

CITY OF EL MONTE  
FRANCHISE AGREEMENT  
FOR SOLID WASTE SERVICES

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May 1, 2019

AGREEMENT  
 BETWEEN  
 CITY OF EL MONTE  
 AND  
 VALLEY VISTA SERVICES  
 FOR  
 SOLID WASTE  
 MANAGEMENT SERVICES

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  - 3B: Pull Plus Dump Roll-off Rates
4. Faithful Performance Bond
5. Notary Certification
6. Example Quarterly Report Format
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## AGREEMENT

THIS AMENDED AND RESTATED FRANCHISE AGREEMENT FOR SOLID WASTE SERVICES ("Agreement") is made and entered into this. MARCH, 2019, by and between the City of El Monte, a municipal corporation, ("City") and Valley Vista Services, Inc., a California corporation, a wholly owned subsidiary of Zerep Management Corporation ("Contractor") with its principal place of business located at 17445 E. Railroad Street, City of Industry, California 91748. The capitalized term "Party" may refer to either City or Contractor interchangeably.

This Agreement is entered into in light of the facts set forth in the following Recital paragraphs:

### RECITALS

WHEREAS, the California Legislature, by enactment of the California Integrated Waste Management Act of 1989 (Public Resources Code Section 40000 et seq.) (the "Act") has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions (Public Resources Code Section 40002); and

WHEREAS, the Act further provides that municipalities, like the City of El Monte, may determine:

1. All aspects of solid waste handling which are of local concern, including, but not limited to the frequency of Collection, the means of Collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste handling services;
2. Whether the services are to be provided by means of contract, license, permit or by means of an exclusive, partially exclusive, or nonexclusive franchise arrangement;
3. Whether the services are to be provided with or without competition; and
4. The terms and conditions under which services are to be performed, if performed by a third-party solid waste enterprise. (See Public Resources Code Section 40059); and

WHEREAS, Section 49300 of the Public Resources Code further provides that municipalities, like the City of El Monte, may contract for the Collection or Disposal of garbage, waste, Refuse, rubbish, offal, trimmings or other Refuse matter; and

WHEREAS, the award of solid waste handling franchises within the City of El Monte is also governed by Chapter 18.12 (Solid Waste Handling Franchises) of the El Monte Municipal Code which sets forth the minimum mandatory requirements for the award of a such franchises by the City; and

WHEREAS, pursuant to Section 40059(a)(2) of the Public Resources Code City has determined that the public health, safety and well-being would be furthered by awarding a Contractor an exclusive franchise to provide solid waste handling services for certain wastes streams within certain delineated geographic areas of the City of El Monte; and

WHEREAS, City desires to maintain reasonable rates and quality service related to the collection, transfer and transportation, recycling, processing, and disposal of solid waste and other services; and

WHEREAS, on March 15, 2001 Contractor and City executed that certain agreement entitled "Agreement Between the City of El Monte and Valley Vista Services for Collection of Solid Waste and Recyclable Material within the Klingerman/Bonwood Multi-Family Residential Sector" (CA #06CD036) for the performance of Multi-Family Services within the Klingerman-Bonwood multi-family sector of the City of El Monte (hereinafter the "VVS Klingerman-Bonwood Franchise"); and

WHEREAS, on November 15, 2005 Contractor and City executed that certain agreement entitled "City of El Monte Franchise Agreement for Residential Solid Waste" (CA #05CD112) for the performance of Residential Services within a specified geographic sector of the City of El Monte (hereinafter, the "VVS Residential Franchise"); and

WHEREAS, on December 28, 2007 Contractor and City executed that certain Agreement entitled "2007 City of El Monte Franchise Agreement for Commercial Premises Solid Waste Services" (CA #08CD006) for the performance Commercial Services within a specified geographic sector of the City of El Monte (hereinafter, the "VVS Commercial Franchise"); and

WHEREAS, on December 28, 2007 Contractor and City executed that certain Agreement entitled "2007 City of El Monte Franchise Agreement Temporary Solid Waste Services" (CA #08CD014) for the performance of Temporary Services within a specified geographic sector of the City of El Monte (hereinafter, the "VVS Temporary Services Franchise"); and

WHEREAS, on July 1, 2010 Contractor acquired and was assigned the interests of Phoenix/UPW Waste & Recycling Services in the following solid waste handling franchise agreements with City:

1. That certain franchise agreement entitled "2005 City of El Monte Franchise Agreement for Residential Solid Waste" (CA #05CD112) dated as of November 1, 2005 for the performance of Residential Services with a specific geographic sector of the City (the "Assigned Residential Franchise");
2. That certain franchise agreement entitled "2007 City of El Monte Franchise Agreement for Commercial Premises Solid Waste Services" (CA #08CD002) dated as of December 28, 2007 for the performance of Commercial Services within a specific geographic sector of the City (the "Assigned Commercial Franchise"); and
3. That certain franchise agreement entitled "2007 City of El Monte Franchise Agreement for Multi-Family Premises Solid Waste Services" (CA #08CD010) dated as of December 28, 2007 for the performance of Multi-Family Services within a specific geographic sector of the City (the "Assigned Multi-Family Franchise"); and

WHEREAS, on July 1, 2011 Contractor and City executed that certain Agreement entitled "Franchise Agreement for Solid Waste Services" (CA 11PW012) for the performance of Residential Services throughout the City, and Commercial, Multi-Family and Temporary Services within specific geographic sectors of the City; and

WHEREAS, on April 1, 2016 Contractor acquired and was assigned the interests of Waste Management San Gabriel/Pomona Valley (formerly USA Waste of California, Inc.) in the following solid waste handling franchise agreements with City:

1. That certain franchise agreement entitled "2007 City of El Monte Franchise Agreement for Commercial Premises Solid Waste Services" (CA #08CD008) dated

as of December 28, 2007 for the performance of Commercial Services with a specific geographic sector of the City (the "Assigned Commercial Franchise");

2. That certain franchise agreement entitled "2007 City of El Monte Franchise Agreement for Temporary Solid Waste Services" (CA #08CD016) dated as of December 28, 2007 for the performance of Temporary Services within a specific geographic sector of the City (the "Assigned Temporary Franchise"); and

WHEREAS, on May 1, 2019 Contractor acquired and was assigned the interests of American Reclamation, Inc. in the following solid waste handling franchise agreements with City:

1. That certain franchise agreement entitled "2007 City of El Monte Franchise Agreement for Commercial Premises Solid Waste Services" (CA #08CD004) dated as of December 28, 2007 for the performance of Commercial Services with a specific geographic sector of the City (the "Assigned Commercial Franchise");
2. That certain franchise agreement entitled "2007 City of El Monte Franchise Agreement for Multi-Family Premises Solid Waste Services" (CA #08CD012) dated as of December 28, 2007 for the performance of Multi-Family Services within a specific geographic sector of the City (the "Assigned Multi-Family Franchise");
3. That certain franchise agreement entitled "Agreement Between the City of El Monte and American Reclamation, Inc. for Collection and Disposal of Solid Waste and Recyclable Materials within the Valley Mall Commercial/Retail Sector" (CA #09CD038) dated March 28, 2002 for the performance of solid waste and recycling services within the Valley Mall commercial/retail sector of the City (the "Assigned Valley Mall Franchise"); and

For purposes of this Agreement, the foregoing solid waste handling franchise agreements acquired by Contractor may be referred to collectively as the "Assigned Franchise Agreements"; and

WHEREAS, the Parties desire to consolidate and modify Contractor's duties and performance obligations under the VVS Klingerman-Bonwood Multi-Family Area, VVS Residential Franchise, VVS Commercial, VVS Temporary, and the Assigned Franchise Agreements (collectively, the "Existing VVS Franchise Agreements") into

one master agreement which will replace, substitute and supersede the Existing VVS Franchise Agreements; and

WHEREAS, Section 49523 of the Public Resources Code further authorizes City and Contractor to terminate all or any part of Contractor's business before the expiration period of an existing franchise agreement, like the Existing VVS Franchise Agreements, upon terms mutually acceptable to both City and Contractor; and

WHEREAS, in consideration for the benefits to be afforded to City and its residents under a single franchise agreement, the solid waste handling franchise rights accorded to Contractor under the Existing VVS Franchise Agreements, Contractor shall be granted a reformulated solid waste franchise to provide the solid waste handling services covered under the Existing VVS Franchise Agreements for a new term of ten (10) years and two (2) months commencing May 1, 2019, and terminating on June 30, 2029; and

WHEREAS, City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, processing and disposal of solid waste, including AB 939, the Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). City and Contractor desire to leave no doubt as to their respective roles and to memorialize that by entering into this Agreement, City is not thereby becoming an "arranger" or a "generator" as those terms are used in CERCLA, and that it is Contractor, not City, that is "arranging for" the collection from premises in the City, transport for disposal, composting or other processing, and recycling of municipal solid waste which may contain hazardous substances; and further to confirm that as a material inducement to City entering into this Agreement, Contractor has agreed to fully indemnify City in connection with any claims, losses, liabilities, lawsuits or actions relating to the inadvertent or intentional collection, transportation and/or disposal of hazardous materials that may occur in connection with Contractor's performance under this Agreement; and,

WHEREAS, Contractor has agreed, as part of this Agreement, acting as an independent contractor to provide such personnel, equipment and supplies as are necessary to ensure City complies with the requirements of Public Resources Code Section 49100, *et seq.*

NOW, THEREFORE, in consideration of the recitals above stated, which recitals are a material part of this Agreement, and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

The terms used in this Agreement shall have the meaning set forth in this Article 1. In the event a term is not defined in this Article 1, then it shall have the meaning set forth in the El Monte Municipal Code or in Division 30, Part 1, Chapter 2 of the California Public Resources Code (with precedence given to definitions in the El Monte Municipal Code over conflicting definitions contained in the Public Resources Code). Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

#### 1.1 AB 341

"AB 341" means Assembly Bill 341 from the 2011-1012 Regular Session of the California Legislature (Chapter 476, Statutes 2011). AB 341 documents the policy goal of the state that not less than 75% of Solid Waste generated be source reduced, recycled, or composted by the year 2020, and requires certain commercial and Multi-Family Premises to have a Recycling program.

#### 1.2 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code Section 40000 *et seq.*, as it may be amended from time to time.

#### 1.3 AB 1826

"AB 1826" means Assembly Bill 1826 from the 2013-1014 Regular Session of the California Legislature (Chapter 12.9, Commencing with Section 42469.8), Statutes 2014). AB 1826 requires certain commercial and Multi-Family Premises to have an Organic Waste Recycling program.

#### 1.4 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management.

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

#### **1.5 Billings**

"Billings" or "Billing" or "Bill" means the statements of charges provided to Customers for services rendered by Contractor.

#### **1.6 Bin**

"Bin" means a rectangular metal or plastic Container with hinged lids and wheels with a capacity of at least 1 cubic yards, and less than eight (8) cubic yards.

#### **1.7 Bin Service**

"Bin Service" means Solid Waste Collection Services in which a Bin is used for the Collection of Solid Waste.

#### **1.8 Bulky Items**

"Bulky Items" means Solid Waste that cannot and/or would not typically be accommodated within the Solid Waste Container at the Premises including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods");

unusually large amounts of yard debris and Green Waste and small pieces of wood limited to one cubic yard of contained material; electronic equipment (including stereos, televisions, computers and monitors, VCRs, microwaves and other similar items commonly known as "brown goods" and "e-waste"); and clothing. Bulky Items do not include car bodies, Construction and Demolition Debris or items requiring more than two persons to remove. Other items not specifically included or excluded above will be Collected provided that they are not more than eight feet in length, four feet in width, or more than 150 pounds. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

**1.9 CalRecycle**

CalRecycle is the California Department of Resources Recycling and Recovery.

**1.10 Cart**

"Cart" means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than 32-gallons and no greater than 101-gallons.

**1.11 City**

"City" means City of El Monte, California, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement.

**1.12 City Council**

"City Council" means the El Monte City Council, inclusive of the Mayor of the City of El Monte, within the meaning of Chapter 2.04 (City Council) and Chapter 2.08 (Mayor) of the El Monte Municipal Code.

**1.13 City Manager**

"City Manager" means the City Manager of the City of El Monte within the meaning of Chapter 2.12 of the El Monte Municipal Code or the City Manager's designee. Unless otherwise stated by the City Manager in writing, the Director of Public Works shall be

the City Manager's designee for the purposes of day-to-day administration of the Agreement and the receipt of all notices, reports, and other like information required under this Agreement.

#### **1.14 Collect/Collection/Collecting/Collected**

"Collect", "Collection", "Collecting", or "Collected" means to take physical possession, transport, and remove Solid Waste within and from City.

#### **1.15 Commercial Premises**

"Commercial Premises" means any building, structure, lot or real property parcel upon which commercial, industrial, manufacturing or other like for-profit or non-profit business activities are conducted and lawfully permitted, including but not limited to retail sales, office uses, services, mechanical repair services, entertainment services, restaurant services, hotel/motel/lodging services, medical facilities, wholesale operations, heavy manufacturing operations, light manufacturing operations, storage, warehousing, and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary contained in this definition, a premises lawfully used for the following purposes shall be deemed to be Commercial Premises for purposes of this Agreement: adult residential facilities; assisted living facilities; convalescent homes; dormitories; extended stay motels; group residential facilities; group care facilities; hotels; motels; any lot, real property parcel or portion thereof lawfully used for the location of residential mobile homes (e.g. any residential mobile home park); and any residential portion of a mixed use development as the term "mixed use development" is defined under Section 17.04.020 of Chapter 17.04 (Definitions) of the El Monte Municipal Code.

#### **1.16 Commercial Services**

"Commercial Services" means Solid Waste Services provided exclusively to Commercial Premises, on a regular, ongoing and routinely performed basis, independent of, and/or unrelated to, any temporary project, activity or undertaking conducted on a Commercial Premise and encompasses those services and tasks set forth and described Section 4.

**1.17 Contractor**

"Contractor" means Valley Vista Services, a corporation organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and subcontractors.

**1.18 Contractor Compensation**

"Contractor Compensation" means the revenue received by the Contractor from Customers in return for providing services in accordance with this Agreement.

**1.19 Construction and Demolition Debris**

"Construction and Demolition Debris" means Solid Waste generated at a Premises that is directly related to construction or demolition activities occurring thereon.

**1.20 Container**

"Container" means any and all types of Solid Waste receptacles, including Carts, Bins and Roll-off Boxes.

**1.21 CPI**

"CPI" means the Consumer Price Index for All items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted (CUURS49ASA0).

**1.22 Customer**

"Customer" means a Person receiving Solid Waste Collection Services from Contractor pursuant to the terms of this Agreement.

**1.23 Disposal**

"Disposal" means the ultimate disposition of Solid Waste Collected by Contractor at a landfill or otherwise in full regulatory compliance.

**1.24 Disposal Site(s)**

"Disposal Site(s)" means the Solid Waste handling Facility or Facilities utilized for the ultimate Disposal of Solid Waste Collected by Contractor.

### 1.25 Diversion/Divert/Diverted

"Diversion," "Divert," and Diverted means any combination of waste prevention (source reduction), Recycling, reuse, composting and Transformation activities that reduces waste disposed at landfills, provided such activities are recognized by CalRecycle as Diversion in its determination of the City's Diversion rate and compliance with AB 939.

### 1.26 Environmental Laws

"Environmental Laws" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §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.*; the California Hazardous Waste Control Act, California Health and Safety Code §25100 *et seq.*; the California Hazardous Substance Account 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 hereafter amended, and all rules and regulations promulgated thereunder.

### 1.27 Facility

"Facility" means any plant or site, owned or leased and maintained, operated or used by Contractor for purposes of performing under this Agreement.

### 1.28 Food Waste

"Food Waste" means:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper that is mixed in with Food Waste (including waxed cardboard, waxed paper, napkins, paper towels, paper plates, paper milk cartons);
- Tea bags; and,

- Coffee grounds and filters.

Food Waste is a subset of Organic Waste.

### 1.29 Green Waste

"Green Waste" means tree trimmings, small pieces of wood, grass cuttings, dead plants, leaves, branches, flowers, plant stocks, and dead trees (not more than four (4) inches in diameter or 48 inches in length), landscape and pruning waste and similar materials. Green Waste is a subset of Organic Waste.

### 1.30 Green Waste Processing Facility

"Green Waste Processing Facility" means a permitted Facility where Green Waste is sorted, mulched or separated for the purposes of Recycling, reuse or composting.

### 1.31 Gross Receipts

In accordance with Generally Accepted Accounting Principles ("GAAP"), the capitalized term "Gross Receipts" means any form of revenue, receipts or other compensation derived by Contractor or Contractor's Affiliates, subsidiaries, parent companies and the like for the performance of all Solid Waste services authorized under this Agreement. The term "Gross Receipts", as defined herein, includes, but is not limited to, all revenue received from Customer billings for the Collection of Solid Waste, Container charges and the performance of any other services and tasks authorized under this Agreement, after subtracting any Franchise Fees and AB 939 Fees due under Article 3. The foregoing notwithstanding, income realized by the Contractor from the sale of discarded recyclable materials Collected by the Contractor pursuant to this Agreement shall be excluded from the calculation of "Gross Receipts".

### 1.32 Hazardous Substance

"Hazardous Substance" shall mean 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 amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter 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.

### **1.33 Hazardous Waste**

"Hazardous Waste" means 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.

### **1.34 Household Hazardous Waste ("HHW")**

"Household Hazardous Waste" means Hazardous Waste generated at Residential Premises and Multi-Family Premises.

### **1.35 Klingerman-Bonwood Multi-Family Area**

Residential Multi-Family units located within the Multi-Family Residential area known as Klingerman/Bonwood pursuant to City of El Monte Resolution No. 7939.

### **1.36 Materials Recovery Facility ("MRF")**

"Materials Recovery Facility" means a permitted Solid Waste Facility where Solid Wastes or Recyclable Materials are sorted or separated for the purposes of Recycling, processing or composting.

### **1.37 Mixed Waste Processing**

"Mixed Waste Processing" means the separation and sorting of Recyclable Materials and other recoverable materials from Solid Waste at a Materials Recovery Facility where loads of Solid Waste are processed.

