes.

10.7 Roll-off Rate Adjustment Steps

The approved Roll-off Box rates consist of the service component, which is the pull rate, and the Disposal tipping fee, which is the actual cost per ton multiplied by the actual tons disposed of or Processed. The Disposal component is separately calculated for each pull and itemized on each invoice. As a result, only the service component or 'pull rate' needs to be adjusted. Roll-off rates will be adjusted using the methodology described below and shown in the example in Exhibit 3.

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Step One – Calculate the percentage increase or decrease in each index listed above in Table 2. The increase or decrease in the published indices for fuel, equipment and all other (CPI) will be for the change in the average annual published index between the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year.

Step Two - The first set of rate adjustment service cost components as a percentage of total service costs are provided above in Table 2. These are to be used for the rate adjustment effective July 1, 2023, with subsequent components calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Four during the previous rate adjustment. Multiply the percentage changes for each rate adjustment cost component by that component's weighting and add these resulting percentages together to derive the weighted change in the Service Cost Component. For the Roll-off rate calculation, the percent change in the Service Cost Component is the same as the Rate Adjustment Percent.

Step Three - Multiply the Total Rate Adjustment Percentage from Step Two by the existing Customer rates to calculate the increase or decrease to the maximum load rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted load rates.

Step Four - Recalculate Service Cost Component weightings, and Service Component and Disposal Component weightings for the following year based upon these changes.

10.8 Extraordinary Adjustments

The Contractor may request an adjustment to the Contractor Compensation at reasonable times other than that required in Section 10.3 to recover increased costs arising from extraordinary changes in the cost of providing service under this Agreement. Such changes may include, but are not limited to, changes in service required by the City, revisions to the Del Mar Municipal Code that affect the performance of services, the City's designation of a Solid Waste Facility under Section 6.1, increases in cost to deliver material (e.g., tipping fees) collected under this Agreement to facilities not owned or operated by the Contractor and which the Contractor is required by City or otherwise under this Agreement to use, or additional costs imposed by or arising from changes in law or actions by Federal, State or local regulatory agencies, including additional Diversion requirements. The Contractor is expected to comply with the San Diego Air Pollution Control District (SDAPCD) Rules and the Air Resource Board's existing emission standards for Refuse removal vehicles with no additional compensation.

For each request for an extraordinary adjustment to the Contractor Compensation, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by the Contractor in preparing the estimate. City shall review the Contractor's request and in City's sole judgment and absolute discretion make the final determination as to whether an adjustment to the compensation will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. The Disposal component of the rate is considered to be a pass-through cost, and annual adjustments to the landfill Disposal component of the rate as governed by the City's RSWA agreement are permitted. The Contractor acknowledges that any rate adjustment approved by the City is contingent upon the Proposition 218 process.

10.8.1 Extraordinary Rate Request – Prop 218 Costs

The Contractor acknowledges that any extraordinary rate adjustment outside of the rate increase mechanism subject to the City's Proposition 218 notification process will cause the City to incur material costs in conducting an additional Proposition 218 process and making any additional changes to the City billing system. The Contractor agrees to reimburse City of actual direct and indirect City costs incurred in implementing an Extraordinary Rate Request, including the corresponding Proposition 218 process extraordinary rate request.

10.9 Proposition 218 and Majority Protest

Contractor acknowledges that any rate adjustment approved by the City (including, but not limited to, the scheduled rates set forth in Section 10.3 above) is subject to and must comply with the requirements of Proposition 218. Contractor further acknowledges any future adjustments beyond a scheduled rate adjustment or beyond thresholds approved in a Proposition 218 process are contingent upon a subsequent Proposition 218 process. In the event a majority protest pursuant to Proposition 218 prevents the approval of a rate adjustment (either an extraordinary rate adjustment or a scheduled periodic rate adjustment) or the approval of initial rates set forth in Section 10.2 above, the parties agree to meet and confer and negotiate in good faith to determine an equitable path forward to a resolution. Meet and confer topics following a majority protest may include, but are not limited to, revised Customer rates or timing of Customer rate adjustments; adjustments of the franchise fees set forth in Section 9.1; adjustment of the program fees set forth in Section 9.3; and modification of the services required under this Agreement, which would result in (a) rates equal to the rates in effect prior to the rejected proposed rates, and (b) Contractor's profit margin under the Agreement being equal to the profit margin projected at the time of this Agreement is executed.

11 Indemnity, Insurance, Performance Bond

11.1 Indemnification of City

The Contractor shall defend, with counsel acceptable to the City, indemnify and hold harmless, to the fullest extent allowed by law, City, its officers, officials, employees, volunteers agents and assignees (indemnitees), 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:

- a) the City's grant of this Franchise to Contractor; and
- b) the operation of Contractor, its agents, employees, Contractors, and/or subcontractors, in exercising the privileges granted to it by this Agreement; and
- c) the failure of Contractor, its agents, employees, Contractors, and/or subcontractors to comply with the provisions and requirements of this Agreement, applicable laws, ordinances, and regulations, and/or applicable permits and licenses; and
- d) the acts of Contractor, its agents, employees, Contractors, and/or subcontractors in performing services under this Agreement 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 indemnitees' active or passive negligence.

Contractor's indemnification obligations shall not be limited by the insurance provisions of this Agreement. Further, the 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. The Contractor must respond within thirty (30) days to the tender of a claim for defense and indemnity by the City unless this time has been extended by the City. If the 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 the money due to Contractor by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until final disposition has been made on the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

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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. The indemnity provisions of this section shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

11.2 Hazardous Substance Indemnification

Without limiting the generality of Contractor's indemnity obligations pursuant to foregoing Section 11.1, the Contractor shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City, its officers, officials, employees, agents, assigns and any successor or successors to the 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 contactors arising from or attributable to acts or omissions including but not limited to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or Hazardous Wastes at any place where the Contractor Transports, Transfers, Processes, stores, or disposes of Garbage pursuant to this Agreement. 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 the City from liability under CERCLA, RCRA, other statutes or common law for any and all matters addressed in this section

11.3 Compliance Indemnification

Without limiting the generality of Contractor's indemnity obligations pursuant to foregoing Section 11.1, the Contractor's duty to defend and indemnify herein includes payments all fines and/or penalties imposed by CalRecycle, subject to the restrictions set forth in Public Resource Code Section 40059.1., if the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 and corresponding regulations are not met by the Contractor with respect to the Contractors obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays in providing information that prevents Contractor or City from submitting reports required by AB 939, AB 341, AB 1826, and/or SB 1383 and

corresponding regulations in a timely manner. This provision of this Section shall survive the termination or expiration of this Agreement.