### **1.38 Multi-Family Premises**

"Multi-family Premises" means (i) any single building or structure containing four (4) or more residential dwelling units; or (ii) any building, structure, lot or real property parcel containing two or more residential dwelling units which the City Manager determines must receive Solid Waste handling services through the use of a shared Bin(s) as such units may not reasonably receive individualized Solid Waste handling services through the use of Carts or resident provided Containers. The foregoing notwithstanding, residential dwelling units which are part of a "planned development" as the term is defined under Section 1351 of the California Civil Code shall not be considered Multi-Family Premises but instead shall be considered Residential Premises. For purposes of illustration "Multi-family Premises" include but are not necessarily limited to any apartment building or apartment structure containing four (4) or more residential units; or any single, exclusively residential high-rise/mid-rise building or structure. For purposes of this Agreement, "Multi-Family Premises" do not include "mixed used developments" as defined under Section 17.04.020 of the El Monte Municipal Code or any residential portion of a "mixed used development".

### **1.39 Multi-Family Services**

"Multi-Family Services" means Solid Waste services provided to Multi-Family Premises on a regular, ongoing and routinely performed basis and encompasses those duties, services and tasks set forth and described in Section 4.

### **1.40 Organic Waste**

"Organic Waste" means Food Waste and Green Waste, and other organic material as defined by CalRecycle, collectively or individually.

**1.41 Organic Waste Processing Facility**

"Organic Waste Processing Facility" means a permitted Facility where Organic Waste is sorted, mulched or separated for the purposes of Recycling, reuse or composting.

**1.42 Person**

"Person" means any individual, firm, association, organization, partnership, limited liability company, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, cities, and special purpose districts.

**1.43 Planned Unit Development; "PUD"**

"Planned Unit Development" and/or "PUD" means and refers to a "planned development", as this term is defined in El Monte Municipal Code Section 16.06.170, where the Premises consist of residential dwelling units and a common area on which each residential dwelling unit is individually owned as a lawfully subdivided parcel or interest in land. A PUD includes a so called townhome or condominium residential development. The subdivision map for a planned unit development or PUD may include more than three (3) residential dwelling units; provided however, that each such residential dwelling unit included in a PUD shall be situated on an individual and separate parcel of land within such Planned Unit Development.

**1.44 Premises**

"Premises" means any land, or building in City where Solid Waste is generated or accumulated.

**1.45 Rate Year**

"Rate Year" means the period July 1 to June 30, for each year during the Term of this Agreement. The Rate Year as defined herein coincides with the City's fiscal year.

**1.46 Recycling**

"Recycling" means the processing of Recyclable Materials for the purpose of returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transportation or Disposal of Solid Waste not intended for, or

capable of, reuse is not Recycling. Recycling does not include use of Solid Waste for conversion to energy.

#### **1.47 Recyclable Materials**

"Recyclable Materials" means Solid Waste that is Source Separated, has some potential economic value, and is set aside, handled, packaged, or offered for Collection in a manner different from Refuse in order to allow it to be processed for Recycling.

#### **1.48 Refuse**

"Refuse" means putrescible and non-putrescible Solid Waste.

#### **1.49 Residential Premises**

"Residential Premises" means (i) any single building, structure, lot or real property parcel containing three (3) or fewer residential dwelling units, except to the extent the City Manager determines the residential dwelling units within such dwellings, buildings or structures must receive Solid Waste Collection Services through the use of a shared Bin(s) as such units may not reasonably receive individualized Solid Waste handling services through the use of Carts or resident provided Containers; or (ii) each residential dwelling unit which is part of a "planned development" as the term is defined under Section 1351 of the California Civil Code; or (iii) any single-family residential dwelling unit attached to one or more single-family residential dwelling units by a common vertical wall(s), with each dwelling unit located on a separate lot; or (iv) any second unit/granny flat. A Residential Premises which either has been or is unlawfully used or improved with more than three (3) residential dwelling units shall not by virtue of this definition or such unlawful improvement become a Commercial Premises or a Multi-Family Premises but shall remain a Residential Premises. "Residential Premises" do not include: adult residential facilities; assisted living facilities; hotels; motels; any lot, real property parcel or portion thereof lawfully used for the location of residential mobile homes (e.g. any residential mobile home park); and any residential portion of a mixed use development as the term "mixed use development" is defined under Section 17.04.020 of Chapter 17.04 (Definitions) of the El Monte Municipal Code.

**1.50 Residential Services**

"Residential Service Area" means the territorial boundaries of the City where all Residential Premises lie and where Residential Services are rendered to a Residential Premises Customer and defined in Section 4.

**1.51 Residential Temporary Services**

"Residential Temporary Services" means the performance of Temporary Services provided to a Residential Premises where the waste generating project, activity or undertaking does not result in the construction of two or more new separate single family dwellings on a single lot.

**1.52 Roll-off Box**

"Roll-off Box" means Solid Waste Collection Containers of 10 cubic yards or larger.

**1.53 SB 1383**

"SB 1383" means the Short-Lived Climate Pollutants Act of 2016 (Chapter 395, Statutes of 2016), as it may be amended from time to time.

**1.54 Senior Citizen**

"Senior Citizen" means and refers to any Residential Premises Customer who is a natural Person who is sixty-two (62) years of age or over as evidenced by a birth certificate, driver license or other form of identification reasonably acceptable to the City for purposes of verifying age and who satisfies such those additional qualifications set forth under Section 5.1.1.3 of this Agreement.

**1.55 Sharps**

"Sharps" means medical devices that have needles or other sharp implements as component parts, including but not limited to Sharps and Sharps used in animal or human patient care, medical research, or clinical or pharmaceutical laboratories, hypodermic, intravenous syringes to which a needle or other sharp is still attached, Pasteur pipettes, scalpel blades, blood vials, other types of broken or unbroken glass (including slides and cover slips) that has been in contact with infectious agents.

"Sharps" shall not include those parts of syringes from which Sharps are specifically

designed to be easily removed and from which Sharps have actually been removed, and which are intended for Recycling or other Disposal, so long as such syringes have not come in contact with infectious agents.

**1.56 Solid Waste**

"Solid Waste" means all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including Refuse, Construction and Demolition Debris, Bulky Items, Recyclable Materials, and Organic Waste, or any combination thereof which are permitted to be disposed of in a Class III landfill, and which are included in the definition of "Non-hazardous Solid Waste" set forth in the California Code of Regulations.

**1.57 Solid Waste Collection Services**

"Solid Waste Collection Services" means the Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste placed for Collection pursuant to this Agreement.

**1.58 Source Separated**

"Source Separated" means the segregation by the Waste Generator of individual components of Solid Waste, which otherwise would become Refuse (such as glass bottles, metal cans, newspapers, plastic containers, etc.) into separate Container(s) for the purpose of allowing the Recycling of such materials.

**1.59 State**

"State" means the State of California.

**1.60 Temporary Service**

"Temporary Service" means Solid Waste Collection Services provided to a Premises on a temporary, as needed basis to any Premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Roll-off Boxes

**1.61 Transformation**

“Transformation” means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting.

**1.62 Transfer Station**

“Transfer Station” means a Facility that received Solid Waste from Collection vehicles and transfers the material to larger vehicles for transport to landfills and other facilities. Transfer Stations may or may not also include MRFs, transferring residual Refuse (Refuse left after the sorting of Recyclable Materials) to landfills and Recyclable Materials (including, for example, Organic Waste and/or Construction and Demolition debris), to processors, brokers or end-users.

**1.63 Valley Mall Retail Area**

The Valley Mall Commercial/Retail Area pursuant to City of El Monte Resolution No. 8068 adopted on October 24, 2000.

**1.64 Waste Generator**

"Waste Generator" means any Person whose act or process produced Solid Waste as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

## ARTICLE 2

### GRANT AND ACCEPTANCE OF FRANCHISE

#### 2.1 Grant and Acceptance of Franchise, Indemnity of Award

Subject to the terms and conditions of this Agreement (including but not limited to the exclusions set forth in Section 2.7 hereof) and applicable State laws, and to the rights of State, county and school district facilities to use a Solid Waste enterprise other than Contractor, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive franchise, right and privilege to provide Solid Waste Collection Services at all Residential Premises, Multi-Family Premises (including the Klingerman-Bonwood Multi-Family Area), Commercial Premises, Temporary (Construction and Demolition) projects, and the Valley Mall Retail Area (the "Franchise").

Contractor agrees to and shall timely take all actions that are reasonably necessary to defend the validity and enforceability of this Agreement and shall pay all costs related to such defense. Contractor shall defend, indemnify, protect and hold harmless, the City, its officers, agents and employees from any and all claims, actions or proceedings to attack, set aside, void, annul or seek monetary damages resulting from an approval by the City of this Agreement. The City shall promptly notify Contractor of any such claim, action, or proceeding. The City and Contractor shall meet in good faith in an effort to come to a mutual agreement for a joint defense; provided that the City shall be entitled to select legal counsel of its choice to conduct the defense if an agreement cannot be reached. Contractor's obligations to pay all costs, defend, indemnify, protect and hold harmless under this Section shall not be altered in the event City retains separate counsel.

#### 2.2 Effective Date

The "Effective Date" of this Agreement shall be the date following the approval of this Agreement by the City Council when Contractor and City have each executed this Agreement as evidenced by the signature of the officers of each of them which appear on the final page of this Agreement.

## 2.3 Term of Agreement

The term of this Agreement (the "Term") shall be ten (10) years, and two (2) months, commencing on May 1, 2019, and expiring June 30, 2029. Notwithstanding the foregoing, the unexcused failure or refusal of Contractor to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, for earlier termination of this Agreement for cause in accordance with the procedures elsewhere contained herein.

### 2.3.1 Performance of Services Between the "Effective Date" and Commencement of Term

Between the Effective Date and the day preceding the commencement of the Term, Contractor shall continue to provide solid waste services to its customers in El Monte under the terms of each of the following solid waste service contracts:

- (i) VVS Klingerman - Bonwood Franchise; and
- (ii) VVS Residential Franchise; and
- (iii) VVS Commercial Franchise; and
- (iv) VVS Temporary Franchise; and
- (v) the Assigned Residential Franchise, the Assigned Commercial Franchise, and the Assigned Multi-Family Franchise, all as included under the Franchise Agreement for Solid Waste Services (CA11PW012); and
- (vi) the Assigned Commercial Franchise (CA08CD008), the Assigned Temporary Franchise (CA08CD016).

Collectively, the foregoing solid waste service contracts enumerated under (i) through (vi), inclusive, above are referred to as the "Pre 2018 Franchise Agreements."

Commencing on the first day of the Term, each customer of Contractor under any of the Pre 2018 Franchise Agreements shall be deemed to be a customer of Contractor under this Agreement without any further or separate notice to any such customer under any of the Pre 2018 Franchise Agreements.

Between the Effective Date and the day preceding the commencement of the Term the unexcused failure or refusal of Contractor to perform any material term, covenant, obligation or consideration contained in any of the Pre 2018 Franchise Agreements shall give rise to the right in favor of the City, for the exercise by the City of the appropriate

remedy under one or more of the applicable Pre 2018 Franchise Agreements, and any claim, dispute or other matter arising under one or more of the Pre 2018 Franchise Agreements as between Contractor and City shall be resolved as provided in the applicable Pre 2018 Franchise Agreement.

Each of the Pre 2018 Franchise Agreements shall terminate as of April 30, 2018.

Commencing on the first day of the Term, the rights, duties and obligations of Contractor and the City for Solid Waste Collection Services shall be enforceable by Contractor and City under the terms of this Agreement.

#### **2.4 Representations and Warranties of Contractor**

Contractor hereby covenants, represents, and warrants the following to City for the purpose of inducing City to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the date of this Agreement and as of the Effective Date:

- a) Contractor is validly existing as a corporation under the laws of the State of California.
- b) Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations hereunder: (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 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.
- c) There is no action, suit or other proceeding as of the date of this Agreement, at law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor that is likely to result in an unfavorable decision, ruling or finding that would materially and 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 that could materially

and adversely affect the ability of Contractor to perform its obligations hereunder or that would have a material adverse effect on the financial condition of Contractor.

- d) Contractor has no knowledge of any applicable law in effect as of the date of this Agreement that would prohibit the performance by Contractor of this Agreement and the transactions contemplated hereby.
- e) 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 Collection services required by this Agreement.
- f) The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Exhibits to this Agreement, 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.
- g) Contractor's representative, designated in Section 5.3.3, shall have authority in all daily operational matters related to this Agreement. City may rely upon action taken by such designated representative as action of Contractor unless the actions taken are not within the scope of this Agreement.
- h) Contractor is duly organized, validly existing and in good standing under applicable laws. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.
- i) Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of Contractor have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Contractor have authority to do so. Contractor shall authorize one employee for the City as a single point of contact for issues arising under this Agreement, and Contractor acknowledges and agrees that City may expect and

assume that this employee's actions are taken on behalf of and with the full approval of the Contractor.

## **2.5 Conditions to Effectiveness of Agreement**

The satisfaction of each and all of 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 Agreement, and a condition of Contractor's continued right to the benefits conveyed herein:

- a) Accuracy of Representations. 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.
- b) Absence of Litigation. There shall be no litigation pending in any court 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 and Bond. Contractor shall have furnished evidence of the insurance and bond as required by Article 9, and shall comply with all ongoing requirements relating thereto.

## **2.6 Delegation of Authority**

The administration of this Agreement by the City shall be under the supervision and direction of the El Monte Public Works Department with oversight by the City Manager and the Director of Public Works. The actions specified in this Agreement, unless otherwise stated, shall be taken by the City Manager, the Director of Public Works or their respective designees.

## **2.7 Limitations to Scope**

Notwithstanding any provision to the contrary contained herein, 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 and 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 and/or Organic Waste by the Waste Generator to any Person or entity other than Contractor; provided, however, if the Generator is required to pay any monetary or non-monetary consideration, directly or indirectly, for the Collection, transportation, transfer, or processing of Recyclable Material, it shall not be considered a sale or donation and shall not be exempt;
- b) Solid Waste, including Recyclable and/or Organic Materials, that is removed from any Premises by the Waste Generator by means of "self-hauling", and that is transported personally by such Generator (or by his or her full-time employees) to a processing or Disposal Facility in a manner consistent with all applicable laws and regulations;
- c) Green Waste removed from a Premises 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;
- d) The Collection, transfer, transport, Recycling, processing, and Disposal of animal remains from slaughterhouse or butcher shops for use as tallow;
- e) The Collection, transfer, transport, Recycling, processing, and Disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- f) The Collection, transfer, transport, Recycling, processing, and Disposal of Hazardous Substances, Hazardous Waste, Household Hazardous Waste and radioactive waste regardless of its source;
- g) Construction and Demolition Debris which is removed via self-hauling by residents, or by a duly-licensed construction or demolition company as part of a total service offered by said licensed company, where the licensed company utilizes its own equipment in compliance with Construction and Demolition Debris requirements of the El Monte Municipal Code;
- h) 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;

- i) 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, such as State, county and school district facilities;
- j) The Collection, transfer, transport, Recycling, and processing of Organic Waste for use as animal feed; and,
- k) Food that is donated or otherwise provided to charitable organizations or food banks for use as food for human consumption.

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 herein, Contractor agrees that the scope of this Agreement will 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 as a result thereof.

## **2.8 City's Right to Direct Changes**

### **2.8.1 General**

City may direct Contractor to perform additional services (including new Diversion programs, etc.) or modify the manner in which it performs existing services or Bills for services. Pilot programs and innovative services which may entail new Collection methods, and different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may direct. Contractor acknowledges that State law may increase the Diversion requirement during the term of this Agreement and Contractor agrees to propose services to meet such Diversion requirements. If City directs Contractor to perform additional services, Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services, including a profit factor equal to ten percent (10%) of the incremental cost of such additional or modified services, unless the Parties otherwise agree. Agreed upon rates and service enhancements require approval of the

City Council. If City does not direct Contractor to perform additional services and Contractor cannot agree on compensation for new or additional services, then City may contract with other parties for such services, which shall be considered exempt from the exclusivity provisions of Section 2.1.

Contractor shall not receive a rate increase to provide additional services implemented to bring Contractor into compliance with contractually-required minimum Diversion rates per Section 4.2.6 or as a remedy for failure to perform under Section 7.1.

Additional or modified services shall be included in written amendment and shall require approval of the City Council.

### **2.8.2 New Diversion Programs**

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

- a) Collection methodology;
- b) Cost estimate and rate impact, if any;
- c) Implementation timeline;
- d) Equipment to be used (e.g. vehicle number, types, capacity, age, etc.);
- e) Labor requirements (number of employees by classification);
- f) Types of Containers to be used;
- g) Recyclable Materials to be Collected;
- h) Public education, outreach and marketing;
- i) Projection of the annual 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;
- j) An estimate of the amount of an adjustment, if any in the Rate Schedule corresponding to the
- k) Contractor's response; and

l) Other information as the City may request.

## **2.9 Ownership of Solid Waste**

City and Contractor understand and agree that it is Contractor, and not City, who will arrange to Collect Solid Waste; that City has not, and, by this Agreement does not, instruct Contractor on its Collection methods, nor supervise the Collection process; nor do the Parties intend to place title to Solid Waste Collected by Contractor in City. Rather, the Parties intend that whatever, if any, title in and to the Solid Waste that is Collected by Contractor which otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor; and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. Subject to the provisions of this Agreement, and unless City exercises its rights to direct the location for Disposal and processing of Solid Waste, Contractor shall have the right to retain, Recycle, process, dispose of, and otherwise use Solid Waste Collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, process, dispose of, or reuse the Solid Waste which it Collects. Ownership of Solid Waste properly placed for Collection shall transfer to Contractor when Customer places it at point of Collection.

## **2.10 Contractor Status**

Contractor represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws, including, but not limited to the laws of the federal government of the United States of America, the State of California, the County of Los Angeles and the City of El Monte. Contractor further warrants and represents that it is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

## **2.11 Contractor Authorization**

Contractor represents and warrants that it has the authority to enter into and perform its obligations under this Agreement. Contractor's owners, principals, trustees, board of directors, partners or shareholders or any Person(s) holding an ownership interest in Contractor (whatever the case may be) have taken all actions required by law, by its articles of incorporation, by its bylaws or as otherwise

required to authorize the execution of this Agreement. Contractor's signatories for the purposes of this Agreement represent that they are duly authorized to execute this Agreement and bind Contractor to the terms and conditions contained herein. City may rely upon the representation of authority and signature of such signatory in all matters relating to this Agreement as binding on Contractor. Contractor shall authorize one employee for the City as a single point of contact for issues arising under this Agreement, and Contractor acknowledges and agrees that City may expect and assume that this employee's actions are taken on behalf of and with the full approval of the Contractor,

#### **2.12 Permits and Licenses**

Contractor shall acquire and maintain all necessary permits and licenses to conduct the activities required and/or authorized under this Agreement. Failure to maintain all required permits shall be deemed a material breach of contract for which City may terminate this Agreement as provided in Article 11, Contractor shall furnish City with any and all documentation evidencing the acquisition, maintenance and timely renewal of all such permits and licenses, including but not limited to true and correct of copies of all permits and licenses upon request.

#### **2.13 Payroll Tax**

Contractor shall exonerate, defend, indemnify, and hold harmless City and City's elected and appointed officials, officers, employees, agents and volunteers, and shall assume full responsibility for payment of all wages or salaries and all federal, State or local taxes or contributions, including, but not limited to, those imposed and required under the Unemployment Insurance, Social Security, Income Tax laws and Workers' Compensation laws with respect to Contractor's employees engaged in the performance of Contractor's obligations hereunder.

#### **2.14 Contractor Name**

Neither Contractor's name nor any name under which Contractor does business shall include the term "El Monte", "City of El Monte" or any other language suggesting or in any way implying that the Contractor is a department, division, subdivision or Affiliate of City or in any way part of the City.

## 2.15 Annexations

Contractor's rights and obligations as set forth in this Agreement may apply in any territory annexed to the City during the term of this Agreement, except to the extent that the application of such rights and obligations within such annexed territory would violate the provisions of Public Resources Code Section 49520 *et seq.*, or any other law or regulation relating to the rights of other Solid Waste enterprises to continue providing services in annexed areas. If upon annexation Contractor is permitted to provide Solid Waste Services in the annexed areas pursuant to preexisting rights granted by another jurisdiction, Contractor shall provide all such Customers in the annexed area with the same services, at the same rates, as are available to all Premises in the balance of the City pursuant to the terms of this Agreement.

## 2.16 Emergency Operations

1. As used in this Section 2.16, the word "Emergency Condition" means the existence of a condition which threatens the public health, safety and welfare as a result of Contractor's failure or inability to perform its duties and obligations under this Agreement within the City of El Monte, or a portion thereof, due to fire, flood, storm, earthquake or other natural calamity, riot, explosion, insurrection, public disturbance, or labor strike or disturbance, or other catastrophic event outside the control of Contractor. If Contractor is unable to provide Solid Waste Services to one or more Customers by virtue of the occurrence of an Emergency Condition for a period of more than seventy two (72) hours, the City Council and/or the City Manager shall have the right, upon notice to Contractor, to execute contracts with Persons or entities other than Contractor to provide such Solid Waste Services to those affected Customers as may then in the opinion of the City be indicated for the duration of the Emergency Condition. Contractor shall not be deemed to breach of its obligations under this Agreement during such Emergency Condition.
2. Regardless of whether an Emergency Condition has occurred and is continuing, the City expressly reserves the right to enter into separate arrangements with other parties on either an exclusive or non-exclusive basis to Collect, transport, Recycle and Dispose of Solid Waste (including Construction and Demolition Debris or other debris and rubble) from Premises or other locations in the City of El Monte

when the occurrence of an Emergency Condition is associated with an earthquake or with a fire or flood for which a declaration of emergency has been issued by the Governor of the State.

## ARTICLE 3

### FEES PAID TO THE CITY

In addition to any other consideration set forth herein, as part of its consideration for entering into this Agreement, and for the exclusive franchise, right and privilege to provide Solid Waste Collection Services as specified herein, Contractor shall provide the following:

#### 3.1 City Fees

##### 3.1.1 Franchise Fee

In consideration of the exclusive right to Collect provided in Section 2.1 of this Agreement, throughout the Term, Contractor shall pay to City a Franchise Fee in an amount equal to fifteen percent (15%) of the Gross Receipts received by Contractor for all services provided in City pursuant to the terms of this Agreement.

Payments shall be made quarterly. The initial payment shall be due by July 30, 2019, covering the period May 1, 2019 to June 30, 2019, and each subsequent payment shall be due within 30 days of the end of each calendar quarter, for the prior calendar quarter. The calculation of Temporary Services Franchise Fees pursuant to this Section shall not include Gross Receipts derived exclusively from Residential Temporary Services, as defined herein.

##### 3.1.2 AB 939 Fee Amount

A. Amount Pursuant to AB 939 (Public Resources Code Section 40000 *et seq.*) as of the Effective Date, the Contractor shall pay a fee (the "AB 939 Fee") to City in the amount of:

- 1) One Dollar and Sixteen Cents (\$1.16) per cubic yard of Solid Waste Collected through the use of Roll-off Bins whether used in the performance of Temporary Services or any other variety of Solid Waste Services authorized under this Agreement; and
- 2) Thirty-Nine Cents (\$0.39) per cubic yard of Solid Waste Collected through the use of any other variety of Container used in the performance of Solid Waste Collection Services authorized under this Agreement; and

- 3) Sixty-Five Cents (\$0.65) per Residential Premise per month serviced by Contractor authorized under this Agreement.

Payments shall be made quarterly. The initial payment shall be due by July 30, 2019, covering the period May 1, 2019 to June 30, 2019, and each subsequent payment shall be due within 30 days of the end of each calendar quarter, for the prior calendar quarter. The AB 939 Fee calculation shall be inclusive of any additional Franchise territory awarded to or acquired by Contractor following the Effective Date of this Agreement, as provided under Section 2.2. Any additional franchise authority to provide Solid Waste Services that may be awarded to or acquired by Contractor following the Effective Date of this Agreement shall conform to and be consistent with the Franchise rights and obligations set forth in this Agreement. Each payment of the AB 939 Fee shall be accompanied by a quarterly statement, the form of which is set forth under Exhibit 6 of this Agreement, accurately detailing the number of Customers served and total cubic yards Collected from Residential Premises, Multi-Family Premises, Commercial Premises and in the performance of Temporary Services provided to properties that qualify as Commercial Premises or Multi-Family Premises. The AB 939 Fee rates referenced under this Section shall not be applied to the performance of those services and tasks which qualify as Residential Temporary Services.

B. Annual Adjustment to AB 939 Fees: The amount of the AB 939 Fee shall be adjusted automatically at the beginning of each Rate Year by a percentage equal to the annual percentage increase, if any, in the January CPI. If there is no increase in the CPI or if the CPI decreases, the AB 939 Fees shall remain unchanged from the previous Rate Year. In addition to any annual adjustments, the City Council, in its sole and absolute discretion, may adjust the AB 939 Fees from time to time by resolution in accordance with applicable law, provided that any increase in Contractor's operating costs attributable to City's increase of AB 939 fees may be considered for any Extraordinary Adjustment to the maximum charges and rates charged by Contractor under this Agreement.

### **3.1.3 Annual Administrative Fee**

Contractor shall also pay an Annual Administrative Fee in the amount of one-hundred and ninety thousand dollars (\$190,000.00). The Annual Administrative Fee shall be paid in four equal installments over the course of each Rate Year. The initial

payment shall be due by July 30, 2019, covering the period May 1, 2019 to June 30, 2019 in the amount of thirty-one thousand, six hundred and sixty-six dollars, and sixty-six cents (\$31,666.66), and each subsequent payment shall be due within 30 days of the end of each calendar quarter, for the prior calendar quarter. The foregoing notwithstanding, the amount of the Annual Administrative Fee shall be adjusted automatically at the beginning of each Rate Year by a percentage equal to the annual percentage increase, if any, in the January CPI. If there is no increase in the CPI or if the CPI decreases, the Annual Administrative Fee shall remain unchanged from the previous Rate Year.

#### **3.1.4 Annual Household Hazardous Waste and E-Waste Fee**

Contractor shall pay an Annual Household Hazardous Waste (HHW) and E-Waste Fee to the City in an amount equal to one-hundred and ten thousand dollars (\$110,000.00). The HHW and E-Waste Fee shall be paid in four installments over the course of each Rate Year. The initial payment shall be due by July 30, 2019, covering the period May 1, 2019 to June 30, 2019 in the amount of eighteen thousand, three hundred, thirty-three dollars, and thirty-three cents (\$18,333.33), and each subsequent payment shall be due within 30 days of the end of each calendar quarter, for the prior calendar quarter. The foregoing notwithstanding, the amount of the HHW and E-Waste Fee shall be adjusted automatically at the beginning of each Rate Year by a percentage equal to the annual percentage increase, if any, in the January CPI. If there is no increase in the CPI or if the CPI decreases, the HHW and E-Waste Fee shall remain unchanged from the previous Rate Year.

#### **3.1.5 Annual Bulky Item Program Fee**

Contractor shall pay an Annual Bulky Item Program Fee to the City in an amount equal to eighty-thousand dollars (\$80,000.00). The Bulky Item Program Fee shall be paid in four installments over the course of each Rate Year. The initial payment shall be due by July 30, 2019, covering the period May 1, 2019 to June 30, 2019 in the amount of thirteen thousand, three hundred and thirty-three dollars, and thirty-three cents (\$13,333.33), and each subsequent payment shall be due within 30 days of the end of each calendar quarter, for the prior calendar quarter. The foregoing notwithstanding, the amount of the Bulky Item Program Fee shall be adjusted automatically at the beginning of each Rate Year by a percentage equal to the annual percentage increase, if any, in the January CPI. If there is no increase in the

CPI or if the CPI decreases, the Bulky Item Program Fee shall remain unchanged from the previous Rate Year.

### **3.1.6 Annual Road Maintenance Cost Reimbursement Fee**

To reimburse the City for road maintenance due to the use of Contractor's Collection vehicles on City streets, Contractor shall pay one-hundred and twenty thousand dollars (\$120,000.00) annually as adjusted herein. The Annual Road Maintenance Cost Reimbursement Fee shall be paid in four quarterly installments over the course of each Rate Year, beginning with the Rate Year starting July 1, 2019. The initial payment shall be due by October 30, 2019, covering the period July 1, 2019 to September 30, 2019 in the amount of thirty thousand dollars (\$30,000.00), and each subsequent payment shall be due within 30 days of the end of each calendar quarter, for the prior calendar quarter. The foregoing notwithstanding, the amount of the Annual Road Maintenance Cost Reimbursement Fee shall be adjusted automatically at the beginning of each Rate Year by a percentage equal to the annual percentage increase, if any, in the January CPI. If there is no increase in the CPI or if the CPI decreases, the Annual Road Maintenance Cost Reimbursement Fee shall remain unchanged from the previous Rate Year.

### **3.1.7 Late Payment of Fees**

Consistent with Article 11 of this Agreement, below, the failure of Contractor to timely pay any sums due under this Article shall constitute an Event of Default within the meaning of this Agreement. Any such past due sums that have not been paid in full to City within 30 days of the due date, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) of the amount owing for that month, plus interest at a rate of one and one-half (1.5%) per month for each month the payment is late thereafter.

## **3.2 Future Fees**

In the event that City implements a new fee not included in Section 3.1, or increases the amount of an existing fee, Contractor shall be entitled to a rate adjustment in an amount sufficient to recover the fee from Customers. City may elect to have Contractor pay in accordance with the requirements of fee payments made in Section 3.1, or on another schedule as City identifies with associated deadlines and late fees.

**ARTICLE 4**  
**DIRECT SERVICES**

**4.1 Refuse**

**4.1.1 General**

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

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that all Customers are provided reliable, courteous and high-quality Solid Waste Collection Services 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 provided in this Section, whether such other aspects are enumerated elsewhere in this Agreement or not.

**4.1.2 Residential Cart Refuse Collection**

Contractor shall provide all Customers at Residential Dwellings without Bin Service one Refuse Cart ("Refuse Cart(s)"), and shall Collect all Refuse placed therein for Collection not less than once per week. The Refuse Cart shall not be used for Collection of any materials prohibited by CalRecycle.

Customers that regularly require more than one Refuse Cart may request additional Carts for an additional charge per Cart per month in accordance with the approved rate schedule.

**4.1.2.1 Refuse Cart Overage**

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Premises Customers are therefore entitled to two annual pickups per calendar year and an end-of-year pickup of material that does not fit in the

Refuse Cart(s) at no additional cost, as provided in this Section. A pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse and placement of more than that amount at any one time shall constitute two pickups. In addition to the two (2) free pickups, Contractor shall Collect all additional Refuse placed out for Collection in the Residential Premises Customer's own Containers (bags, boxes, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 4.1.7. Contractor shall Collect, and Customers may be charged an extra fee per pickup (in accordance with the approved rate schedule for overage pickups) of, all Refuse put out for Collection that does not fit in the Refuse Cart(s) above and beyond the free pickups described above.

Customer shall be instructed to call in both free and additional overages. However, if not called in, Contractor shall Collect and record pickup per Section 4.1.8.

#### **4.1.2.2 Valet Service**

Contractor may charge Customers requesting valet service (e.g., the Contractor shall provide for the movement of Customer's Carts from the storage point to the curbside Collection point, and return them to the storage location, on each Collection day) in accordance with the approved rate schedule, unless the Customer falls under the exception described in Section 4.1.2.3.

#### **4.1.2.3 Valet Service For Senior Citizens and Disabled Persons**

Valet service (e.g., the Contractor shall provide for the movement of Customer's Carts from the storage point to the curbside Collection point, and return them to the storage location, on each Collection day) is available to qualifying Senior Citizens and disabled Persons upon request at no additional charge.

#### **4.1.3 PUD Collection.**

If Solid Waste generated by the individual single-family dwelling units of a PUD is deposited into a shared Solid Waste Bin(s) that serves the PUD. Contractor, upon request, shall provide free of charge one Recycling Cart and/or one Green Waste Cart to any single-family dwelling unit within a PUD whose Solid Waste is routinely Collected through the use of a permanent Bin(s) shared by the PUD residents.

Contractor shall Collect discarded Recyclable Materials and Green Waste deposited

in such Carts free of charge and on the same day Solid Waste is Collected from the permanent Bin(s) shared by PUD residents. Contractor, upon request by a PUD whose generated Solid Waste is deposited into a permanent Bin(s) shared by the PUD residents, shall provide the PUD with a dedicated Recycling Bin for the deposit of discarded Recyclable Materials generated by the PUD residents, provided that the provision of such a Bin and the Collection of discarded Recyclables from such a Bin shall be paid for by the PUD in accordance with the schedule maximum charges and rates attached hereto as Exhibit 2. As the Parties acknowledge that configuration of certain PUD's may render Recyclable Materials and Green Waste Cart service and/or Recyclable Materials Bin Service impossible or impractical, in the event Contractor and a PUD Customer disagree as to the feasibility of implementing either such service within a PUD, such dispute shall be resolved by the Director of Public Works whose decision shall be final and binding.

#### **4.1.4 Bin Refuse Collection**

Contractor shall provide Bins and Bin Service to its Multi-Family, Commercial, Klingerman-Bonwood Multi-Family Area, and Valley Mall Retail Area Customers that request such service. Contractor shall Collect and remove all Refuse that is placed in Bins from the property of Customers receiving Bin Service, at least once per week and more frequently if required to handle the waste generated at the Premises where the Bins are located. Bins shall not be used for the Collection of materials prohibited by CalRecycle. To resolve a dispute between Contractor and Customers, or if the City has health or safety concerns, City shall make final determination as to the number and size of Containers, and frequency of Collection to be provided to Customers. Special consideration shall be given when determining the pickup areas to ensure that the flow of traffic is not impeded.

Contractor shall provide 1.5, 2, 3, 4 and 6 cubic yard Bins upon request. Contractor will service Bins equipped with compaction devices (known as compactors) that attach to the Bins if requested by Customer. The provision, sale or lease of the compaction device itself is outside this Agreement. Contractor is not required to provide the compaction device.

#### **4.1.4.1 Determination of Service Type**

If Contractor and Customer have a disagreement as to whether a Refuse Bin is appropriate, or if City determines the Collection in a Refuse Bin causes health and safety or other concerns, or if the City determines Cart service is more appropriate, City shall make the final determination as to whether Refuse Collection shall be from a Bin, or from a Cart. In all cases, City retains absolute discretion in the determination of which type of service a Customer shall receive, and therefore which with hauler will provide service.

#### **4.1.4.2 Overflowing Containers - Bin Customers**

Customers that regularly produce more Solid Waste than their current level of service can accommodate may have their service level increased in accordance with the following procedure:

First and Second Incident in a Six Month Period – If more material is placed for Collection than fits in a Container, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer (at both the service and Billing addresses) the picture and a letter instructing that further instances of an overflowing Container may result in an increase in the level of service.

Third Incident in a Six Month Period – Upon the third event of an overfilled Container in a three-month period, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter requesting that Customer increase its service level. If the Customer declines, Contractor may petition City to permit Contractor to increase the service level to accommodate the higher demand for service.

Contractor shall send City via e-mail or U.S. mail a copy of each letter and picture sent to a Customer under this Section 4.1.4.2.

#### **4.1.4.3 Bin Pushout Service**

Upon Customer request, Contractor shall provide Bin pushout service, whereby Contractor will move Containers manually to facilitate Collection. The Contractor may charge the pushout rate included in Exhibit 2 to move or retrieve a Container sixteen (16) to twenty-five (25) feet to facilitate Collection. In the event of a dispute between

Contractor and Customer as to whether pushout service will be used, City will make the final determination.

#### **4.1.4.4 Scout Service**

Upon Customer request, Contractor shall provide scout service, whereby Contractor will access Containers using a small vehicle either to move Containers to street or other public right-of-way for Collection, or Collecting Solid Waste directly from Container storage location. The Contractor may charge the scout rate included in Exhibit 2 to move or retrieve a Container twenty-six (26) feet or more to facilitate Collection. In the event of a dispute between Contractor and Customer as to whether scout service will be used, City will make the final determination. If a scout fee is charged then a pushout fee shall not be charged. Contractor shall confirm that an encroachment permit has been issued for Scout Service that causes a Container to be staged for Collection in the public right-of-way if required by City.

#### **4.1.4.5 Locking Bins**

Contractor shall provide locking Bin Service (providing the hasp and lock and servicing the lock) to Customers that request such service in accordance with the approved rate schedule.

#### **4.1.5 Permanent Roll-off Box Service**

Contractor shall offer Permanent Roll-off Service to all Multi-Family and Commercial Premise Customers requiring said services pursuant to this Agreement. Contractor shall charge Commercial and Multi-Family Customers in accordance with the approved rate schedule. City and Contractor shall cooperate in reducing illegal Collection of Roll-off Bins by non-permitted or non-franchised Solid Waste enterprises or any other Person or entity not authorized to perform Solid Waste Services in the City of El Monte. City, in its discretion, may enact such other ordinances or approve such other resolutions as may be necessary or desirable to prohibit, prevent and/or discourage the performance of Solid Waste Services by unauthorized Persons.

#### **4.1.6 Temporary Bin and Temporary Roll-off Box Service**

##### **4.1.6.1 Solid Waste Collection**

Except as may be later authorized pursuant to Section 2.3 of this Agreement, Contractor shall provide Temporary Services to all Customers. Contractor shall Collect and remove all Solid Waste that is placed in Containers provided to its Temporary Services Customers, at least as frequently as required per the El Monte Municipal Code and more frequently if required to handle the amount of Solid Waste generated by the Premises where the Containers are placed.