11.4 Sole Negligence or Willful Misconduct of City

Notwithstanding Sections 11.1, 11.2 and 11.3, the Contractor's obligation to indemnify, hold harmless and defend City, its officers and employees shall not extend to any loss, liability, penalty, pain, damage, action or suit arising or resulting solely from acts or omissions constituting willful misconduct or sole negligence on the part of the City its officers or employees.

11.5 Indemnification by Subcontractors

Contractor shall require all subcontractors to enter into an agreement containing the indemnification provisions set forth Sections 11.1 through 11.3 in their entirety in which the subcontractor fully indemnifies the City in accordance with this Agreement.

11.6 Separate Counsel

City may elect to have separate legal counsel from the Contractor at any time at its sole discretion, and in such case, the Contractor shall pay one-half (1/2) of all fees and costs and charges for such separate legal counsel.

11.7 Proposition 218 Indemnification

Without limiting the generality of Contractor's indemnity obligations pursuant to foregoing Section 11.1, the Contractor shall defend with counsel acceptable to the City, hold harmless, and indemnify City, its officers, officials, employees, volunteers, agents and assignees (indemnitees) from and against any loss, liability, penalties, forfeiture, claims, damages, demands, actions, proceedings or suits, in law or equity, of every kind and description, arising from the City's setting of maximum service rates for Collection services under this Agreement and/or in connection with the application of Article XIIC and Article XIID of the California Constitution to the imposition, payment, or Collection of service rates and fees for services provided by Contractor under this Agreement, and/or in connection with the imposition or payment of Franchise Fees under this Agreement.

11.8 Insurance

11.8.1 General Requirements

The Contractor shall secure and maintain throughout the Term of this Agreement insurance acceptable to City against claims for injuries to persons or damages to property which may arise from or in connection with the Contractor's performance of work or services under this Agreement. The Contractor's performance of work or services shall

include performance by the Contractor's employees, agents, representatives, and subcontractors.

11.8.2 Coverage and Limits

Insurance coverage shall include the following policies and minimum coverage amounts:

- a) **General Liability** – A broad form comprehensive general liability policy with a minimum combined single limit of ten million dollars (\$10,000,000.00) per occurrence for bodily injury, personal injury, and property damage which may arise from operations, performed pursuant to this Agreement.
- b) **Automobile Liability** – An auto liability policy with a minimum combined single limit of ten million dollars (\$10,000,000.00) per occurrence for bodily injury and property damage (include coverage for Hired and Non-owned vehicles) which may arise from operations, performed pursuant to this Agreement.
- c) **Workers' Compensation and Employers' Liability** – A workers compensation policy with limits as required by the Labor Code of the State of California, and an employer's liability policy with a limit of three million dollars (\$3,000,000.00).
- d) **Employee Blanket Fidelity Bond** – An employee blanket fidelity bond in the amount of one hundred thousand dollars (\$100,000.00) per employee, covering dishonesty, forgery, alteration, theft, disappearance, or destruction (inside or outside).
- e) **Hazardous Waste and Environmental Liability** – A Hazardous Waste and environmental liability policy (or an endorsement to its general liability policy) covering environmental pollution and contamination. Said coverage shall be in the amount of not less than three million dollars (\$3,000,000.00) per occurrence, and ten million dollars (\$10,000,000.00) in the aggregate for on-site, under-site, or off-site bodily injury and property damage and regulatory fines as a result of pollution conditions which may arise from operations, performed pursuant to this Agreement. This policy shall cover 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. This policy shall stipulate this insurance is primary and no other insurance carried by City will be called upon to contribute to the loss suffered by the Contractor under this Agreement and waive subrogation against the City and other additional insureds.

11.8.3 Deductibles and Self-insured Retention

Any deductibles or self-insured retention must be declared to, and approved by, City. City shall not unreasonably withhold approval of any deductible or self-Insured retention amounts where the Contractor can demonstrate a successful history of managing such deductibles or self-Insured retention amounts.

11.8.4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- a) General Liability and Automobile Liability Coverages
 - a. The City of Del Mar, its elective and appointive boards, commissions, officers, employees, Contractors, agents and volunteers are to be named as additional insureds on each of the policies and policy endorsements as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; Premises owned, leased, or used by the Contractor; or vehicles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Del Mar, its elective and appointive boards, commissions, officials, employees, Contractors, agents or volunteers.
 - b. The insurance required by this Agreement shall be with insurer carriers that are rated by Best as A- or better and admitted to write insurance by the State of California. The insurance required by this Agreement is in addition to, and not in lieu or limitation of, the indemnification provisions above in this Agreement.
 - c. This policy shall be considered primary insurance as respects any other valid and collectible insurance the City of Del Mar may possess including any self-insured retention the City of Del Mar may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it.
 - d. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Del Mar, its officials, elective and appointive boards, commissions, employees, agents, or volunteers.
 - e. This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring the Contractor.

- b) Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the City of Del Mar, its officials, elective or appointed officials, commissions, employees, agents, and volunteers for losses arising from any work performed by the named insured for the City.
- c) All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party for whatever reason except after thirty (30) days' prior written notice (ten (10) days in the event of termination for non-payment) by certified mail, return receipt requested, has been given to City of Del Mar. Such notice shall be sent to the City Manager, City Attorney and City Clerk.

11.8.5 Subcontractors Required to Carry Insurance

In the event any services required under this Agreement are provided by a subcontractor, Contractor shall require any such subcontractor to provide insurance coverages in accordance with this insurance coverages required by this Agreement. The Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

11.8.6 Rights of Subrogation

All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against City with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above-described insurance. Contractor shall ensure that any companies issuing insurance to cover the requirements contained in this Agreement agree that they shall have no recourse against City for payment or assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an occurrence, Claim or Suit' as it appears in any policy of insurance in which City is named as an additional insured shall not apply to City.