##### **4.1.6.2 Temporary Services**

Bins and other reasonably suitable Containers provided by Contractor in the performance of Temporary Services shall be provided to Customers in accordance with the schedule of maximum charges and rates attached hereto as Exhibit 2. City and Contractor shall cooperate in reducing illegal Solid Waste Services (including illegal Temporary Services) provided or otherwise performed by non-permitted or non-franchised Solid Waste enterprises or any other Person or entity not authorized to provide and/or perform Solid Waste Services in the City of El Monte. City, in its discretion, may enact such other ordinances or approve such other resolutions as may be necessary or desirable to prohibit, prevent and/or discourage the performance of Solid Waste Services by unauthorized providers.

##### **4.1.6.3 Roll-off Containers**

Contractor shall provide Customers with clean Roll-off Bins which shall be kept free of graffiti and corrosion and which shall be equipped with reflectors. All Roll-off Bins shall have the name, business address and phone number of the Contractor in letters not less than five inches (5") in size on the exterior of the Roll-off Bins as to be visible when placed for use. The Contractor shall cover all open Roll-off Bins during transport so as to prevent the release of their contents. Contractor shall also comply with all applicable provisions of the El Monte Municipal Code and State law (including but not limited to the California Vehicle Code) relating to the handling of Roll-off Bins during transport. The Contractor shall maintain all of its Bins and Containers in a sanitary condition free from putrescible residue and leakages. Containers shall be constructed of suitable, durable materials (including but not limited to heavy metal, as appropriate), and, if reasonably appropriate, shall be well

painted at all times. Doors, channels, chains, locks and other appurtenances, which were designed for movement, loading or unloading of the Container, shall be maintained in good repair at all times. Contractor and Customer by mutual agreement shall determine the appropriate size of the Roll-off Bin required for a particular Temporary Services engagement, provided that in the event Contractor and the Customer are unable to mutually agree as to the appropriate size of the Roll-off Bin required for the engagement, the Director of Public Works shall resolve the dispute.

#### **4.1.6.4 Encroachment Permit**

Contractor shall confirm, prior to delivery of Container in the public right-of-way, that Customer has obtained an encroachment permit.

#### **4.1.7 On-Call Bulky Item Pickup**

Contractor shall provide Bulky Item pickup service to all Residential Premises and Multi-Family Premises.

A. Residential Premises Customers. Contractor shall Collect, free of charge, a maximum of twenty (20) individual Bulky Items per Rate Year for each Residential Services account holder/Residential Premises Customer. Residential Services account holders/Residential Premises Customers shall pay for the cost of Collecting any Bulky Items in excess of twenty (20) per Rate Year in accordance with the schedule attached hereto as Exhibit 2.

B. Multi-Family Premises. Multi-Family Premises shall be entitled to a number of annual pickups at no additional charge equal to the number of dwelling units in the building or complex. The property owner, manager or individual dwelling units may call in the pickup requests. Multi-Family Premises shall pay for the cost of Collecting any Bulky Items in excess of the number of dwelling units per Rate Year in accordance with the schedule attached hereto as Exhibit 2. The setout location shall be curbside unless otherwise agreed upon by the Customer and Contractor.

C. Unscheduled Bulky Item Collection. Contractor will Collect and dispose of, at no additional charge, within one business (1) day of notification from City, all items left curbside, or adjacent to Carts or Bins. Contractor will not be required to Collect Hazardous Waste (with the exclusion of electronic waste and universal wastes as

provided in this Agreement), liquid wastes, or automobile parts that are individually too large for Collection by two people, but will be required to Collect any items defined as Bulky Items. Abandoned items shall be transported by Contractor to the City Yard. Contractor will properly Divert from landfilling or Dispose of such items in accordance with Sections 4.1.8 and 4.1.9. Items left adjacent to Residential Carts or Multi-Family Bins shall count toward the Customer's annual Bulky Items, and may be charged the Bulky Item Fee in the approved rate schedule if they exceed the number of annual allowable Bulky Items. Contractor may charge Commercial Premises Customers a Bulky Item Fee or Extra Pickup Fee for items left adjacent to Commercial Bins, if the Customer can be identified.

D. Conditions of Collection. Contractor may instruct Customers to provide Contractor with a minimum of one business days' notice for the items, which shall be Collected on the Customer's regular Collection day. Contractor shall Collect all Bulky Items as defined in Section 1.8 including items referred to as electronic waste or "e-waste." The following provisions shall apply to this program:

- No single item that cannot be handled by two workers will be accepted.
- The following items will not be picked up: Hazardous Substances, Hazardous Waste, including waste oil or anti-freeze, with the exception of Bulky Items per Section 1.8 (including without limitation, universal wastes such as fluorescent bulbs, household batteries, and televisions, monitors and other items commonly referred to as "e-waste" that will be Collected by and disposed of by Contractor in accordance with this Section as well as Sections 4.1.8 and 4.1.9.)
- Contractor shall record by class and weight (in tons) the Solid Waste Collected from Bulky Item pickups. Contractor shall record the kinds and weights (in tons) of this Solid Waste that is Diverted from the landfill through Recycling, reuse, Transformation or other means of Diversion. Contractor shall include this information in its quarterly reporting per Section 8.3.2(1).

Commercial Premises Customers may receive Bulky Item Collection under the same terms for a fee, in accordance with the approved rate schedule in Exhibit 2.

#### **4.1.8 Bulky Item Diversion**

Bulky Items Collected by Contractor in accordance with Section 4.1.7, or otherwise Collected under this Agreement, may not be landfilled or disposed of until the following hierarchy of Diversion efforts has been followed by Contractor:

- 1) Reuse as is
- 2) Disassemble for reuse or Recycling
- 3) Recycle
- 4) Disposal

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items unless the compaction mechanism is not used to compact the Bulky Items. An exception maybe made for items that have been designated for Disposal.

#### **4.1.9 Disposal of Electronic and Other Special Wastes**

Contractor shall Divert waste requiring special handling, such as universal or electronic waste, or "e-waste," Collected in accordance with this Agreement, by taking these goods to a properly permitted Facility, and not by landfilling.

#### **4.1.10 Service Exceptions; Hazardous Waste Notifications**

A. Failure to Collect. When Solid Waste is not Collected from any Customer, Contractor shall notify Customer in writing, at the time Collection is not made, through the use of a "tag" or otherwise, of the reasons why the Collection was not made, such as the placement of Hazardous Waste in the Container.

B. Hazardous Waste Inspection and Reporting. Contractor reserves the right to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste and the right not to Collect Hazardous Waste put out with Solid Waste. Contractor shall notify all agencies with jurisdiction, 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 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 immediately notify City Manager or City Manager's designee. Contractor shall implement and maintain a training program that will assist its employees in identifying and properly disposing of any Hazardous Waste that may come into their possession.

C. Hazardous Waste Diversion Records. Contractor shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste and which was inadvertently Collected from Customers within City, but Diverted from landfilling.

#### **4.1.11 Sharps Program**

Contractor shall implement a mail-based program for the Collection and safe processing of Sharps generated by Residential and Multi-Family Customers. Residential and Multi-Family Customers requesting Sharps services may apply to Contractor to participate in this program, and Sharps Containers will be delivered directly to them at no cost to the Customer or City. Customer may request up to four Sharps Containers per calendar year at no additional cost.

## **4.2 Recycling**

### **4.2.1 Residential Cart Recycling Collection**

Contractor shall provide all Residential Cart Customers with a Cart for Recyclable Materials ("Recycling Cart(s)"), and shall Collect all Recyclable Materials placed therein for Collection not less than once per week. Recycling Carts shall not be used for the Collection of materials prohibited by CalRecycle. Contractor shall Collect Recyclable Material placed in Recycling Carts for Collection from each Customer on the same day as Customers' Refuse Cart is Collected.

Contractor shall have a Recycling program whereby it, at a minimum, Collects all materials that can be recovered at the local processing Facility used by Contractor. Contractor will update public education materials accordingly as new items are added to those recovered by the Facility.

Residential Premises Customers are entitled to an unlimited number of Recyclable Material Carts for no additional charge.

Contractor shall take whatever actions may be appropriate, lawful and effective to discourage the unauthorized removal of Recyclable Materials from the Solid Waste stream, commonly referred to as scavenging.

#### **4.2.2 Bin Recyclables Collection**

Contractor agrees to provide, in accordance with the approved rate schedule in Exhibit 2, Recycling Collection service to Customers requesting it from the Contractor. Contractor may purchase Recyclable Materials from its Customers as well. The Contractor agrees to provide Recycling Bins or Carts to such Customers in sufficient quantities to meet the Recycling needs of each Customer.

Contractor shall take whatever actions may be appropriate, lawful and effective to discourage the unauthorized removal of Recyclable Materials from the Solid Waste stream, commonly referred to as scavenging. Recycling Bins shall not be used for the Collection of materials prohibited by CalRecycle.

#### **4.2.3 Processing of Solid Waste**

Contractor shall deliver to the Grand Central Recycling and Transfer Station, or any comparable facility with advance written City approval, and process all Multi-Family and Commercial Premises mixed Solid Waste Collected in order to maximize recovery of Recyclables.

#### **4.2.4 Contaminated Loads, Warning Notice**

Contractor shall place a tag or other warning notice approved by the City on all Recyclable Material or Green/Organic Waste loads that are contaminated, indicating to the Customer why the load was not Collected and Diverted, and providing Contractor's phone number. Contractor shall notify City on a quarterly basis of any warning notices issued pursuant to this Section, and shall provide copies of such warnings to City upon request. With prior written City authorization, Contractor may remove Recycling and Green Waste Carts from habitual contaminators that have received a total of three warnings on either or both Carts in any six-month period. Residential Recycling and Green Waste Carts will be returned only after six months, or upon direction of the City, or if there is a change of occupancy.

Contamination Monitoring – If required by SB 1383, Contractor shall perform, on behalf of the City, contamination monitoring, route reviews, and inspections in compliance with SB 1383.

#### **4.2.5 Marketing and Sale of Recyclable Materials**

Marketing and Sale of Recyclable Materials. Contractor shall be responsible for the marketing and sales of all discarded Recyclable Materials Collected pursuant to this Agreement. Contractor may retain revenue from the sale of such discarded Recyclable Materials.

#### **4.2.6 Minimum Diversion Requirements**

Contractor shall Divert from landfilling a minimum of 35% of all Solid Waste Contractor Collects under this Agreement excluding temporary Roll-off service.

Contractor shall Divert from landfilling the State-mandated Construction and Demolition Diversion percentage, currently 65%, of all Construction and Demolition Debris loads Contractor Collects under this Agreement.

Upon the request of either party, not more often than once every two (2) years, the Parties agree to meet and confer regarding adjustments to the minimum Diversion rate, based on factors including waste characterization data provided by Contractor, trends in source reduction and reuse, trends in third party Diversion, extent of reverse logistics, the availability of permitted Facilities that are capable of processing material to achieve the required levels of Diversion, emerging methods of processing and Recycling/reusing new waste materials, the availability of markets, transportation constraints, embargoes, and the impact of scavenging. City shall consider such information provided by Contractor and other industry data and shall, at its sole discretion, determine if any adjustments to the minimum Diversion requirements shall be made, and such changes must be approved by the City Council before becoming effective.

Compliance with each of these minimums will be measured, initially, for the first period from May 1, 2019 to December 31, 2019, and subsequently on a calendar year basis. Recycling of materials not Collected by the Contractor is not to be counted towards meeting this requirement. If Contractor fails to comply with these Diversion rate requirements, Contractor must submit a plan for compliance, including without

limitation implementation of applicable portions of City's Source Reduction and Recycling Element, within sixty (60) days of the end of the calendar year. Contractor's plan is subject to approval by the Director of Public Works, and to be approved must constitute a good faith plan to implement applicable portions of City's Source Reduction and Recycling Element and be reasonably likely to achieve compliance with the above requirement. Costs for providing the services in the compliance plan to meet this existing obligation will be borne by Contractor and shall not be the subject of a rate adjustment.

If, following implementation of the plan for compliance, Contractor does not achieve compliance with the above requirement for the calendar year in which the plan was submitted, liquidated damages may be assessed under Section 11.3 for failure to meet this requirement.

#### **4.2.7 Construction and Demolition Debris Diversion**

Contractor will bring all loads of mixed Construction and Demolition Debris to a construction and demolition processing Facility designated per Section 4.10 for separation and recovery of this material. Contractor may deliver separated loads of Construction and Demolition Debris, such as clean dirt, concrete or rebar, to facilities specializing in the reuse of such materials, provided this material is Diverted from landfilling. Contractor shall Divert from landfilling a minimum of the State-mandated Construction and Demolition Diversion percentage of all Construction and Demolition Debris Collected.

#### **4.2.8 Organic Waste Collection Services**

Contractor will develop and provide an Organic Waste Recycling program that at minimum meets the standards required by CalRecycle.

Contractor shall be responsible for ensuring that the Organic Waste Recycling program meets the requirements of CalRecycle and may be required to modify its program from time to time.

Contractor shall provide Organic Waste Recycling to all Commercial and Multi-Family Premises and City Facilities subject to the requirements of CalRecycle. At a minimum the program will include Organics Cart Collection service and Organics Bin Collection

service at the rates included in Exhibit 2. Contractor shall replace compostable Cart liners after each Collection service.

Contractor shall conduct Customer surveys and onsite waste assessments of Customers subject to the requirements of CalRecycle that do not receive Organic Waste Collection service on an annual basis. Contractor shall provide to the City on annual basis, or upon City's request, the total number of Contractor's Customers within the thresholds of CalRecycle, the total number of these Customers that subscribe to the Contractor provided Organic Waste program or a third-party program, or that self-haul, a listing of all surveys and onsite waste assessment performed, the outcome of the assessments, and contact information for Customers that do not currently have an Organic Waste program. Contractor personnel shall conduct outreach to introduce the program and conduct initial assessments of onsite needs. Contractor shall conduct visual waste audits of Commercial and Multi-Family Premises to evaluate the Organic Waste service requirements and service level needs. Contractor shall train employees such as servers, food preparers, hospitality and maintenance, taking into consideration employee turnover and shift changes.

Contractor shall provide Customers with information regarding food donation programs where applicable to ensure compliance with SB 1383 that requires recovery of 20 percent of edible food for human consumption that is currently landfilled by 2025.

#### **4.2.8.1 Public Education**

Contractor shall produce, keep current, and provide public information on applicable organics regulations specifically outlining a Recycling plan and identification of who is affected by the legislation. The information shall be available on Contractor's website, mailed in annual publication and included in the Contractor's brochure. Every Commercial and Multi-Family Premises Customer shall receive information on how to recycle Organic Waste. The availability of Organic Waste Collection and Recycling shall be promoted through Contractor's website, mailers, Billing inserts, email content, online announcements, brochures distributed at community events, annual distribution of Contractor's brochure, and/or Commercial Premises, City Facilities, and Multi-Family Premises.

Contractor shall work with Multi-Family and Commercial Premises to provide or confirm compliance with mandatory Organics recycling requirements. For Multi-Family

or Commercial Premises Customers that self-haul Organic Waste through a third party, Contractor shall provide information on compliance requirements and options for compliance.

Contractor shall produce, keep current, and provide public information specifically outlining its Organic Waste Recycling program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City.

Contractor shall provide additional education and outreach on behalf of the City in accordance with CalRecycle requirements for all current and future regulations.

City shall support Contractor's outreach efforts by developing a letter and/or other information that Contractor shall distribute to Customers regarding Organics Recycling.

#### **4.2.9 Optional Residential Food Waste Diversion Program**

City reserves the right to require Contractor to implement a Collection program to Divert Food Waste. Contractor shall only be required to implement a Residential Food Waste Diversion program if mandated by CalRecycle. The program shall be implemented following the exercise of the City's right and adjustment of rates as described below. The Contractor shall be entitled to a rate adjustment of four percent (4%) for implementation of the Food Waste program. This is in addition to the annual adjustment implemented pursuant to Section 6.3. The four percent (4%) rate adjustment shall only apply to the "Basic Service," "Senior Service," and "Disabled Service" rates for Residential Cart service included in Exhibit 2, and shall not apply to Additional Cart Rates and Services or Temporary Services included in Exhibit 2. The four percent (4%) rate adjustment is based on the food waste being co-Collected with Green Waste or one of the other existing Residential Solid Waste Carts.

### **4.3 Green Waste Program**

#### **4.3.1 Residential Green Waste Collection**

Except as otherwise provided under Section 4.1.3, Contractor shall provide one (1) Green Waste Cart to each Residential Service account/Residential Premises Customer at no cost and shall Collect Green Waste deposited into such Green Waste Carts free of charge. Contractor shall Collect Green Waste deposited into all

dedicated Green Waste Carts provided pursuant to this subsection on the same day Solid Waste is routinely Collected from such Residential Premises. Contractor shall Collect and remove all discarded Green Waste deposited in Green Waste Carts at the curbside of each Residential Premises. The Contractor shall ensure that each Green Waste Cart is aesthetically appealing and of sufficiently high quality to permit the safe and sanitary Collection of discarded Green Waste. Upon request, Residential Service account holders/Residential Premises Customers shall be provided one (1) additional Green Waste Cart free of charge and the Collection of Green Waste from this one additional Green Waste Cart shall be free of charge to the Customer. If a Residential Service account holder/Residential Premise Customer requests any number of Green Waste Carts in excess of the first two contemplated under this subsection, the account holders/Customers shall be required to pay for such additional Carts and the Collection of Green Waste deposited in such additional Green Waste Carts in accordance with the schedule of maximum charges and rates attached hereto as Exhibit 2

#### **4.3.2 Holiday Tree Collection Program**

Contractor shall operate an annual holiday tree Collection program from December 26 through the second Sunday in January. During this period all holiday trees placed out for Collection by Residential Premises Customers shall be Collected and Diverted by Contractor.

#### **4.3.3 End Uses for Green Waste**

Contractor shall Divert Green Waste materials Collected or recovered through Mixed Waste Processing from Disposal. Contractor must provide end uses for Green Waste that maximize Diversion credit for City according to regulations established by CalRecycle. Green Waste may be used as alternative daily cover ("ADC") only to the extent that the City will get full Diversion credit for its use. Diversion credit for ADC is not allowed after January 1, 2020 per Assembly Bill 1594. Contractor is responsible for monitoring how the Green Waste will be Diverted at selected facilities and for selecting alternative facilities if necessary to ensure full Diversion credit. Failure to do so places the Contractor in default unless City directed Contractor in writing to use a specific Green Waste Processing Facility as provided for in this Section. City has the option, but not obligation, to direct Contractor where to deliver the material.