11.8.7 Modification of Insurance Requirements

The insurance requirements provided in this Agreement may be modified or waived by the City, in writing, upon the request of the Contractor if the City determines such modification or waiver is in the best interest of City considering all relevant factors, including exposure to City.

11.8.8 Evidence of Coverage; Insurance Repository

Contemporaneously with the execution of this Agreement, the Contractor shall file certificates and/or endorsements of insurance evidencing the above-required insurance coverage with the City Clerk. From time to time thereafter, Contractor shall provide

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substitute certificates or endorsements at least thirty (30) days prior to any changes in coverage or limits, or a change in the carrier. In addition, City shall have the right of inspection of all insurance policies required by this Agreement. The Contractor shall establish an insurance policy repository and to maintain copies of insurance policies required pursuant to this Agreement for fifty (50) years after the end of the Term during which Collection services are to be provided pursuant to this Agreement. The Contractor shall notify City's Risk Manager and City Attorney before destroying copies of such policies, and the Contractor shall provide copies or originals of such policies to City. This provision shall survive the expiration of the Term of this Agreement.

11.9 Performance Bond or Letter of Credit

Upon the Effective Date of this Agreement, Contractor shall provide a performance bond or letter of credit bond (collectively 'performance bond') in a form acceptable to City. Performance Bond shall be an amount equal to three hundred thousand dollars (\$300,000.00). City shall decide whether the Contractor shall provide a performance bond or a letter or credit.

11.10 Performance Bond

If selected by City, the performance bond shall be executed by a surety by the Contractor that is acceptable to the City; an admitted surety Contractor licensed to do business in the State of California; has an 'A:V11' or better rating by A. M. Best or Standard and Poors; and is included on the list of surety companies approved by the Treasurer of the United States. The performance bond shall be on terms and in a form acceptable to the City Attorney. The performance bond shall serve as security for the faithful performance by the Contractor of all the provisions and obligations of this Agreement.

11.11 Letter of Credit

Contractor may furnish a letter of credit in lieu of a performance bond subject to City approval. The letter of credit must be issued by an FDIC insured banking institution chartered to business in the State of California, in the City's name, and be callable at the discretion of the City. Nothing in this section shall, in any way, obligate the City to accept a letter of credit in lieu of the performance bond.

11.12 Failure to Perform; Forfeiture of Performance Bond

Upon Contractor's failure to pay the City an amount due, or to perform any services under this Agreement, the performance bond may be assessed by the City, for purposes including, but not limited to:

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- a) Reimbursement of costs borne by the City to correct any violations of this Agreement not corrected by Contractor, after City provides notice in accordance with Section 12;
- b) To provide monetary remedies or to satisfy damages assessed against Contractor due to a material breach of this Agreement; or
- c) To satisfy an order of a court or a mediator.

The Contractor shall deposit a replacement instrument sufficient to restore the performance bond to the original amount within thirty (30) days after notice from the City that any amount has been levied against the performance bond. Contractor shall be relieved of the foregoing requirement to replenish the Performance Bond during the pendency of an appeal from the City's decision to draw on the Performance Bond.

In the event the City draws on the performance bond, all of City's costs of Collection and enforcement of the provisions relating to the performance bond called for by this section, including reasonable attorneys' fees and costs, shall be paid by the Contractor.

12 Default and Remedies; Administrative Remedies; Termination

12.1 Events of Default

All provisions of this Agreement to be performed by the Contractor are considered material. Without limiting the generality of the foregoing, each of the following shall constitute an event of default:

- a) **Fraud or Deceit or Misrepresentation.** If the Contractor engages in, or attempts to practice, any fraud or deceit upon the City or makes an intentional misrepresentation regarding material information to the City.
- b) **Insolvency or Bankruptcy.** If the Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- c) **Failure to Maintain Coverage.** If the Contractor fails to provide or maintain in full force and effect the workers' compensation, liability, or indemnification coverage as required by this Agreement.
- d) **Violations of Regulation.** If the Contractor violates any law or regulation or orders or filings of any regulatory body having jurisdiction over the Contractor or City relative to the performance of this Agreement, provided that the Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to the Contractor is entered.
- e) **Failure to Perform.** If the Contractor ceases to provide Collection, Processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, unless excused per Sections 12.4 or 12.5.
- f) **Failure to Pay.** If the Contractor fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand, with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- g) **Acts or Omissions.** Any other act or omission by the Contractor related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Contractor cannot reasonably correct or remedy the

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breach within the time set forth in such notice, if the Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

- h) False or Misleading Statements. Any representation or disclosure made to the City by the Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- i) Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Contractor, including without limits its equipment, maintenance or office Facilities, or any part thereof, which make the Contractor's performance under this Agreement impracticable.
- j) Failure to Provide Assurance of Performance. If the Contractor fails to provide reasonable assurances of performance as required under Section 12.7.
- k) Failure to Implement Collection Program. If the Contractor fails to implement a Collection program that complies with the requirements.
- l) Failure to Provide Processing Capacity. If the Contractor fails to provide adequate processing capacity.
- m) Failure to Comply with Other Requirements of SB 1383 Regulations. If the Contractor fails to comply with other requirements of the Agreement including public education, reporting, contamination monitoring, recordkeeping, or other obligations of this Agreement that delegate the City's responsibility and/or authority under SB 1383 Regulations.

The Contractor shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections C, D, E, F, G, H, I J, K, L, M, and N provided, however, that the City shall not be obligated to provide the Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

12.2 Criminal Activity of Contractor

Should any of the Contractor's officers, directors or managerial employees with oversight over this Agreement be found guilty of embezzlement, extortion, racketeering, false claims, false statements, forgery or any other similar felony involving business dishonesty, the Contractor shall either terminate from employment or remove from

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office the convicted employee, officer or director and eliminate the ability of such employee, officer or director to manage, supervise or influence the decisions or actions of the Contractor or any parent company of the Contractor. If the Contractor fails to comply with the foregoing obligation, the Contractor may be considered in breach of this Agreement and subject to the City's remedies for default as set forth under this Agreement.

12.3 Right to Terminate Upon Default

Upon an uncured default or breach of the Agreement by the Contractor, the City shall have the right to terminate this Agreement upon ten (10) calendar days' notice if the public health or safety is threatened, or otherwise a thirty (30) calendar days' notice, but without the need for any hearing, suit, or legal action.

The City's rights to terminate this Agreement, or to take possession of the Contractor's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the time required to effect alternative service, and the rights granted by the City to the Contractor, the remedy of damages for a breach hereof by the Contractor is inadequate and the City shall be entitled to injunctive relief.

12.4 Force Majeure

Contractor shall not be in default under Section 12.1 this Agreement in the event that the Collection, Transportation and/or Disposal services of Contractor are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of Del Mar; sabotage; civil disturbance; insurrection; explosion; natural Disasters such as floods, earthquakes, landslides and fires (including brushfires); or other catastrophic events which are beyond the reasonable control of Contractor. 'Other catastrophic events' does not include the financial inability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public entity where such failure occurs where Contractor has failed to exercise reasonable diligence.

In the event a labor disturbance or disruption interrupts Collection and Transportation of Solid Waste, and/or Disposal of Solid Waste by Contractor as required under this Agreement, City may consider the disturbance or disruption an uncured default and elect

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to exercise its rights under Section 12 of this Agreement, and such labor disturbance or disruption shall not otherwise be considered a Force Majeure event.

12.5 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor may be considered an excuse from performance to the extent that the Contractor meets the Terms of this Agreement including this Section and Section 12.6 (Procedures in Event of Excused Performance).

Within ninety (90) days after the Effective Date, Contractor shall prepare (at its own expense) and provide to the City a Labor Unrest Contingency Plan describing how services will be provided during a period of labor unrest. The Labor Unrest Contingency Plan is subject to City approval and Contractor shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. The Labor Unrest Contingency Plan shall address, at a minimum, the priority of Collection by Customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.

During the Term of this Agreement, Contractor shall notify City Manager one hundred eighty (180) days prior to the expiration of any labor agreement. Thereafter, Contractor shall keep City informed on a monthly basis of the status of Contractor's labor agreement negotiations.

Notwithstanding other remedies to which the City shall be entitled under this Agreement, in the event of Contractor's failure to perform, or anticipated failure to perform, due to labor unrest, Contractor shall:

- a) Meet the requirements agreed to in the Labor Unrest Contingency Plan; and
- b) Meet requirements of Section 12.6 (Procedures in Event of Excused Performance).

Contractor shall meet all requirements under this section or City may choose to revoke the excuse from performance offered under Section 12.6 (Procedures in Event of Excused Performance) of this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 12.1 and 12.3 in which case Contractor is not excused from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all such events. The City, in its sole

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discretion, may deem any failure to continue performance an event of default pursuant to Section 12.1 (Events of Default).

12.6 Procedures in Event of Excused Performance

Contractor shall have the right to request an excuse from performance for interruption or stoppage of its services under this Agreement. If Contractor claims an excuse from performance under Section 12.5 (Labor Unrest) or Section 12.4 (Force Majeure) Contractor shall, no later than two (2) days after service has stopped, notify the City of the facts constituting such cause and asserting its claim to excuse under this Section.

Throughout the service disruption, Contractor shall:

- a) Provide City with a minimum of daily service updates; and
- b) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, the Contractor shall update its website and shall provide ongoing updates to City for use on its website, and a 'reverse 911' contact method to reach all possible Customers. Should enhanced contact technologies become available, the Contractor shall use such methods upon approval from City.

The interruption or discontinuance of the Contractor's services caused by one or more of the events excused shall not constitute a default by the Contractor under this Agreement. Notwithstanding the foregoing, if the Contractor is excused from performing its obligations under this Agreement for any of the causes listed in this section for a period of thirty (30) days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days written notice.

12.7 Assurance of Performance

The City may, at its option and in addition to all other remedies it may have, demand from the Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may require. If the Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the City, such failure or refusal shall be an event of default.

12.8 Liquidated Damages

12.8.1 General

The City finds, and the Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a breach by the Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage

results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) the services provided under this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

12.8.2 Service Performance Standards; Liquidated Damages

The parties further acknowledge that consistent, reliable Solid Waste Collection Service is of utmost importance to the City and that the City has considered and relied on the Contractor's representations as to its quality-of-service commitment in awarding the Franchise to it. 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 the Contractor fails to achieve the performance standards or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this section, the parties agree that the following liquidated damage amounts shown below in Table 4 represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that 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 Agreement was made.

Table 4 – Liquidated Damages

Event of Non-Performance		Liquidated Damage
1.	Use of Unauthorized Facilities. For each individual occurrence of delivering Solid Waste to a Facility other than an Approved/Designated Facility for each Discarded Material type under this Agreement.	\$5,000 First offense \$25,000 each subsequent offense.
2.	Failure to provide Recyclable Material and Organic Waste Collection services to every Customer.	\$500/per Customer//
3.	Failure of the Approved Source Separated Recyclable Materials Processing Facility or Approved Organic Waste Processing Facility to meet SB 1383 Regulatory definition of a Designated Source Separated Organic Waste Processing Facility.	\$50/ Ton in the quarterly reporting period when the failure occurred
4.	Failure of Approved Facility to Meet Limits on Organic Waste in materials sent to Disposal exceeds the thresholds.	\$50/ Ton in the quarterly reporting period when the failure occurred
5.	Failure to Perform Contamination Monitoring Requirements. For each failure to conduct Hauler Route contamination monitoring.	\$150.00/Hauler Route / occurrence