#### **4.4 Residential Collection of Manure.**

Contractor, as a component of its Residential Services and upon the request of a Residential Premises Customer, shall provide all Residential Premises Customers with up to four (4) sixty-four (64) gallon Carts for the Collection of manure. Contractor shall Collect manure deposited in such dedicated manure Carts on the same day that Solid Waste is Collected from Residential Premises Customers. The Contractor shall ensure that each manure Cart is of high quality and aesthetics for safe and sanitary Collection of manure. Upon request, Residential Premises Customers shall be provided additional manure Carts, provided that such Customers shall be required to pay for the Collection of manure from such additional manure Carts in accordance with the schedule of maximum charges and rates attached hereto as Exhibit 2.

#### **4.5 Cart Selection, Distribution, Exchanges and Removal**

Contractor shall provide Residential Premises Customers with 96-gallon Carts for Refuse, Recycling and Green Waste Collection. The Contractor shall also offer thirty-five (35) or sixty four (64) gallon Containers to qualifying seniors or disabled citizens upon request at the monthly rate for Solid Waste Services identified in the Rate Schedule.

#### **4.6 City Services**

##### **4.6.1 City Facilities Collection**

The Contractor shall provide complimentary Solid Waste Collection and Disposal service to City facilities as noted in Exhibit 7. The City will identify each City facility and level of service to the Contractor. The Contractor will provide Organic Waste and Recycling services to each City facility upon request of the City. Service levels and number of facilities serviced may increase during the Term without any additional compensation paid to the Contractor.

##### **4.6.2 City Sponsored Events**

Contractor shall provide complimentary Solid Waste, Recycling, and Organic Waste Collection Containers at up to twelve (12) City sponsored public assembly events identified by the City to the Contractor each calendar year. In addition, Contractor shall provide complimentary portable restroom and wash stations for seven (7) City sponsored public assembly events identified by the City to the Contractor each

calendar year. Contractor shall provide for the complimentary removal of all Solid Waste and Recyclables upon conclusion of each such public assembly event.

#### **4.6.3 Quarterly Bulky-Item Sweepstakes Events**

Contractor shall sponsor and participate in the City's Quarterly Bulky-Item Sweepstakes events to be held on the same day as the second City Household Hazardous Waste Events per quarter held at City Yard. Contractor shall coordinate advertising of the events through flyers mailed with Customer invoices and development of a street banner at no additional charge to the City. Additionally, Contractor shall provide a minimum of two (2) staff at each event to complete participant surveys and distribute raffle tickets, adequate additional staff to deliver and stage Roll-off Boxes, adequate Roll-off Boxes to Collect Bulky Items dropped off by City residents during event, and raffle prizes in the form of gift cards in the amounts of one-hundred dollars (\$100.00), fifty dollars (\$50.00), and twenty-five dollars (\$25.00).

#### **4.6.4 Annual Cleanups**

At no additional charge, Contractor shall provide services for one (1) Residential curbside cleanup event annually to Residential Premises Customers receiving curbside or valet Cart service. The duration of each event shall be five (5) days, Monday through Friday, and Collection shall occur on Residential Premises Customers' regularly scheduled Collection days. Contractor shall make reasonable efforts to Divert Solid Waste Collected during the clean-ups from landfill Disposal. The date for the cleanup shall be proposed by Contractor prior to January of each year and approved by City. Contractor shall pick up authorized annual cleanup items from all Residential Premises and transport to a Transfer Station, Disposal Site or MRF at no additional cost to Customers. The following guidelines must be followed:

- a) All waste must be placed out for Collection by 6:00 a.m.
- b) The truck will pass each street one time only.
- c) Non-Bulky Items must be placed in disposable garbage bags or boxes only.
- d) Tree pruning and branches must be tied in bundles not longer than 4 feet.
- e) The maximum each residence may dispose of is 3 cubic yards (approximately 24 trash bags or 3' x 3' x 9').

- f) No single item that cannot be handled by two workers will be accepted.
- g) The following items will not be picked up: Hazardous Material, including waste oil or anti-freeze; concrete and dirt.

Contractor shall notify City of Persons whose clean-up items were not Collected.  
Contractor shall record the weight (in tons) of the Solid Waste Collected and Diverted during the cleanup events.

#### 4.6.5 Emergency Collection and Disposal Service

Subject to City's reservation of rights as set forth under Section 2.16, Contractor shall assist City at the City's request with emergency Collection and Disposal efforts in the event of a major disaster, such as an earthquake, storm (including but not limited to high wind storms), flood, riot or civil disturbance, or as otherwise determined necessary by the City, by providing Collection vehicles and drivers normally assigned to the City, at rates not exceeding those set forth in the "Emergency Rate Schedule" in Exhibit 2.

#### 4.6.6 Abandoned Item Sweeps

Contractor will provide one (1) vehicle with a two (2) Person crew to average forty (40) hours per week to Collect abandoned items. City shall work with Contractor to designate sweep areas, and will provide Contractor a minimum of two (2) business days' notice for changes to location. Additionally, vehicle and crew shall respond to and Collect abandoned items reported by City to Contractor the same day of notification if reported by 12 p.m., and the following business day if reported after 12 p.m.

In addition to its responsibilities under the preceding paragraph, the Contractor shall also dispose of Bulky Items found at curbside in the City regardless of whether a Customer is or can be identified by the Contractor or the City for the Collection of such Bulky Item. The Contractor shall dispatch a Collection vehicle to the Public Works yard of the City where the abandoned Bulky Item(s) are deposited and Collect such items within twenty (24) hours of request by City. The Disposal of a Bulky Item for which no Customer can be reasonably identified by either the Contractor or the City, shall be performed by the Contractor at no cost to the City.

#### **4.6.7 Shredding Service Event**

Contractor shall provide an on-site mobile shredding service for use by City residents (a "Shredding Event") up to two (2) times per year, on the same day and location as two (2) of the Quarterly Bulky-Item Sweepstakes Events. Each Shredding Event shall be provided at dates, time, and locations designated or approved by the Director of Public Works, in his or her reasonable discretion, and should be for a minimum of three (3) hours in duration. In the event inclement weather prevents a Shredding Event from occurring, Contractor shall reschedule the Shredding Event to a date, time and location designated or approved by the Director of Public Works. Each Shredding Event shall be conducted at Contractor's sole cost and expense, utilizing equipment, personnel, and methods appropriate for such event, as approved by the Director of Public Works. Prior to each Shredding Event, Contractor shall coordinate with City staff and/or public safety personnel to make arrangements for safe, convenient, and effective access to and participation by City residents in the Shredding Event, and shall procure all necessary insurance coverage. Each Shredding Event shall be designed to accommodate up to a maximum of five (5) "Bankers" boxes of paper or other media suitable for shredding from each Residential and Multi-Family Premises Customer within the City that is participating in the Shredding Event. Residents participating in the Shredding Event must be able to visually observe the materials they delivered to the Shredding Event. Contractor shall publicize each Shredding Event through methods, and using materials, approved by the Director of Public Works, at no cost to the City.

#### **4.7 Operations**

##### **4.7.1 Schedules; Missed Pickups**

###### **4.7.1.1 Schedules**

To preserve the peace and quiet, Contractor shall restrict its Collection of Solid Waste and other materials contemplated under this Agreement to between the hours of 6:00A.M. and 7:00P.M. Monday through Friday and 8:00 A.M. through 6:00 P.M. on Saturday. There shall be no Collection on Sunday without the prior written approval of the City Manager or his designee and then only upon forty-eight (48) hours prior written notice. If Customers have parking arrangements that may block access to Bins or other Containers used by Contractor to perform its services, Contractor shall provide such Customers with a window of time, no more than four

(4) hours during which Collection shall take place in order to provide Customers the opportunity to post signs or make other arrangements to clear parking and provide access during those hours.

If the regularly scheduled Collection day for any Customer falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, Collection for all Customers will be performed the following day for the remainder of the week in which any of the foregoing holidays occurs, except as may otherwise be directed by the Director of Public Works in those instances where the make-up day may conflict with routine City street sweeping for a particular sector, quadrant or portion thereof. If any of the foregoing holidays falls on a Saturday, Customers with regularly scheduled Saturday Collection, if any, will instead receive Collection on the following Monday, except as may otherwise be directed by the Director of Public Works in those instances where the make-up day may conflict with routing City street sweeping for a particular sector, quadrant or portion thereof. All Collection days falling on other legal holidays will remain as scheduled.

City in its sole and absolute discretion may annually require Contractor to provide City with accurate and up-to-date copies of all its Collection schedules and route maps as well a list of Sunday service addresses, if any.

#### **4.7.1.2 Missed Pick-Ups**

When notified of a missed pick-up of a Cart, Bin or other Container prior to 12:00 pm, the Contractor shall Collect the Solid Waste, discarded Recyclable Materials, manure and/or Green Waste, as applicable, that same day. If notified after 12:00 pm, the Contractor shall Collect the Solid Waste, discarded Recyclable Materials, manure and/or Green Waste no later than the next business day.

#### **4.7.2 Vehicles**

A. General. Contractor is responsible for providing all vehicles that may be required for the Collection of Solid Waste that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor is expressly obligated to provide such Collection vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to

respond to complaints and emergencies. All equipment of Contractor used to provide the services set forth in this Agreement shall be subject to inspection by City upon request.

B. Specifications. Contractor shall ensure that the average age of the Collection vehicles regularly used in the provision of services under this Agreement does not exceed ten (10) years. For purposes of this paragraph, a vehicle's "age" shall consist of the age of the older of its chassis and body. All vehicles used in the City shall use compressed natural gas ("CNG") or liquefied natural gas ("LNG") at all times during the term of this Agreement. Such vehicles must be registered with the California Department of Motor Vehicles and shall have water-tight bodies designed to prevent leakage, spillage or overflow. At all times during the term of this Agreement, Contractor's Collection vehicles shall comply with South Coast Air Quality Management District Requirements and the California Air Resource Board requirements as they are currently in force and as they may be approved for Refuse removal vehicles, as well as other Federal, State and local laws and regulations that may be enacted during the term of this Agreement. No rate adjustments shall be made for such changes in law. If a vehicle is replaced during the term, the replacement vehicle must be newer or same model year as the replaced vehicle. Roll-off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law.

C. Vehicle Identification and Labeling. Each Collection vehicle shall be marked with Contractor's name, toll free phone number, and a vehicle identification number designated by Contractor for each Collection vehicle which shall be prominently displayed on all such Vehicles, in lettering at least six inches (6") in height. City must approve truck labeling.

D. Cleaning and Maintenance Contractor shall maintain all of its properties, work sites, buildings, owned or leased Facilities, Collection vehicles and equipment used in providing Solid Waste Services within the City in a good, safe, neat, clean, sanitary and operable condition at all times.

1. Collection vehicles shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance.

City may inspect Contractor's Collection vehicles at any time to determine compliance with this Agreement and/or the laws of the State of California relating to the safe and proper maintenance of motorized vehicles. Contractor shall also make all Collection vehicles available to the Los Angeles County Health Department for inspection, at any frequency the County Health Department requests.

2. Contractor agrees to replace or repair to the City's satisfaction any Collection vehicle, which City determines to be of dirty or unsightly in appearance, leaking, or in an unsatisfactory operating condition that fails to comply with the standards set forth in this Agreement or the laws of the State of California.
3. Contractor shall inspect each Collection vehicle daily to ensure that all equipment operates properly. Collection vehicles that are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all Collection vehicle maintenance, recorded according to the date and mileage and shall make such records available to City upon request at any time.
4. Contractor shall repair, or arrange for the repair of its Collection vehicles and other equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all such Collection vehicles and equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date and mileage, nature of repair, and the verification by signature of a maintenance supervisor that the repair has been properly performed and shall make such records available to City upon request.
5. Contractor shall commence the clean up any leaks or spills from any of its motor vehicle fleet (including but not limited to Collection vehicles) in conformity with the National Pollutant Discharge Elimination System ("NPDES") permit in effect at the time but in no event later than 90 minutes from the occurrence of the spill or leakage. No fluids shall be

washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection vehicles must be equipped with absorbent for such clean-up efforts.

6. 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, year of production, ID number, date of acquisition, type, capacity, and whether the vehicle is a spare.
7. All vehicles used to provide services under this Agreement shall at all times have in the cab the registration of the truck, evidence of insurance meeting the requirements of this Agreement and an identification card with the name of whom to telephone in case of an accident or emergency. Each truck shall be equipped with a minimum of a 20-pound fire extinguisher that has been certified by the state fire marshal. This fire extinguisher shall be recharged as needed, but not less than once annually. Vehicles shall be equipped with a shovel and broom to clean up any spillage.
8. All trucks used to provide services under this Agreement in the City shall be required to be completely enclosed with a nonabsorbent cover while transporting Refuse, Recyclables or compostable materials or other Solid Waste materials in or through the City. "Completely enclosed with a nonabsorbent cover" means that Refuse, trash, Recyclable or compostable materials shall not be visible from the public highway, nor shall any of the substances be permitted to leak, spill or become deposited along any public highway.

E. Operation.

All of Contractor's Collection vehicles (whether owned or leased) shall be operated in compliance with the California Vehicle Code, this Agreement, and all applicable safety laws, including but not limited to those of the federal government of the United States of America, the State of California, the County of Los Angeles and the City. Contractor shall not load Collection vehicles in excess of the manufacturer's

recommendations or limitations imposed by state or local weight restrictions on vehicles.

Contractor's equipment shall comply with U.S. Environmental Protection Agency ("EPA") noise emission regulations, currently codified at 40 CFR Part 205 as the same may be amended, modified or updated from time to time, and other applicable noise control regulations. Such noise control features shall be incorporated throughout the entirety of all Collection vehicles. Noise levels of equipment used for Collection shall comply with the El Monte Municipal Code as the same may be amended, modified or updated from time to time, and in no event shall the noise level exceed 65 db when measured at a distance of twenty-five feet (25') from the vehicle, five feet (5') from the ground. Contractor shall store all equipment in safe and secure locations in accordance with City's applicable zoning regulations.

Contractor shall be responsible for any damage, normal wear and tear excepted, resulting from or directly attributable to any of its operations, and which it causes to: City's driving surfaces, whether or not paved, public or private; associated curbs, gutters and traffic control devices; and all other public and private improvements.

F. City Inspection Per Code. City may cause any vehicle used in performance of this Agreement to be inspected and tested at any reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of the California Vehicle Code, including, but not limited to, California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. City may direct the removal of any vehicle from service if that vehicle is found to be in noncompliance with applicable laws and regulations. No vehicle directed to be removed from service shall be returned to service until it complies with all applicable laws and standards and the City has approved its return to service in writing.

G. Vehicle Inspections. Contractor shall submit the Safety Compliance Report/Terminal Record Update from its Biennial Inspection of Terminal, or BIT to City for so long as the State of California conducts such inspections. If Contractor receives a terminal rating below satisfactory, an Event of Default within the meaning of this Agreement shall have occurred. The Contractor has the time allowed by the California Highway Patrol ("CHP") to cure the Event of Default and bring the terminal

rating up to satisfactory. If the CHP does not adjust the rating to satisfactory or better within six (6) months, then the Contractor shall be considered in breach of this Agreement and the City may terminate this Agreement in accordance with Article 11. The running of the six-month cure period shall commence at the same time as the CHP's six-month cure period commences and City shall not be obligated to issue a Default Notice, as defined herein, to commence the running of the six-month cure period. City shall be under no obligation to grant additional time to cure the Event of Default referenced under this Section. The six-month period to cure the Event of Default referenced under this Section shall govern and control over any other cure period set forth under Section 11 of this Agreement.

H. Correction of Defects. Following any inspection by City, the City Manager or designee shall have the right to cause Contractor, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The determination of the City Manager or designee may be appealed to the City Council, whose decision shall be final.

#### **4.7.3 Containers**

Contractor shall ensure that all Containers comply with requirements included in Sections 4.7.3.1 through 4.7.3.4, and any additional requirements specified by CalRecycle. Contractor shall provide City with a written Container inspection report.

##### **4.7.3.1 Carts**

###### **A. Cart Design Requirements**

Carts and Cart lids must meet color, size, uniformity and quality requirements of the City. The City will not permit Carts and Cart lids with inconsistent colors or in poor condition to be used in the City at any time during the term of this Agreement, and may require Contractor to replace such Carts.

All Carts placed in service shall be subject to City's approval. Contractor shall ensure that all Carts in service during the terms of this Agreement comply with CalRecycle requirements under SB 1383.

## **B. Cart Color and Appearance**

The Refuse, Recycling, Green Waste and Organic Waste Carts will be differentiated by color.

The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be approved in advance by the City. Cart and Cart lid colors shall be consistent throughout the City, and shall comply with CalRecycle requirements under SB 1383.

## **C. Cart Labeling and Hot Stamping**

Labels used on Carts shall be placed on the inside of the Cart lid, and hot stamps shall be on the top of the lid and/or on the body of the Cart. Each Cart shall be hot stamped with the material type (e.g., trash, Recycling, Organics) in English and Spanish. Labels shall include graphic instruction on what materials should and should not be placed in each Cart. Design for both the labels and the hot stamps must be approved by City prior to ordering labels or Carts. City shall approve what information is included on the label and in the hot stamp, as well as approve design and quality. Labels shall be replaced when worn, and when information on the label is in need of updating, but no later than 90 days of request from City. Information on the Carts shall include the telephone number to call for Contractor and Bulky Item pickups, and shall include an anti-scavenging warning. Additionally, all Carts shall be labeled in accordance with CalRecycle requirements under SB 1383 throughout the term of this Agreement.

### **4.7.3.2 Cart Maintenance and Replacement Responsibilities**

Contractor shall be responsible for Cart repair and maintenance and replacing lost or stolen Carts within one (1) business day, and repair or replace damaged Carts within two (2) business days, at no additional charge to the Customer or to City, unless Contractor can demonstrate to the City Manager that the damage or loss was due exclusively to Customer's intentional or negligent behavior. City Manager shall make the final determination. If City permits a repair or replacement charge to be assessed against a Customer, charge shall be no more than the actual cost of repair or the Contractor's purchase price for a new Cart, whichever is lower. All repairs must restore the Cart to its full functionality. Unsightly/worn-out Carts shall be replaced by Contractor upon Customer request at no additional charge.

Contractor shall be responsible for Cart graffiti removal within two (2) business days of notification. Carts with graffiti may be cleaned, painted or replaced.