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Event of Non-Performance		Liquidated Damage
6.	Failure to Comply with Container Labeling and Colors. For each occurrence of Contractor's failure to comply with Container labeling and color requirements.	\$50.00/per Container / occurrence
7.	Failure to Perform Public Education and Outreach. For each failure to perform any individual education and outreach activity as required and, in the timeframe, specified by this Agreement.	\$500.00 / per Activity
8.	Failure to Submit Reports or Allow Access to Records. For each failure to submit any individual report or provide access to records in compliance with and in the timeframe specified in this Agreement. Incomplete and/or inaccurate reports shall be considered a failure to submit until such time as all information in the report has been provided in a complete and accurate form. In the event City determines an errant or incomplete report more than ten (10) Business Days after submittal by Contractor, Contractor shall be given ten (10) Business Days to complete and correct and any pending Liquidated Damages shall be tolled during that period.	\$500.00 / report / occurrence
9.	Failure to Conduct Compliance Tasks. For each failure to conduct any compliance review, Waste Evaluations.	\$500.00 / occurrence
10.	Failure to Issue Contamination Notices. For each failure of Contractor Collection personnel to issue contamination notices and contaminating Processing fee notices and maintain documentation of issuance.	\$50.00 / Hauler Route / day
11.	Failure to Conduct Follow-Up Inspections. For each failure to conduct a follow-up inspection.	\$50.00 / occurrence

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Event of Non-Performance		Liquidated Damage
12.	Failure or neglect to resolve each Complaint within the time set forth in this Agreement.	\$100.00 / per occurrence per Customer
13.	Failure to clean up spillage or litter caused by Contractor.	\$500.00 / per occurrence per location
14.	Failure to repair damage to Customer property caused by Contractor or its personnel.	\$500.00 / per occurrence per location
15.	Failure to repair damage to City property caused by Contractor or its personnel.	\$500.00 / per occurrence
16.	Failure to repair damage to City streets caused by Contractor or its personnel.	\$1,500.00 / per occurrence and actual cost of repair to City's satisfaction
17.	Failure to maintain equipment in a clean, safe, and sanitary manner	\$250.00 /per occurrence per day
18.	Failure to have a vehicle operator properly licensed.	\$250.00/ per occurrence per day
19.	Failure to maintain or timely submit to City all documents and reports required under the provisions of this Agreement.	\$250.00 /per occurrence per day
20.	Failure to repair or replace damaged Carts within the time required by this Agreement.	\$100.00 / per occurrence per day
21.	Failure to meet minimum Diversion standards.	\$15,000.00 each occurrence

The City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer Complaints. Prior to assessing liquidated damages, the City shall give the Contractor

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notice of its intention to do so. The notice will include a brief description of the incident(s)/nonperformance. The Contractor may review (and make copies at its own expense) all non-confidential information in the possession of the City relating to incident(s)/nonperformance. The Contractor may, within ten (10) days after receiving the notice, request a meeting with the City Manager or his or her designee. The Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager or his or her designee will provide the Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager or his or her designee, acting reasonably and in good faith, shall be final.

12.8.3 Amount

The City may assess liquidated damages for each calendar day or event, as appropriate, that the Contractor is determined to be liable in accordance with Table 4 this Agreement.

12.8.4 Timing of Payment

The Contractor shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) calendar day period, the City may withhold amount due from the next monthly payment to Contractor, may proceed against the bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

12.9 Review of Service and Performance

The City may hold a public hearing on or about the two-year anniversary of the start of this Agreement, and annually thereafter, at which time the Contractor shall be present and shall participate, to review the services provided under this Agreement, source reduction, processing, and other Diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, Processing and Disposal to achieve a continuing, advanced Solid Waste Collection and Diversion services, source reduction and recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness, and economy.

Forty-five (45) days after receiving notice from the City of a performance review hearing, the Contractor shall, at a minimum, submit a report to the City indicating the following:

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- a) Recommended changes and/or new services to improve the City's ability to significantly exceed the goals of AB 939 and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by the Contractor.

The reports required by this Agreement regarding Customer Complaints shall be used as one basis for review. The Contractor may submit other relevant performance information and reports for consideration. The City may request the Contractor to submit specific information for the hearing. In addition, any Customer may submit comments or Complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the performance review hearing shall include, but shall not be limited to, services provided, route audit results, feasibility of providing new services, application of new technologies, Customer Complaints, amendments to this Agreement, developments in the law, new initiatives for significantly exceeding AB 939's goals, regulatory constraints, and the Contractor's performance. The City and the Contractor may each select additional topics for discussion at any performance review hearing.

Not later than sixty (60) days after the conclusion of each performance review hearing, the City may issue a report. As a result of the review, the City may require the Contractor to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

12.10 Performance Satisfaction Survey

If requested by the City, the Contractor will create and conduct a survey at the Contractor's expense in preparation for any performance review meeting held pursuant to Section 12.9. City shall notify the Contractor of its desire for such a survey at least ninety (90) days in advance of the performance review meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Contractor. The survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. The City may instruct the Contractor to send out separate Single-family Residential and Multi-family Residential/Commercial Customers surveys. The Contractor shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. The City may choose to write or re-write the survey.

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City may require that Contractor have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste and Diversion services and performance review meeting.

13 Other Agreement of the Parties

13.1 Relationship of Parties

The parties intend that the Contractor shall perform the services required by this Agreement as an independent contractor engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Contractor shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided in this Agreement, the Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste Collection Services performed under this Agreement, and all Persons performing such services. The Contractor shall be solely responsible for the acts and omissions of its officers, employees, companies, subcontractors, Affiliates, and agents. Neither the Contractor nor its officers, employees, companies, subcontractors, Affiliates, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

13.2 Permits and License

Contractor shall obtain, at its own expense, all permits and a City of Del Mar business license required by law or ordinance and maintain same in full force and effect throughout the Term of this Agreement. Contractor shall provide proof of such permits, business license or approvals and shall demonstrate compliance with the terms and conditions of such permits, business license and approvals upon the request of the City Manager.

13.3 Ownership of Electronic and Written Materials

All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by City or Contractor in connection with the services to be performed under this Agreement, 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. This section does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

13.4 Compliance with Law

In providing the services required under this Agreement, the Contractor shall at all times during the Term of this Agreement, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local

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administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the Term.

13.5 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

13.6 Mediation and Arbitration

Any controversy or claim arising out of or relating to this Agreement, the relationship resulting in or from this Agreement, or breach of any duties under this Agreement shall be settled by arbitration in accordance with the arbitration rules of the American Arbitration Association which may be found at www.adr.org. All hearings will be held in San Diego, California before an arbitrator who is a licensed attorney with at least 15 years of experience. A judgment upon the award rendered by the arbitrator shall be entered in a court with competent jurisdiction. The Federal Arbitration Act (Title 9 U.S. Code Section 1 et. seq.) shall govern all arbitration and confirmation proceedings.