Contractor shall comply with CalRecycle Cart replacement requirements under SB 1383, including but not limited to, color and labeling requirements.

#### **4.7.3.3 Bins**

A. Cleaning and Replacement. Contractor shall maintain Bins in a clean, sound condition free from putrescible residue. All Bins in use shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other apparatuses, which were designed for movement, loading, or unloading of the Bin shall be maintained in good repair.

Upon Customer or City request, or if required to maintain the Containers in a clean condition, Contractor shall clean all Bins once per year at no additional charge. Contractor shall perform cleaning or replacement of Bins more frequently if necessary to prevent a nuisance caused by odors or vector harborage, or if requested by Customer or City, for an additional fee in accordance with the approved rate schedule. When a Bin is removed for cleaning, Contractor shall replace the Bin, either temporarily or as a change-out, with another Container. Cleaning of Bins shall occur within five (5) business days of request. Contractor shall remove graffiti from any Container within two (2) business days of request by City or Customer. Contractor is required to proactively look for graffiti when Collecting Bins, with all graffiti removed from Containers in no later than two (2) business days after any Collection without notification.

#### Klingerman-Bonwood Multi-Family Area and Valley Mall Retail Area Bins

Bins located in the Klingerman-Bonwood Multi-Family Area of the City, and in the Valley Mall Retail Area shall be cleaned or exchanged at least one (1) time per Rate Year at no additional charge. Additionally, if requested by Customer or City, Contractor shall provide a second cleaning or bin exchange per year at no additional charge. Contractor shall perform cleaning or replacement of Bins more frequently if necessary to prevent a nuisance caused by odors or vector harborage, or if requested by Customer or City, for an additional fee in accordance with the approved rate schedule. When a Bin is removed for cleaning, Contractor shall replace the Bin, either temporarily or as a change-out, with another Container. Contractor shall remove graffiti from any

Container, and repair or replace damaged Containers within two (2) business days of request by City or Customer. Contractor is required to proactively look for graffiti when Collecting Bins, with all graffiti removed from Containers in no later than two (2) business days after any Collection without notification.

Stolen or lost Bins shall be replaced within one (1) business day.

B. Bin Identification, Color and Labeling. Each Bin placed in City by Contractor shall be clearly labeled on the front of the Bin with the Bin type (Refuse, Recycling, Cardboard, Organic Waste) and the name of Contractor and phone number in letters not less than five (5) inches high on the exterior of the Bin so as to be visible when the Bin is placed for use. Alternatively, the Bin type (Refuse, Recycling, Cardboard, Organic Waste) may be identified with an affixed sign. Labels shall also be placed on the inside of the Bin lid. Labels shall include English and Spanish and graphic instruction on what materials should and should not be placed in each Bin, and shall include an anti-scavenging warning. Contractor shall have labels approved by City prior to ordering and placement on Bins. Labels shall be replaced when worn, and when information on the label is in need of updating, but no later than 90 days of request from City. Contractor shall repaint Bins upon City's request if the City deems it necessary to maintain a neat appearance.

Bins shall comply with color and labeling requirements specified by CalRecycle under SB 1383.

#### **4.7.3.4 Roll-off Boxes**

Contractor shall provide sufficient Roll-off Boxes to meet Customer demand throughout the Term of the Agreement, and will keep all Roll-off Boxes clean, free from graffiti, equipped with reflectors, and with the name and phone number of Contractor in letters not less than five (5) inches high on the exterior of the Roll-off Box so as to be visible when the Roll-off Box is placed for use. Contractor shall properly cover all open Roll-off Boxes during transport as required by the State Vehicle Code.

#### **4.7.4 Litter Abatement**

A. Minimization of Spills. Contractor shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process and shall clean up any leaks or spills from its vehicles per the National

Pollutant Discharge Elimination System (NPDES) permit in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection vehicles must be equipped with absorbent for such cleanup efforts and shall carry a broom, shovel, absorbent, and containment materials at all times for this purpose.

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 City. See Section 11.3.B.2.d.

B. Clean Up. During the Collection or transportation process, Contractor shall clean up all litter spilled during Collection or otherwise caused by Contractor. Contractor shall leave a "tag" notice for Customer if litter not caused by Contractor is found in Container enclosure or around Containers. Contractor may charge Customers in accordance with the approved rate schedule for the cleaning of Container enclosures or around the Container if it is littered due to overflowing Containers. Contractor may address habitual offenders in accordance with Section 4.1.4.2.

In the event of a spill of materials (vehicle fluids, Organic Waste leachate, etc.), Contractor shall provide a cleanup of the spill to the satisfaction of City and other governing agencies. Cleanup methods may include pressure washing (Contractor must capture and reclaim water) or other similar clean-up methods.

C. Covering of Loads. Contractor shall properly cover all open debris boxes during transport to the Disposal Site or processing facility.

#### **4.7.5 Anti-Scavenging Safeguards**

Contractor shall use all reasonable efforts to cooperate with the City's Police Department and Code Enforcement Division to deter and significantly reduce scavenging or other unauthorized removals of discarded Recyclable Materials from Carts, Bins and Roll-off Containers provided to its Customers.

#### **4.7.6 Personnel**

A. Qualified Personnel. 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 must possess valid California driver licenses, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall prescreen all applicants seeking employment which would result in the applicant, if hired, driving Collection vehicles within the City of El Monte in connection with the Contractor's obligations under this Agreement. The prescreening shall include drug and alcohol testing by an accredited or certified independent testing laboratory, reasonably acceptable to City. Contractor shall reject any applicant from employment within the City of El Monte who tests positively for any prohibited substance or alcohol. In addition, Contractor shall conduct unannounced random drug and alcohol testing of all employees performing driving duties under this Agreement within the City of El Monte. Such random testing shall be conducted by an accredited or certified independent testing laboratory reasonably acceptable to City, and shall be performed on a schedule approved by City. 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. Annually on July 1st of each Rate Year, Contractor shall certify, in writing, to City that it has complied with all responsibilities under this Section, and failure to timely provide such certification, or the falsification of such certification, shall constitute an Event of Default.

B. Hazardous Waste Employee Training. Contractor also agrees to establish and vigorously enforce an educational program that will train Contractor's employees in the identification of Hazardous Waste and Hazardous Substances. Contractor's employees shall not knowingly place such Hazardous Waste or Hazardous Substances in Collection vehicles, nor shall they knowingly dispose of such Hazardous Waste or Hazardous Substances in a manner that violates any Environmental Laws or any other federal, State or local laws or at any location where the Disposal of Hazardous Waste or Hazardous Substances would violate Environmental Laws or any other federal, State or local laws prohibiting the Disposal of such substances at the Disposal location.

C. Customer Courtesy. Contractor shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work in a quiet and conscientious manner. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct

themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous or improper behavior, Contractor shall consider reassigning the employee to duties not entailing contact with the public while Contractor pursues its investigation of the conduct alleged and formulates any corrective action to be taken.

D. Unauthorized Material Removal. Contractor will dismiss or discipline employees that remove documents or any other material from Containers, other than specifically for the purposes of Disposal and Diversion as described in this Agreement.

E. Training. Contractor shall provide suitable operations, 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.

F. Identification Required. Contractor shall provide its employees and subcontractors with identification for all individuals who may have personal contact with Customers, residents or businesses in the City. City may require Contractor to notify Customers yearly of the form of said identification. Contractor shall provide City with a list of current employees and subcontractors upon request.

The City reserves the right, but does not assume the obligation, to perform a security and identification check through the El Monte Police Department upon Contractor and all its present and future employees assigned to work in the City, in accordance with accepted procedures established by the City, or where probable cause exists.

G. Fees and Gratuities. Contractor shall not, nor shall Contractor permit any agent, employee, or subcontractors employed or engaged by Contractor, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for Contractor's Solid Waste Services or any other variety of Solid Waste Service Contractor may be authorized to perform under this Agreement.

H. Non-Discrimination. Contractor shall not discriminate in the provision of services or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap, or mental condition in violation of any applicable federal or state law.

#### **4.7.7 Employment of Former Contractor Employees**

Contractor shall interview all former employees of the previous hauler to be displaced by the transition of Solid Waste Collection under this Agreement. Contractor shall make offers of employment to all such applicants qualified for positions with Contractor.

#### **4.8 Contingency Plan**

Not less than thirty (30) calendar days from the Effective Date of this Agreement, Contractor shall submit a written contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and in case of natural disaster or other emergency.

#### **4.9 Transportation of Solid Waste**

Contractor shall transport all Refuse Collected to a City-approved Facility (e.g. Transfer Station, Organic Waste Processing Facility, MRF, Disposal Site). Contractor agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for Diversion from landfill Disposal.

Contractor shall maintain accurate records of the quantities of Solid Waste transported to all Facilities utilized and will cooperate with City in any audits or investigations of such quantities.

Contractor shall cooperate with the operator of any Facility it uses with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with its Hazardous Waste exclusion program, and so forth.

#### **4.10 Approved Facilities**

The Contractor shall dispose of Refuse Collected that is not required to be processed at the approved Disposal Site. Contractor must receive written advance approval from City to modify the approved facilities. Contractor is responsible for ensuring that each Facility it uses is properly permitted. Unless and until the City instructs otherwise, the approved Facilities are: Grand Central Recycling and Transfer Station, the Orange County Landfill system, and El Sobrante Landfill.

#### 4.11 Status of Disposal Site

Any Disposal Site utilized by Contractor, shall be designed and constructed in accordance with 23 California Code of Regulations Section 2510 *et seq.* ("Subchapter 15"). Any landfill Disposal Site shall have been issued all permits from federal, state, regional, county and city agencies necessary for it to operate as a Class III Sanitary Landfill and is in full regulatory compliance with all such permits.

#### 4.12 Dedicated Routes

Solid Waste Collected in the City shall not be commingled in Collection vehicles with Solid Waste from other jurisdictions. All routes approved under this Agreement shall be dedicated exclusively to Solid Waste Collected in the City of El Monte, with the exception of Commercial Organics and Commercial Source-Separated Recycling routes.

#### 4.13 Route Audit

A. Contractor shall undertake and complete a follow-up route audit between July 1st and December 31st of every even numbered calendar year for the Term of this Agreement and any Extension Term. All route audits, at a minimum, shall consist of an independent physical observation by agents or employees of Contractor other than the route driver or route supervisor of each Customer in the City. The route audit information shall include, at a minimum, the following information for each account:

- Account name;
- Account number;
- Account service address;
- Account type;
- Container condition, including but not limited to evidence of graffiti, as applicable;
- Proper signage;
- Route number;
- Service level per Billing system (quantity, size, frequency, as

applicable to the particular Customer/Premises);

- Observed Containers (quantity and size);
- Truck number.

B. Within thirty (30) calendar days after the completion of the 1st route audit, the Contractor shall submit to the City a report summarizing the results of the audit. This summary shall include:

- Identification of Contractor routes;
- Route map;
- Truck numbers;
- Number of accounts, by route and in total;
- Confirmation that all applicable routes are dedicated exclusively to City (excluding Commercial Organics and Commercial Source-Separated Recycling routes)
- Types of exceptions observed;
- Number of exceptions by type;
- Total monthly Billing, pre-audit;
- Total monthly Billing, post-audit (subsequent to corrections of identified exceptions).

C. The report shall include a description of the procedures followed to complete the route audit. This description shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

D. The report shall also include a description of any indicated changes proposed by the Contractor to resolve the exceptions noted in the route audit, if any. The results of the route audit, and supporting back-up data, shall be available for review

and verification by the City or its representative. If the Contractor fails to provide the City with the report or the back-up data in a format which is usable by the City for the purposes of verification and authentication of the route audit then in addition to any other remedy available to the City under this Agreement the City may retain the services of a third party to perform such a route audit of the Contractor using such records and field observation data as may be available to the City and the Contractor. If City retains the services of a third party to perform a route audit due to Contractor's failure to perform such route audits as provided under this Agreement, Contractor, within thirty (30) calendar days of City's written request, shall reimburse City for the cost of conducting the route audit on its own or through the engagement of a third-party.

## ARTICLE 5

### OTHER SERVICES

#### 5.1 Customer Billing and Contractor Compensation

##### 5.1.1 Billing

##### 5.1.1.1 Billing Rates

Contractor shall provide all Solid Waste Services authorized under this Agreement at rates and levels of charge that Contractor sets, charges to, and collects from Customers; provided, however, Contractor's charges and rates shall not exceed those maximum charges and rates set forth in the Rate Schedule set forth in the document attached and incorporated hereto as Exhibit 2. Contractor shall provide Customers (excluding Klingerman-Bonwood Multi-Family Area Customers) with itemized Bills, detailing charges for all services rendered, including charges for late payments, as described under Section 3.1.7 of this Agreement, as well as the time period and number of services to which the Bill applies. Contractor acknowledges, understands and agrees that Contractor, and not its Customers, are responsible for paying any and all franchise fees and other related fees (including AB 939 Fees) required under this Agreement and under the El Monte Municipal Code in connection with the services contemplated herein. Accordingly, Contractor's Bills shall not include separate itemization of a "Franchise Fee" or other similar designation relating to fees that Contractor is required to pay to City.

##### 5.1.1.2 Residential Services Billed by Contractor

Contractor shall be solely responsible for Billing each Residential Services Customer for the Solid Waste Services provided by Contractor. Such Billing of Customers by the Contractor shall be made on a quarterly basis, unless and until City, in its sole and absolute discretion, approves a more frequent schedule of Billing in writing. Contractor is also authorized to Bill Residential Premises Customers in advance, provided, however, that Contractor shall not assess interest, late Bill processing fees or penalties on those sums which may be set forth in a given Bill that are not yet past due or otherwise eligible for the assessment of interest, late Bill processing fees or penalties. If underlying base sums set forth in a Residential Premises Customer Bill becomes "past due" within the meaning of subsection 8.20.160 of the El Monte

Municipal Code, Contractor may undertake the collection of such past due sums in compliance with the procedures (including but not limited to all noticing requirements) set forth under Section 8.20.160 of the El Monte Municipal Code as the same may be amended from time to time by the El Monte City Council. Contractor may not assess interest or penalties or impose any other punitive monetary sanction or cost recovery fee on past due sums except as otherwise prescribed under this subsection. Contractor may assess interest on the underlying past due base sum at a rate no greater than one and one-half percent (1 and 1/2%) per month or portion thereof commencing from the date such unpaid base sum becomes "past due" within the meaning of Section 8.20.160 of the El Monte Municipal Code. If all or any portion of an unpaid past due sum is submitted to the City for collection on the ad valorem tax roll as described under Section, such monthly interest shall cease to accrue as of the date the matter is submitted to the City for collection on the tax roll. Upon the issuance of a second past due notice as contemplated under Section 8.20.160 of the El Monte Municipal Code, Contractor may add a one-time \$5.00 late Bill processing fee to the outstanding sums due. Also, upon the submission of all outstanding sums due Contractor by a Customer to the City for collection on the tax roll, Contractor may also add a one-time ten (10%) late penalty against all such outstanding sums due (inclusive of the unpaid base sum, the \$5.00 late Bill processing fee and all interest accrued thereupon) as of the date such outstanding sums are forwarded to the City for placement on the ad valorem tax roll.

Residential Premises Customers shall be offered the option to pay their invoices online via the Contractor's website, or other application as approved by City.

#### **5.1.1.3 Senior Citizen and Disabled Resident Discount**

A. Senior Citizen Discount. A Senior Citizen is a Person of at least sixty-two (62) years of age and who is the head of a household in the Service Area (e.g., a Customer). A Senior Citizen Customer who is also HUD low income eligible under a City-administered application process shall receive a 50% discount on Solid Waste Collection Services for Refuse, Green Waste and Recyclables Collected in 96 gallon Containers. Senior Citizens who qualify under HUD low-income guidelines may also receive a discounted rate for 35 gallon automated Container service. All Senior Citizens, regardless of income status, may receive a discounted rate for 64 gallon automated Container service. Free valet service (e.g., the Contractor shall provide for the movement of Customer's Carts from the storage point to the curbside Collection

point, and return them to the storage location, on each Collection day) is available to qualifying Senior Citizens upon request. These rates are reflected in Exhibit 2.

B. Disabled Resident Solid Waste Services. Each Customer who is both a disabled Person and HUD low income eligible may qualify through an application process administered by the City to receive a 50% discount on Collection services for Refuse, Green Waste and Recyclables Collected in 96 gallon Containers. Disabled Persons who qualify under HUD low-income guidelines may also receive a discounted rate for 35 gallon automated Container service. Disabled citizens shall also receive free valet service. Rates are reflected in Exhibit 2.

#### **5.1.1.4 Collection of Delinquent Residential Accounts on the Property Tax Roll.**

A. By or before 5:30 p.m. of May 1st of each Rate Year, Contractor may submit to the City a list of delinquent Residential Premises Services accounts for the placement of certain eligible delinquent Residential Premises Service account sums on the ad valorem property tax roll for collection by the Los Angeles County Tax Collector during the Fiscal Year immediately following May 1st deadline date. If May 1st falls on a date in which the City of El Monte is not open for business, the deadline for submission shall be extended to the next day in which the City of El Monte is open for business and any additional unpaid sums which may become eligible for submission to the City during this extension period may also be included in Contractor's final submission to the City For purposes of this Agreement the term Fiscal Year means a period of time beginning on July 1st of each calendar year and ending on June 30<sup>th</sup> of the following calendar year. Such collection shall be undertaken under the authority of Health & Safety Code Section 5473a or other applicable laws. Only delinquent sums that satisfy all of the following conditions shall be eligible for placement on the ad valorem tax roll if as of May 1st of a given Rate Year if all of the following conditions are met:

- 1) Contractor has issued all past due notices required under Section 8.20.160 of the El Monte Municipal Code as the same may be amended from time to time by the City Council;
- 2) More than twenty-one (21) days have passed since Contractor's issuance of the notice required under Section 8.20.160;
- 3) The delinquent sums which Contractor seeks to place on the ad valorem tax

roll has not be eligible for such submission for a period in excess of one (1) year from the date initial eligibility. Except as may be otherwise provided under Section 8.20.160 of the El Monte Municipal Code, only the underlying past due base sum as stated on the original Billing invoice, the accrued monthly interest not exceeding one and one-half percent (1 and ½%) per month thereon, the \$5.00 late Bill processing fee and the 10% late penalty shall be submitted to the City for collection on the ad valorem tax roll.

B. In addition to any other information required under Section 8.20.160 of the El Monte Municipal Code, the listing submitted by Contractor to the City shall indicate the property address of the delinquent Residential Service account; the delinquent amount due; and the Los Angeles County Assessor Parcel Number corresponding to the real property parcel upon which the lien shall be placed. Contractor shall also provide City with written proof Contractor's compliance with the noticing requirements of Section 5.1.1.4. City shall be under no obligation to place delinquent sums due for a particular account on the property tax roll where Contractor has failed to provide City with written proof that reasonably confirms Contractor's compliance with the noticing requirements of Section 8.20.160 of the El Monte Municipal Code.

C. The Contractor shall consult, cooperate and coordinate with City in notifying the owner of each real property parcel upon which a delinquent Residential Premises is located of the time, date and place of a public hearing to consider and approve the collection delinquent sums owed by means of a lien on the ad valorem property tax and direct assessment rolls. Contractor, as directed by City, shall also provide staffing on the date of the subject public hearing to give Customers and property owners one last opportunity to bring delinquent accounts current before any delinquent sums are placed on the tax rolls and Contractor shall verify with City staff whether or not certain accounts have been brought current prior to any vote to place delinquent sums on the tax roll.

D. The City shall remit all delinquent sums successfully collected by the Los Angeles County Tax Collector to Contractor, less (i) any and all outstanding past-due sums owed to City by Contractor pursuant to this Agreement, including but not limited to past due Franchise Fees, AB 939 Fees, Annual Administrative and/or liquidated damage sums; as well as (ii) an amount equal to ten percent (10%) of delinquent Residential Service account sums placed on the tax rolls pursuant to this

subsection as partial reimbursement for City's costs associated with the placement of delinquent sums owned by Residential Premises Services accounts on the property tax roll. The ten percent (10%) reimbursement sum deducted by City shall in no way be considered a pre-payment or credit toward any fees or liquidated damages sums which Contractor is required to pay under this Agreement or as a credit toward any past-due sums owed by Contractor to City.

E. Collection of Sums. City shall have no liability to the Contractor for the failure of the Los Angeles County Tax Collector and Contractor, by execution of this Agreement, releases and holds the City completely free and harmless for the Los Angeles County Tax Collector's failure to collect any sums submitted for collection pursuant to this Section.

F. Remittance Advice. In the event the Los Angeles County Tax Collector fails to provide City with a property tax remittance advice summary that segregates the sums liened against each of the subject properties, the City shall make a good faith effort to reasonably segregate the sums attributable to the lien procedures of this Section and such good faith determination by the City shall be final.

#### **5.1.1.5 Multi-Family Commercial and Valley Mall Retail Area Customers (excluding Temporary Services Klingerman-Bonwood Multi-Family Area) Billed by Contractor**

A. Contractor is solely responsible for Billing each Customer for the Solid Waste Services provided by the Contractor for Contractor's performance of any and all Multi-Family Commercial, and Valley Mall Retail Area Services (excluding Temporary Services Klingerman-Bonwood Multi-Family Area) authorized under this Agreement. Contractor shall Bill Multi-Family, Commercial and Valley Mall Retail Area Customers in accordance with a Billing cycle that is no more frequent than once a month and Contractor may not require that such Billing be payable upon request; rather, such Billing shall be due and payable to Contractor no less than seven (7) calendar days from the end of each Billing cycle, whether such cycle is conducted on a monthly basis or some greater and recurring interval of time. Recyclable Materials Discounts. Contractor shall provide discounts for Recyclable Materials Collection rendered to Multi-Family Commercial, and Valley Mall Retail Area Services Customers as set forth in Exhibit 2 (Rate Schedule), and shall notify all Multi-Family Commercial, and Valley Mall Retail Area Services Customers in writing of the availability and cost of any discounted services. The discount rates shall only apply for those Recycling

Services identified in Exhibit 2 (Rate Schedule) for Multi-Family and Commercial Premises Customers.

B. Credit for Missed Pickups. Contractor shall credit Customers for missed pickups, provided that the missed pickup was not made up for by Contractor within twenty-four (24) hours of the routine pick-up time. A Customer with daily service shall not be required to accept two pickups on the same day in order for Contractor to make up a pickup. The amount of the credit shall be a sum equal to the total amount charged for routinely scheduled Collection during a given Billing cycle, divided by the total number of regularly scheduled Collection days during the Billing cycle multiplied by the total number of missed pick-ups during the Billing cycle.

C. Excess Waste. If a Multi-Family Commercial, or Valley Mall Retail Area Services Customer habitually places or allows the placement Solid Waste or other discarded items (not including Bulky Items) next to or outside of a Container, Contractor may require such Customer to either (i) acquire one or more additional Containers, as reasonably necessary; or (ii) charge the Customer a non-containerized waste charge set forth under the Rate Schedule attached hereto as Exhibit 2. For purposes of this Section, the placement of items shall be considered habitual if such placement exceeds more than four (4) pick-up days within any given Rate Year quarter.

D. Delinquent Accounts. Multi-Family Commercial, or Valley Mall Retail Area Services Customer who fails to remit payment for Solid Waste Services performed by Contractor within thirty (30) calendar days of the applicable Billing due date, shall be notified of such delinquency by Contractor on forms approved by the City Manager. Said forms shall contain a statement that services may be discontinued thirty (30) calendar days from the date of the initial notice if payment is not made before that time. If payment is not made by the expiration of said thirty (30) day period, Contractor may discontinue service no less than forty-eight (48) hours thereafter. Upon receipt of payment of delinquent fees and any related service restart charges, Contractor shall resume Solid Waste Services on the next regularly scheduled pick-up day for any Multi-Family Commercial, or Valley Mall Retail Area Customer whose service has been discontinued or at such earlier time as may be directed by City in writing. Any delinquent fees or service charges that may be imposed in connection with delinquent accounts shall be set forth in the Rate Schedule attached hereto as Exhibit 2. Contractor may not Bill or charge Solid Waste Services for during that period of time in which service was discontinued.

E. Online Payment: Multi-Family Commercial and Valley Mall Retail Area Customers shall be offered the option to pay their invoices online via the Contractor's website, or other application as approved by City.

#### **5.1.1.6 Temporary Services Billed by Contractor**

Contractor will accept major credit cards for payment from Customers who request temporary Roll-off Box or temporary Bin Service that do not have an account with Contractor. Customers without such an account who do not use credit cards may be required by the Contractor to post a security deposit. Security deposits for projects with an estimated duration of less than forty-five (45) days shall be one-hundred percent (100%) of the estimated Contractor costs. Security deposits for projects with an estimated duration of more than forty-five (45) days shall be calculated as follows:

Estimated Total Contractor Costs divided by Total Number of Estimated Months of Project During multiplied by 1.5.

Any unused portion of a security deposit will be refunded to the Customer within fifteen business days of the termination of service.

#### **5.1.1.7 Klingerman-Bonwood Multi-Family Service Area Billing**

Contractor shall not directly Bill each premise for the regular Collection of Solid Waste and Recycling services. City shall be solely responsible for Billing each account holder/property owner within the Klingerman-Bonwood Multi-Family Area via the Los Angeles County Tax Collector, and will remit quarterly payments to Contractor.

#### **5.1.2 Contractor's Invoices**

Bills must be itemized by Container size, frequency of service, discounts and period Billed for. City must approve the format of Contractor Billing invoices. All Bills must carry a due date, not "due upon receipt." Bills will not carry an itemization of fees remitted to the City.

## 5.2 Customer Service

### 5.2.1 Local Office

Contractor shall establish and maintain a business office located at 17445 East Railroad Street in the City of Industry, California 91748. Said office shall be open, at a minimum, from 7:00 A.M. to 5:00 P.M., Monday through Friday, and from 7:00 A.M. to 1:00 P.M. on Saturdays, exclusive of holidays – said hours of operation hereinafter referred to as "Office Hours". A responsible and qualified representative of Contractor shall be available during Office Hours for personal communication with the public at the business office, and a similarly qualified employee or agent shall be available for communication with the public by phone during any times, other than Office Hours, when Solid Waste Services are being performed.

### 5.2.2 Telephone Customer Service Requirements.

A. Contractor shall maintain a dedicated, toll-free telephone number, exclusively for El Monte Customers at its local office during Office Hours. Bi-lingual (English and Spanish speaking) personnel will be available during Office Hours to assist Customers with both personal and telephonic inquiries.

- 1) Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest of days. Contractor shall also maintain a toll-free telephone number for use at times other than Office Hours, which number shall be published at the Contractor's expense. Except as otherwise provided under subsection A of this Section, above, the toll-free number shall be answered by a representative; answering service; or message providing/receiving service (i.e. voicemail) during non-Office Hours. Calls received at times other than during Office Hours shall be responded to no later than the next business day. Contractor shall also provide City with a 24-hour emergency number to a live responsible and qualified representative of Contractor; automated emergency phone number systems, including those involving voice recordings and voicemail options shall be prohibited.
- 2) Contractor shall record Customer complaints regarding Customer service personnel in accordance with subsection C of this Section 5.2. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties or disciplined and appropriately trained.

3) When notified of a missed pick-up of a Cart or Bin prior to 12:00 noon, Contractor shall Collect the Solid Waste, discarded Recyclable Materials, Green Waste or other like materials that were not Collected, as applicable, that same day. If notified after 12:00 noon, the Contractor shall Collect it no later than the next business day.

B. Complaint Documentation.

1) All service complaints shall be directed to Contractor. Daily logs of complaints shall be retained for a minimum of twenty-four (24) months and shall be available to City at all times upon request for review and/or photocopying.

2) Contractor shall log all complaints received by telephone and said log shall include the date and time the complaint was received, the name, address and telephone number of the caller, a description of the complaint, the name of the employee recording the complaint, and the action taken by Contractor to respond to and remedy the complaint. Logs shall also include each instance that Solid Waste and/or Recyclable Materials are not Collected and the form of notification used to inform the participants of the reasons of non-Collection and the end result or means of resolution of the incident. All written Customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day of receipt. Contractor shall log action taken by Contractor to respond to and remedy the complaint. All Customer service records and logs kept by Contractor shall be available to City upon request. City shall, at any time during regular Office Hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

C. Resolution of Customer Complaints. Disputes between Contractor and its Customers regarding the character or quality of services provided by Contractor to a Customer or disputes over the permissible scope of the franchise rights granted to Contractor under this Agreement may be submitted by either the Customer or Contractor to the City Manager for resolution. The decision of the City Manager shall be final and binding. The party initiating the City's intervention shall pay City the sum of One Hundred Dollars (\$100.00) for each City intervention in a dispute

between Contractor and a Customer. If City reasonably determines intervention is required and the Customer's dispute is valid City shall accept the intervention request. If City declines an intervention request it shall refund any funds deposited for such intervention within fourteen (14) business days. Should Contractor and Customers not be able to establish a mutually acceptable fee to be charged for special hauling services, the matter may also be determined by the City Manager, and City Manager's decision shall be final. Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this Section is intended to affect the remedies of third parties against Contractor. The City Manager may also resolve any disputes through the administrative ruling process set forth under Chapter 8.20 of the El Monte Municipal Code.

D. Franchise Liaison. Contractor shall designate in writing a "Franchise Liaison" who shall be responsible for working with City, the City Manager and any other City designated representative(s) to resolve Agreement-related issues. City shall have the right to approve the Contractor's choice for Franchise Liaison.

E. Service Liaison. Contractor shall designate in writing a field supervisor as "Service Liaison" who shall be responsible for working with City, the City Manager and any other City designated representative(s) to resolve Customer service related complaints and other service related issues. City shall have the right to approve the Contractor's choice for a Service Liaison.

### **5.3 Education and Public Awareness**

#### **5.3.1 General**

Contractor acknowledges and agrees that education and public awareness are critical elements of efforts to achieve the requirements of AB 939. Accordingly, Contractor agrees to take direction from City to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and Recycle Solid Waste and to cooperate fully with City in this regard.

Contractor shall maintain its own program of providing information relevant to needs and methods to reduce, reuse and Recycle Solid Waste to be distributed, when

appropriate, along with its Bills. All public education materials shall be subject to approval in advance by City and shall be printed in English and Spanish.

### **5.3.2 Implementation and On-going Education Requirements**

In order to promote public education, in addition to any other materials it develops, Contractor shall create the following public education materials and programs at its expense, which will be distributed as indicated below. All of these materials and programs shall be produced and/or available in English and Spanish languages, including pictures wherever applicable. All brochures, mailings, and other educational materials are subject to approval by City in advance of distribution. A Public Education Plan shall be submitted to City for review upon execution of this Agreement. The plan shall address the items described in this Section. The approved plan shall be attached to this Agreement as Exhibit 1.

- **Initial Mailing to Former Contractor's (American Reclamation) Customers.** Within ten (10) calendar days from the execution of this Agreement, Contractor will prepare and mail a brochure to all former contractor's Customers explaining the transition from the existing integrated waste service programs to the new program as defined by this Agreement. The mailing will describe program changes, dates of program implementation, services offered and rates to be charged, the annual holiday schedule, Recycling and Diversion programs available, Billing and Customer service numbers, and other pertinent information. The initial mailing shall be sent to each former contractor's Customer prior to commencement of Solid Waste Services as defined in this Agreement. Contractor shall develop an Initial Mailings for the Multi-Family and Commercial Premises sector, and a separate Initial Mailing for the Valley Mall Retail Area, containing information specific to that sector.
- **Initial Mailing to Contractor's Existing Customers.** Within ten (10) calendar days from the execution of this Agreement, Contractor will prepare and mail a brochure to all existing Customers explaining the new, enhanced, or modified programs as defined by this Agreement. The mailing will describe program changes, dates of program implementation, services offered and rates to be charged, the annual holiday schedule, Recycling and Diversion programs available, Billing and Customer service numbers, and other pertinent information. The initial mailing shall be sent to each existing Customer prior to commencement of Solid Waste Services as defined in this Agreement. Contractor shall develop different Initial Mailings for

each of the different service sectors (residential, commercial, and multi-family services), containing information specific to that sector.

- **Instructional "How-to" Packets** – An informational packet shall be provided to each new Customer throughout the Agreement term. This packet shall: describe available services, including available Recycling and Diversion programs; provide instructions for proper use of the Containers (such as the types of materials to be placed in each type of Container and other similar information); detailed holiday Collection schedules; and provide Billing and Customer service telephone numbers; identify who to contact with service or Billing questions; and who to contact for Bulky Item pickups. All Customers shall be promptly notified of any changes to such information.

The packet should also clearly indicate what materials, such as syringes and other Household Hazardous Wastes (HHW), should not be disposed of in the Containers. The packet shall include instructions on how Customers should dispose of HHW.

- **Container Labels and Hot Stamps**–Containers shall carry stickers/labels and hot stamps as described in Sections 4.7.3.1, 4.7.3.3 and 4.7.3.4.
- **Billing Inserts** - Contractor shall reproduce and include in any Billing, at no additional cost, one 8.5" by 11" sheet, provided by the City. City may request Contractor to perform mailing services and if so able, provide not less than thirty (30) calendar days notice to Contractor prior to the mailing date of any proposed mailing to permit Contractor to make appropriate arrangements for inclusion of City's materials in its Billings. City will provide Contractor the mailers at least fifteen (15) calendar days prior to the mailing date
- **Quarterly Notice** - Quarterly Notice. No less than four (4) times per Rate Year, Contractor shall prepare and mail notices at Contractor's expense, to each Customer promoting and explaining: programs (such as Recycling, Green Waste, holiday tree and Bulky Item Collections); how to properly dispose of HHW such as syringes, paint, etc., through the City's program, the County's program or other means; Collection schedules, including holiday schedules, temporary Bin rentals, and the procedure to begin and terminate services. These materials may be included with Billings, and shall be printed in English and Spanish, at a minimum. City may recommend topics for inclusion into the Quarterly Notices.

- **Annual Brochures/Mailings** – Not less than once per year during each Rate Year, Contractor shall prepare and distribute to each Customer a mailing to update Customers regarding program basics, program changes, holiday schedules and other service related information. Mailings should promote and explain: all Solid Waste programs offered by City and Contractor (such as Recycling, Organic Waste, holiday tree and Bulky Item Collections) described in detail; the environmental, regulatory, and other benefits of participating in Recycling; how to properly dispose of HHW such as syringes, paint, etc.; Collection schedules, including holiday schedules; Customers service numbers; and the procedures to begin and terminate services (if moving from Premises). This brochure shall be at least four (4) pages, and printed in full color. Contractor is responsible for all associated costs.
- **Corrective Action Notice** – Contractor shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection that explains the appropriate manner for Disposal of such items. Contractor to provide example Corrective Action Notice to City for approval upon execution of this Agreement.
- **Website** – Contractor shall maintain a website to display holiday schedules, explain proper HHW Disposal procedures, describe which materials are to be placed in Recyclables Containers and other useful information, as well as informing Customers how to contact Contractor.
- **SB 1383 Education and Outreach** – Contractor shall provide additional education and outreach in accordance with the CalRecycle requirements under SB 1383, including but not limited to, the education and outreach required of the City.

### 5.3.3 Contractor Representative

Contractor shall retain on its staff an individual who shall, as part of his or her job function, routinely visit civic groups, school assemblies, homeowners' associations, Multi-Family complexes and businesses, to promote and explain the Recycling programs Contractor offers, and participate in demonstrations, and civic events, and coordinate those visits with the City.

### 5.3.4 Community Events

At the direction of City, Contractor shall participate in and promote Recycling and

other Diversion techniques at community events and local activities. Such participation shall normally include providing, without cost, Collection and educational and publicity information promoting the goals of City's Integrated Waste Services program.

#### **5.4 Waste Generation/Characterization Studies**

Contractor acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, Diverted or otherwise handled/processed, by Customer type, to satisfy the requirements of AB 939. Upon request of City, Contractor will at its sole expense conduct a waste generation and characterization study relating only to the Solid Waste Contractor Collects, but not more than once every three years.

## ARTICLE 6

### CONTRACTOR COMPENSATION AND RATES

#### 6.1 General

The maximum rates set forth in the Rate Schedule attached and incorporated hereto as Exhibit 2 (Rate Schedule) shall be the maximum rates at which Contractor may charge Customers for all services Contractor is authorized to perform under this Agreement. Such rates shall constitute full and complete compensation for all services performed by Contractor and shall also constitute full and complete compensation for all labor, equipment materials and supplies, taxes, insurance, bonds, letters of credit, overhead and all other things necessary to perform those services Contractor is authorized to perform in the manner and at the times prescribed herein. Contractor shall impose no other charges for services provided to Customers unless approved by the City Manager.

#### 6.2 Initial Rates

##### 6.2.1 Residential Premises Cart Services

The Contractor agrees to waive the annual rate adjustments for Residential Premises Cart Customers that would be due July 1, 2019 and July 1, 2020. The maximum rates that Contractor may charge Residential Premises Cart Customers through June 30, 2021 shall not exceed the maximum rates for Residential Premises Cart Customers set forth in Exhibit 2. Beginning July 1, 2021 and through the term of this Agreement, the rates shall be adjusted as described in Section 6.3.