As a condition precedent to the filing of an arbitration claim, the parties agree to first mediate any claims between them at the American Arbitration Association office at 402 W. Broadway, San Diego, CA 92101. Any party refusing to mediate shall not prevent the other party or parties from pursuing their claims in arbitration. The parties shall share the cost of mediation equally. Nothing in this Agreement shall be construed to prevent any party's use of injunction, and/or any other prejudgment or provisional action or remedy. Any such action or remedy will not waive the moving party's right to compel arbitration of any dispute.

13.7 Jurisdiction

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in San Diego County.

13.8 Assignment

Except as may be provided for in Section 12, neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

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For purposes of this section when used in reference to the Contractor, 'assignment' shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Contractor to a third party provided said sale, exchange or transfer may result in a change of control of the Contractor; (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 the 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 Agreement, appointment of a receiver taking possession of the 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 the Contractor.

The Contractor acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Contractor to perform the services specified in this Agreement based on (1) the 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 Solid Waste management practices, and (2) the Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Contractor to perform the services to be rendered by the Contractor under this Agreement.

If the Contractor requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the City shall deny or approve in its reasonable discretion. No request by the Contractor for consent to an assignment need be considered by the City unless and until the Contractor has met the following requirements:

- a) Contractor shall pay City its reasonable expenses for attorney's and/or 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. An advance payment towards expenses may be requested by City prior to City consideration of any assignment request and Contractor shall be responsible to pay all costs incurred

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by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment; and

- b) The Contractor shall pay a transfer fee to the City equal to 1% of the annual revenue for the most recent 12 months prior to the Effective Date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Contractor; and
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent Contractor, the parent Contractor's audited financial statements may be provided; and
- d) A proforma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such proforma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Contractor's operations; and
- e) Except for an assignment to an Affiliate of the Contractor, the proposed assignee must furnish the City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by the Contractor under this Agreement; (ii) that 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 Solid Waste management operations due to any significant failure to comply with State, federal or local Environmental Laws and that the assignee has provided the City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, State and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner; and

- f) Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Contractor is in default at any time during the period of consideration.

13.9 Contracting or Subcontracting

The Contractor shall not engage any companies or subcontractors for Collection, Transfer, Processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. Transport from the transfer station to Processing or Disposal facilities is excluded from this paragraph.

13.10 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

13.11 Transition to the Next Contractor

If the transition of services to another Contractor occurs through expiration of the Term, default by the Contractor and termination by City, or otherwise (other than breach by City), the Contractor will cooperate with the City and subsequent contractor(s) to assist in an orderly transition which will include, but not be limited to, the Contractor providing detailed route lists, billing and service-level information and other operating records needed to service all properties covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pickups, so as not to disrupt service. Contractor shall provide City with detailed route sheets containing service names and addresses, Billing names and addresses, monthly rate and Service Levels at least ninety (90) days prior to the transition date and provide an updated list two (2) weeks before the transition and a final list of changes the day before the transition. Contractor shall provide means of access to the new service provider at least one full Work Day prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

Contractor shall cooperate in good faith with City and new service provider in scheduling exchanges of Contractor Containers with Containers provided by the new service

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provider so as to assure that Customers neither need to find storage for two (2) sets of Containers nor go without a Container for an inconvenient length of time.

13.12 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns.

13.13 The Contractor's Investigation

The Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

13.14 Condemnation

The City fully reserves the rights to acquire the Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties.

13.15 Notice

All notices, demands, requests, proposals, proposals approvals, consents, and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the parties at the address below, sent overnight through a national courier, or, addressed as follows:

If to the City:

City Manager
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

And to:

City Attorney
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

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If to the Contractor:

Chief Executive Officer
EDCO Disposal Corporation
6670 Federal Blvd.
Lemon Grove, CA 91945

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section. Notice shall be deemed given on the day it is personally delivered, or, if sent via courier the day received, or three business days from the date it is deposited in the mail.

13.16 Representatives of the Parties

The City Council delegates authority to administer this Agreement and to serve as the City's representative in all matters related to this Agreement to the City Manager, and/or to other City employees designated by the City Manager. Unless otherwise stated, all actions specified in this Agreement shall be taken by and under the supervision and direction of the City Manager. The Contractor may rely upon actions taken by City Manager and/or designee(s) if they are within the scope of the authority properly delegated to them.

The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of the Contractor in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Contractor. The City may rely upon action taken by such designated representative as actions of the Contractor unless they are outside the scope of the authority delegated to him/her by the Contractor as communicated to the City.

13.17 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, Transporting, Recycling, Processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Contractor and from third parties for the provision of Collection, Disposal, Recycling, Organic Waste services and Processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 12 of this Agreement.

13.18 Compliance with Municipal Code

The Contractor shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the Term of this Agreement.

13.19 Privacy

The Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or Contractor, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude the Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to City pursuant to this Agreement so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Contractor.

13.20 Compliance with Immigration Laws.

The Contractor agrees that, in the performance of this Agreement, it will comply with all immigration laws.

13.21 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees and expert witness fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

14 Miscellaneous Agreements

14.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire agreement between the parties with respect to the matters covered in this Agreement. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations in this Agreement contained nor such verbal agreement or conversation entitle the Contractor to any additional payment whatsoever under the terms of this Agreement.

14.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

14.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

14.4 Interpretation

This Agreement, including the exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

14.5 Amendments

This Agreement may not be modified or amended in any respect except by a writing duly executed by the parties. Purported oral amendments shall be void and of no force or effect.

14.6 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been included in this Agreement.

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14.7 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

14.8 Non-Waiver Provision

Failure of either party to exercise any of the rights or remedies set forth in this Agreement within the time periods provided shall not constitute a waiver of any rights or remedies of that party with regard to that failure to perform or subsequent failures to perform whether determined to be a breach, excused performance or unexcused defaults by the other party. The subsequent acceptance by either party of any moneys that become due under this Agreement shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the day and year first above written.

CITY OF DEL MAR

EDCO DISPOSAL CORPORATION


By: 
Ashley Jones, City Manager


Sandra L. Burr, Chair

ATTEST: 
Sarah Krietor, Acting City
Clerk


John C. Snyder, Vice President

Approved as to form by:


Leslie E. Devaney, City Attorney

City of Del Mar

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Exhibit 1 - Initial Rates

Single-family Residential Rates	Rate	Billing Unit
Cart Service - one each gray (refuse), blue (recycling), and green (organics)		
35 gallon	\$ 24.95	per month
64 gallon	\$ 28.95	per month
96 gallon	\$ 29.95	per month
Each Additional 35 gallon Gray (refuse) cart	\$ 6.00	per month
Each Additional 64 gallon Gray (refuse) cart	\$ 6.00	per month
Each Additional 96 gallon Gray (refuse) cart	\$ 6.00	per month
Cart Exchange (in excess of one per year)	\$ 20.00	per cart per exchange
Cart Replacement (in excess of one per year)	\$ 20.00	per cart per replacement
Cart Contamination Fee	\$ 10.00	per occurrence
Cart Overage Fee (for more than two overage pickups per year)	\$ 10.00	per occurrence
Backyard Service	\$ 39.95	per month
Manual Service	\$ 44.95	per month
Additional Bulky item pickups (in excess of three per year)	\$ 50.00	per pickup

Bin Rates Commercial and Multi-family Bin Rates							
Bin Size	Monthly Rate (Based on pickups per week)						Rate per Extra Pickup
	1	2	3	4	5	6	
2 cubic yard	\$ 115.70	\$ 210.58	\$ 319.34	\$ 402.57	\$ 499.16	\$ 595.78	\$ 73.16
3 cubic yard	\$ 135.71	\$ 249.70	\$ 374.55	\$ 472.96	\$ 586.64	\$ 700.29	\$ 85.81
4 cubic yard	\$ 190.15	\$ 349.87	\$ 524.81	\$ 676.12	\$ 839.86	\$ 1,003.56	\$ 120.23
6 cubic yard	\$ 221.65	\$ 407.83	\$ 611.75	\$ 812.17	\$ 1,009.37	\$ 1,206.56	\$ 140.15
3 yard split bin	\$ 199.50	\$ 374.26	\$ 556.61	\$ 735.00	\$ 915.00	\$ 1,095.00	\$ 65.00/side
64-gal cart	\$ 87.38	\$ 160.78	\$ 241.17	\$ 314.50	\$ 391.00	\$ 467.50	
96-gal cart	\$ 97.66	\$ 179.69	\$ 269.54	\$ 351.50	\$ 437.00	\$ 522.50	

Rates for Recycling and Organics Collection service are equal to 85% of Refuse rate for same level of service
Customers with Bin compactors pay 2X the rate for the same Service Level of Refuse service

Scout Service	\$ 35.47	\$ 65.26	\$ 97.89	\$ 136.28	\$ 170.78	\$ 205.28
Locking Bin Svc	\$ 13.93	\$ 27.86	\$ 41.79	\$ 55.72	\$ 69.65	\$ 83.58

Roll-Off Box Charges	Rate	
Open-top Roll-Off Box - Rate per load (excluding disposal/processing)		
10-yard low boy	\$ 475.00	per load
15 - 25 cubic yards- open top	\$ 475.00	per load
26 - 40 cubic yards- open top	\$ 475.00	per load
Roll-Off Compactor - Rate per pull (excluding disposal/processing):		
26 - 40 cubic yards- compactor	\$ 475.00	per load
Disposal/Processing Charges (in addition to per load charge)		
Landfill	\$ 60.72	per ton
Construction & Demolition	\$ 101.11	per ton
Recyclables Processing	\$ -	per ton
Organics Processing	\$ 116.67	per ton
Overweight charge (per ton over 10 tons)	\$ -	per ton
Re-delivery/Return Trip Fee	\$ 165.00	per trip

Other Charges	Rate	Rate Per Service
Bin Contamination Fee (after two notified contaminations in a calendar year)	\$ 11.58	per occurrence
Bin Overage Fee (after two notified overages in a calendar year)	\$ 31.29	per occurrence
Multi-family Bulky Item Pickup (in excess of one per dwelling unit)	\$ 50.00	per pickup
Temporary Bin Service - 3 yard	\$ 279.00	per pickup
Bin Delivery Fee	\$ 75.00	per delivery
Initial Installation of Hasp for Locking Bin Service	\$ 20.00	per service
Bin Exchange (in excess of one per year)	\$ 75.00	per exchange

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Exhibit 2 – Example Rate Adjustment Method – Residential and Commercial

Step One: Calculate percentage change in indices

Line	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index (Column B / Column A - 1)	D Percent of Index Change Allowed for Rate Adjustment	E Percent Change for Rate Adjustment (Column C X Column D)
1	Service Component						
2	Labor	(1)	153.70	158.30	2.99%	100%	2.99%
3	Fuel	(2)	131.50	135.50	3.04%	100%	3.04%
4	Equipment	(3)	276.50	284.80	3.00%	100%	3.00%
5	All Other	(4)	273.00	281.200	3.00%	50%	1.50%
6	Disposal Component		50.00	\$ 54.00	8.00%	100%	8.00%

Step Two: Determine Components

Line	Adjustment Factor	Index	F Initial Cost Component (6)	G Cost Factor Category Weighted as % of Component Total (7)	H Percent Change in Index from Column (E)	I Total Weighted Change
7	Service Component					
8	Labor	(1)	\$ 657,098	40.0%	2.99%	1.2%
9	Fuel	(2)	\$ 102,167	5.0%	3.04%	0.2%
10	Equipment	(3)	\$ 476,755	20.0%	3.00%	0.6%
11	All Other	(4)	\$ 562,667	35.0%	1.50%	0.5%
12	Service Component Total		\$ 1,798,688	100.0%		2.5%
13	Service Component Rate Adjustment Percentage					2.5%
14	Disposal Component		\$ 242,622	100.00%	8.00%	8.00%

Step Three: Apply Weighted Changes in Cost Components

Line	Cost Component Factor	J Initial Cost Component (6)	K Component Weighted in Total Rate (7)	L Percent Change (from Step 2 in Column 1)	M Weighted Percent Change
15	Service Component	\$ 1,798,688	65.0%	2.48%	1.6%
16	Disposal Component	\$ 242,622	35.0%	8.00%	2.8%
17	Total - Percent Change	\$ 2,041,310	100.0%		4.41%

Step Four: Apply Percentage Change to Rates

Line	Rate Category	N Current Monthly Customer Rate	O Total Weighted Percentage Change (from Column M)	P Rate Increase or Decrease (Column N x Column O)	Q Adjusted Monthly Rate (Column N + Column P)
18	Standard Service	\$ 25.00	4.41%	\$ 1.10	\$ 26.10
19	Extra Refuse Cart	\$ 8.00	4.41%	\$ 0.35	\$ 8.35
20	Contamination Fee	\$ 5.00	4.41%	\$ 0.22	\$ 5.22
21	Cart Exchange	\$ 15.00	4.41%	\$ 0.66	\$ 15.66
22	Additional Bulky Pickups	\$ 25.00	4.41%	\$ 1.10	\$ 26.10

Step Five: Determine Cost Components for Future Rate Adjustment Calculation

Line	Adjustment Factor	Index	R Cost Component (Column G)	S Percentage Change as Applied to Rate Adjustment (Column E)	T Increase In Cost Components (Column R x Column S)	U Cost Component Increased (Column R + Column T)	V Cost Components Reweighed to Equal 100% for Future Adjustments
23	Service Component						
24	Labor	(1)	40.0%	3.0%	1.2%	41.2%	40.2%
25	Fuel	(2)	5.0%	3.0%	0.2%	5.2%	5.0%
26	Equipment	(3)	20.0%	3.0%	0.6%	20.6%	20.1%
27	All Other	(4)	35.0%	1.5%	0.5%	35.5%	34.7%
28	Service Component Total		100.0%			102.5%	100.0%
29	Service Component		65.0%	2.5%	1.6%	66.6%	63.8%
30	Disposal Component		35.0%	8.0%	2.8%	37.8%	36.2%
31	Total		100.0%			104.4%	100.0%

Step One:

- (1) PPI Index, Waste collection, Annual, final indexes (PCU562111562111)
- (2) WPU0531, PPI, Not seasonally adjusted, Fuels and related products and power, Natural Gas, Annual, final indexes
- (3) PCU336211336211, PPI, Motor vehicle body manufacturing, Annual, final indexes
- (4) CUUR0000SA0, CPI, All Urban Consumers, not seasonally adjusted, U.S. City Average, all items, Annual, final indexes
- (5) County of Orange gate rate as of the effective rate date

Steps Two and Three:

- (1)-(5) From Step Five of the previous year Rate adjustment.

Step Four: Rates per previous rate schedule

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Exhibit 3 – Example Rate Adjustment Method – Roll-off

Step One: Calculate percentage change in indices

Line	Adjustment Factor	Index	A	B	C	D	E
			Old Index Value	New Index Value	Percent Change In Index (Column B / Column A - 1)	Percent of Index Change Allowed for Rate Adjustment	Percent Change for Rate Adjustment (Column C X Column D)
1	Service Component						
2	Labor	(1)	153.70	158.30	2.99%	100.00%	2.99%
3	Fuel	(2)	131.50	135.50	3.04%	100.00%	3.04%
4	Equipment	(3)	276.50	284.80	3.00%	100.00%	3.00%
5	All Other	(4)	273.00	281.20	3.00%	50.00%	1.50%

Step Two: Determine Components

Line	Adjustment Factor	Index	F	G	H	I
			Initial Cost Component (6)	Cost Factor Category Weighted as % of Component Total (7)	Percent Change in Index from Column (E)	Total Weighted Change
6	Service Component					
7	Labor	(1)	\$ 93,871	40.0%	2.99%	1.20%
8	Fuel	(2)	\$ 14,595	5.0%	3.04%	0.15%
9	Equipment	(3)	\$ 68,108	20.0%	3.00%	0.60%
10	All Other	(4)	\$ 80,381	35.0%	1.50%	0.53%
11	Total - Percent Change		\$ 256,955	100.0%		2.48%

Step Three: Apply percentage change to rates

Line	Rate Category	J	K	L	M
		Current Monthly Customer Rate	Total Weighted Percentage Change (from Column I, Line 12)	Rate Increase or Decrease (Column J x Column K)	Adjusted Monthly Rate (Column J + Column I)
13	Standard Roffoff Box	\$ 200.00	2.48%	\$ 4.95	\$ 204.95
14	Compactor Rolloff Box	\$ 300.00	2.48%	\$ 7.43	\$ 307.43

Step Four: Determine Cost Components for Future Rate Adjustment Calculation

Line	Adjustment Factor	Index	N	O	P	Q	R
			Cost Component (Column G)	Percentage Change as Applied to Rate Adjustment (Column E)	Increase In Cost Components (Column N x Column O)	Cost Component Increased (Column N + Column P)	Cost Components Reweighed to Equal 100% for Future Adjustments
15	Service Component						
16	Labor	(1)	40.00%	2.99%	1.20%	41.20%	40.20%
17	Fuel	(2)	5.00%	3.04%	0.15%	5.15%	5.03%
18	Equipment	(3)	20.00%	3.00%	0.60%	20.60%	20.10%
19	All Other	(4)	35.00%	1.50%	0.53%	35.53%	34.67%
20	Service Component Total		100.00%			102.48%	100.00%

Step One:

- (1) PCU5621--5621--PPI Index, Waste collection, Annual, final indexes
- (2) WPU0531, PPI, Not seasonally adjusted, Fuels and related products and power, Natural Gas, Annual, final indexes
- (3) PCU336211336211, PPI, Motor vehicle body manufacturing, Annual, final indexes
- (4) CUUR0000SA0, CPI, All Urban Consumers, not seasonally adjusted, U.S. City Average, all items, Annual, final indexes
- (5) County of Orange gate rate as of the effective rate date

Step Two:

- (1)-(5) From Step Four of the previous year adjustment.

Step Three Rates per previous rate schedule