##### 6.2.2 Initial Rate Adjustment to Former Franchisee's (American Reclamation) Commercial and Multi-Family Bin Customers

On May 1, 2019, Commercial and Multi-Family Premises Customer rates in the area previously serviced by American Reclamation will receive a one-time adjustment in order to be equal to Contractor's rates.

##### 6.2.3 Incremental Rate Adjustments to Commercial and Multi-Family Bin Customers (excluding Klingerman-Bonwood Multi-Family Area Customers, Valley

**Mall Retail Area Customers, and Temporary and Permanent Roll-off Customers)  
Rates**

In addition to the annual rate adjustments described in Section 6.3, Commercial and Multi-Family Premises Bin Customer rates will receive an additional rate adjustment on July 1, 2019, January 1, 2020, and July 1, 2020 for the additional costs associated with Processing of mixed Solid Waste and other service enhancements, as shown in the table below.

	July 1, 2019	January 1, 2020	July 1, 2020
Rate Adjustment to Commercial and Multi-Family Bin Customers for Processing of Solid Waste	1.2%	4.2%	1.2%

**6.2.4 Klingerman-Bonwood Multi-Family Area Customers, PUD Customers, Valley Mall Retail Area Customers, and Permanent and Temporary Roll-off Customers**

Klingerman-Bonwood Multi-Family Area Customers, Valley Mall Retail Area Customers, and Permanent and Temporary Roll-off Customer rates shall be charged the initial rates shown in Exhibit 2 and rates shall be adjusted as described in Section 6.3. The first increase shall occur July 1, 2019.

**6.3 Automatic Adjustments to Charges and Rates**

Service rates for all Customers shall be adjusted annually on July 1<sup>st</sup> of each Rate Year based on the methodologies included in Sections 6.3.1 and 6.3.2.

**6.3.1 Adjustment Methodology for Residential, Multi-Family, and Commercial Premises Carts and Bins (including Klingerman Bonwood, PUD, and Valley Mall Retail Area Customers), Temporary Source-Separated Inert Solid Roll-off Containers, and Temporary 3 Cubic-Yard Mixed Construction and Demolition Bins:**

Annual adjustments to the charges and service rates shall be calculated in accordance with the adjustment methodology described under this Section. The amount of each charge and rate set forth in this Section shall be adjusted by the percentage change to the Adjustment Multiplier, as defined herein. See Exhibit 3A for an example rate adjustment procedure. The Adjustment Multiplier represents the weighted percentage

change of two (2) subcomponent multipliers. These two subcomponent multipliers are as follows:

The operations and disposal component which shall be given a weight of Ninety-Five Percent (95%);

The CNG fuel component which shall be given a weight of Five Percent (5%).

The multiplier for the operations and disposal component shall be the percentage change in the January Consumer Price Index for All items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted (CUURS49ASA0) published by the United States Bureau of Labor Statistics from January of the calendar year immediately preceding the calendar year in which an adjustment will take effect to January of the calendar year in which the adjustment will take effect.

The multiplier for the CNG fuel component shall be the annual percentage change in the January Producer Price Index Fuels and related products and power - Commercial Natural Gas not seasonally adjusted (WPU05522101) as published by the United States Bureau of Labor Statistics from January of the calendar year immediately preceding the calendar year in which an adjustment will take effect to January of the calendar year in which the adjustment will take effect.

Sample Calculation of the Adjustment Multiplier: Assume, for purposes of example only, that the operations and disposal component increase is calculated to be 5%, and that the CNG fuel component increase is calculated to be 4%. Take the percentage that corresponds to each component and multiply that percentage by the weight assigned to the component: 95% for the operations and disposal component, and 5% for the CNG fuel component. Next add the resulting products that are arrived at by multiplying the percentage of each component by its respective weight percentage. The sum of these two products constitutes the Adjustment Multiplier for a given Rate Year which shall be the percentage by which charges and rates may be increased effective July 1<sup>st</sup> of the Rate Year in question. The following table illustrates this calculation:

Component	Percent Change	Weight	Adjusted Percent
Operations and Disposal Component	5%	95%	4.75%
CNG Fuel Component	4%	5%	0.20%
<i>Adjustment Multiplier</i>			<b>4.95%</b>

If the Adjustment Multiplier is calculated to be 0% or less, there shall be no changes to charges and rates during the Rate Year corresponding the Adjustment Multiplier calculation. In the case of a calculated rate decrease, the amount of such decrease shall be carried forward as an offset to future rate increases. Contractor must implement the City-approved rate increase on the July 1<sup>st</sup> Customer Billing for the Rate Year in which the increase is to take effect.

### **6.3.2 Rate Adjustment Steps for Pull Plus Dump Roll-off Rates**

This Section shall apply exclusively to the adjustment of permanent Roll-off Box rates that are bill as “pull plus dump” and consist of a pull rate, or service component, plus a per ton disposal/diversion cost. See Exhibit 3B for an example rate adjustment procedure.

Contractor must implement the City-approved rate increase on the July 1st Customer Billing for the Rate Year in which the increase is to take effect.

#### Service or “Pull” Component

The Adjustment Multiplier for the “pull” component represents the weighted percentage change of two (2) subcomponent multipliers. These two subcomponent multipliers are as follows:

The operations component which shall be given a weight of Ninety Percent (90%);

The CNG fuel component which shall be given a weight of Ten Percent (10%).

The multiplier for the operations component shall be the percentage change in the January Consumer Price Index for All items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted (CUURS49ASA0) published by the United States Bureau of Labor Statistics from January of the calendar year immediately preceding the calendar year in which an adjustment will take effect to January of the calendar year in which the adjustment will take effect.

The multiplier for the CNG fuel component shall be the annual percentage change in the January Producer Price Index Fuels and related products and power - Commercial Natural Gas not seasonally adjusted (WPU05522101) as published by the United States Bureau of Labor Statistics from January of the calendar year immediately preceding

the calendar year in which an adjustment will take effect to January of the calendar year in which the adjustment will take effect.

Sample Calculation of the Adjustment Multiplier: Assume, for purposes of example only, that the operations component increase is calculated to be 5%, and that the CNG fuel component increase is calculated to be 4%. Take the percentage that corresponds to each component and multiply that percentage by the weight assigned to the component: 90% for the operations and disposal component, and 10% for the CNG fuel component. Next add the resulting products that are arrived at by multiplying the percentage of each component by its respective weight percentage. The sum of these two products constitutes the Adjustment Multiplier for the "pull" component for a given Rate Year which shall be the percentage by which the "pull" rates may be increased effective July 1<sup>st</sup> of the Rate Year in question. The following table illustrates this calculation:

Component	Percent Change	Weight	Adjusted Percent
Operations Component	5%	90%	4.50%
CNG Fuel Component	4%	10%	0.40%
<i>Adjustment Multiplier</i>			<b>4.90%</b>

If the Adjustment Multiplier is calculated to be 0% or less, there shall be no changes to the "pull" component during the Rate Year corresponding the Adjustment Multiplier calculation. In the case of a calculated rate decrease, the amount of such decrease shall be carried forward as an offset to future rate increases.

Disposal/Diversion Component - The disposal/diversion component of these rates will be adjusted based on the percentage change in the January Consumer Price Index for All items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted (CUURS49ASA0) published by the United States Bureau of Labor Statistics from January of the calendar year immediately preceding the calendar year in which an adjustment will take effect to January of the calendar year in which the adjustment will take effect.

If the Adjustment Multiplier is calculated to be 0% or less, there shall be no changes to the "disposal/diversion" component during the Rate Year corresponding the Adjustment Multiplier calculation. In the case of a calculated rate decrease, the amount of such decrease shall be carried forward as an offset to future rate increases.

### **6.3.3 Notification of Adjustment and Written Protest Procedures**

Calculation of Adjustment Multiplier by Director of Public Works: On or about May 15<sup>th</sup> of each Rate Year, the Director of Public Works shall calculate the Adjustment Multiplier for the upcoming Rate Year using the methodology set forth under this Section. The Director of Public Works shall provide Contractor with written notice of the amount of the Adjustment Multiplier for the upcoming Rate Year and such notice shall demonstrate how the calculation was arrived at. The Contractor shall have three (3) City of El Monte business days from the date of the written notice to submit a written objection to the Director of Public Works' calculation of the Adjustment Multiplier, and such written protest shall include all documentation in support of the Contractor's assertion that the Director of Public Works' calculation of the Adjustment Multiplier is incorrect. The Director of Public Works may revise its calculation in light of Contractor's objection and, in such event, shall issue a new notice stating the revised Adjustment Multiplier. If the Director of Public Works rejects the Contractor's objection or if the Contractor objects to any revised Adjustment Multiplier developed by the Director of Public Works, the Contractor shall have three (3) City of El Monte business days from the date of the rejection or the date of any notice of a revised calculation to submit a written request for an appeal to the City Manager. The appeal request shall state the basis for the appeal and shall include all supporting documentation in support of the Contractor's position. The City Manager's decision on the appeal request shall be final and binding.

### **6.3.4 Special Organics Rate Adjustments**

#### **6.3.4.1 Optional Residential Food Waste Diversion Rate Adjustment**

As described in Section 4.2.9, if a Residential Food Waste diversion program is required by CalRecycle, the Contractor shall be entitled to a one-time rate adjustment of four percent (4%) for implementation of the Food Waste program. This is in addition to the annual adjustment implemented pursuant to Sections 6.2.1 and 6.3.1. The four percent (4%) rate adjustment shall only apply to the "Basic Service," "Senior Service," and "Disabled Service" rates for Residential Cart service included in Exhibit 2, and shall not apply to Additional Cart Rates and Services or Residential Temporary Services included in Exhibit 2.

#### 6.3.4.2 Commercial Organics Cart Rate Review

City or Contractor may request a review of the Commercial Organics Cart rate after January 1, 2022. If the review determines an adjustment is warranted, the adjustment shall be effective at the next regularly scheduled rate adjustment on the following July 1. The review will follow the Rate adjustment calculation procedures provided in Exhibit 8. The review will only be performed once during the Agreement term.

Contractor shall provide all required data and make available supporting information for the review. The Commercial Organics Cart rate review will be performed by an auditing party selected by the City, and the analysis will be made available to Contractor for review. Any decision regarding the adjustment and review shall be made by the City Manager whose decision shall be final and binding.

#### 6.4 Extraordinary Adjustments to Charges and Rates

Contractor or City may request an adjustment to maximum rates at reasonable times other than that allowed under Section 6.3 in the event of extraordinary changes in the cost of providing service under this Agreement. Such changes shall not include inaccurate estimates by the Contractor of its cost of operations, unionization of Contractor's work force, or change in wage rates or employee benefits. Contractor may request an extraordinary adjustment based upon changes in a direct per ton fee assessed at the Disposal Site by federal, state or local regulatory agencies after the Effective Date. Extraordinary rate adjustments shall only be effective after approval by City Council and may not be applied retroactively.

For each request for an adjustment to the maximum rates that Contractor may charge Customers brought pursuant to this Section 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 Contractor in preparing the estimate. Contractor shall also submit a schedule showing how its total costs and total revenues have changed over the past three years for the services provided under this Agreement.

City may request a copy of the Contractor's annual financial statements in connection with the City's review of Contractor's rate adjustment request. City shall review the Contractor's request and, in City's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be

made, and, if an adjustment is permitted, the appropriate amount of the adjustment. The City's approval of an extraordinary rate adjustment request made in response to a change in the City of El Monte's Municipal Code shall not be unreasonably withheld. City may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. A rate adjustment request made in response to a new service requested by City will be determined in accordance with Section 2.8.

#### **6.5 Effect of Rate Challenge**

If a rate adjustment approved by the City Manager or City Council is prevented from implementation due to a legal challenge by third parties, and City does not otherwise compensate Contractor for the amount of the adjustment due, Contractor is permitted to terminate this Agreement upon one-year notice.

#### **6.6 Emergency Rate Schedules**

The Emergency Rate Schedule provided as a part of Exhibit 2 represent the approved rates that may be charged for services rendered under this Agreement in the case that emergency Collection and Disposal services are needed. Such emergency services may be requested by the City in the event of a major disaster, such as an earthquake, storm, flood, riot or civil disturbance, or as otherwise determined necessary by the City. Contractor shall provide Collection vehicles and drivers normally assigned to the City, at rates not exceeding those established herein.

All Emergency Rate Schedule will be adjusted equally and simultaneously with any such adjustments to the (non-emergency) Rate Schedules included in Exhibit 2.

## ARTICLE 7

### REVIEW OF SERVICES AND PERFORMANCE

#### 7.1 Performance Review Meeting

City may hold a meeting annually to review Contractor's Solid Waste Collection efforts, source reduction, processing and other Diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Meeting"). The purpose of the Solid Waste Services and Performance Review Meeting 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, source reduction and Recycling and Disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy, and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Meeting shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding CalRecycle's diversion goals, regulatory constraints, results of route audits, and Contractor performance. City and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Meeting.

City shall notify Contractor of its intent to hold a Solid Waste Services and Performance Review Meeting at least sixty (60) days in advance thereof. Thirty (30) days after receiving notice from City of a Solid Waste Services and Performance Review Meeting, Contractor shall submit a report to City which may contain such information as it wishes to have considered, and shall contain the following:

- a) Current Diversion rates and a report on Contractor's outreach activities for the past year.
- b) Recommended changes and/or new services to improve City's ability to meet the goals of CalRecycle and to contain costs and minimize impacts on rates. A specific plan for CalRecycle compliance shall be included.
- c) Any specific plans for provision for new or changed services by Contractor.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration at the Solid Waste Services and Performance Review Meeting. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Meeting, and any Customer may submit comments or complaints during or before the Meeting, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Meeting.

As a result of its findings following any Solid Waste Services and Performance Review Meeting, City may require Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Solid Waste Services and Performance Review Meeting in order to enforce any rights or remedies it has pursuant to the terms hereof.) Should City require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Contractor shall be subject to the provisions of Section 2.8.

## **7.2 Performance Satisfaction Survey**

If requested by the City, not more than once every two years, Contractor will create and conduct a survey at Contractor's expense. If City would like to present results at a Solid Waste Services and Performance Review Meeting, City shall notify Contractor of its desire for such a survey at least 90 days in advance of the Solid Waste Services and 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 one hundred percent (100%) of the Customers. Contractor shall obtain City's approval of the survey's content, format, and mailing list prior to its distribution. 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 Services and Performance Review Meeting.

## ARTICLE 8

### RECORDS, REPORTS AND INFORMATION REQUIREMENTS

#### 8.1 General

Contractor shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulations and to meet the reporting and Solid Waste program management needs of City. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of City, the records and reports to be maintained and provided by Contractor in accordance with this and other Articles of this Agreement shall be adjusted in number, format, or frequency.

#### 8.2 Records

##### 8.2.1 General

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records, with the exception of CERCLA defense records to be maintained under Section 8.2.4, shall be maintained for five (5) years, and shall continue to be available for five (5) years after the expiration of this Agreement. After minimum holding periods are met, Contractor will notify City Manager and City Attorney ninety (90) days before destroying records and offer records to the City.

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 Contractor or its Affiliates that City shall deem, in its sole discretion,

necessary to evaluate annual reports, and Contractor's performance provided for in this Agreement. Contractor agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to City and its official representatives. Account histories shall be accessible to the City by computer for a minimum of five (5) years after termination of the Agreement. Contractor shall make all records and documents to be reviewed and inspected by City as a part of any audit or other record review conducted by City, available for City's review, inspection and copying within five (5) days of receiving written notice from City requesting the same. Additionally, City may review records at Contractor's local facility during normal business hours, within five (5) days of request during normal business hours. Such records include, but are not limited to, financial, Solid Waste, CERCLA and Disposal records.

### **8.2.2 Financial Records**

Contractor shall maintain financial records relating to its operations pursuant to this Agreement separate and segregated from such records relating to its other operations.

Contractor shall maintain at least the following records:

- Audited financial statements for Contractor or, if a guarantee was provided, for the parent company guarantor as a whole;
- Financial statements (compiled, reviewed, or audited) of revenue and expense for this Agreement segregated from the other operations of Contractor (including without limitation those operations of Contractor in City and surrounding jurisdictions which are not covered by this Agreement), including a description of segregation methodology; and
- Complete descriptions of related party transactions (corporate and/or regional management fees, inter-company profits from transfer, processing or Disposal operations).

### **8.2.3 Solid Waste Records**

Contractor shall maintain and make available to the City upon request the following records relating to its operations pursuant to this Agreement:

- a) Customer services and Billing/City payment records;

- b) Records of tons Collected, processed, Diverted and Disposed by waste stream (Refuse, Recycling, Organic Waste), by Customer type (Cart, Bin, Roll-off Box), and the Facilities (Transfer Station, MRF, or landfill) where such material was taken;
- c) Quantity of Recyclable Materials recovered by material type, as well as quantity of material Diverted from landfills in compliance with AB 939;
- d) Bulky Item Collection results and Special Event tonnages, including tons disposed and Diverted;
- e) Routes;
- f) Facilities, equipment and personnel used;
- g) Facilities and equipment operations, maintenance and repair;
- h) Number and type of Refuse, Recycling, and Organic Waste Containers in service;
- i) Complaints; and
- j) Missed pickups.

#### **8.2.4 CERCLA Defense Records**

City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a matter of great importance. For this reason, 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 matters of concern. 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) for not less than twenty-five (25) years following the termination of this Agreement, and agrees to notify City Manager and City Attorney before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Contractor shall provide copies of such records to City upon request. The requirements of this section shall survive the expiration of the Term.

### **8.2.5 Other Programs' Records**

Records for other programs shall be tailored to specific needs. In general, they shall include:

- a) Plans, tasks, and milestones; and,
- b) Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

### **8.2.6 Audit**

City may conduct an audit of Contractor at any time. The scope of the audit, and auditing party, will be determined by City and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, Gross Receipts, tonnage, and verification of Diversion rate. The first audit, to be performed during calendar year 2021, will be based on the Contractor's reports and records from the start of the Agreement through calendar year 2020. Audits may be performed every other year thereafter. Contractor will pay to the City the cost of such audits (including audits conducted by City staff) up to \$60,000 for the first audit. After 2021, the initial audit cost of \$60,000 shall be increased annually by the change in CPI as calculated for the operations and disposal component in the rate adjustment formula in Section 6.3.1. Audit payments from the Contractor to the City are due January 1 of year the audit is being performed.

Should an audit conducted or authorized by the City disclose that fees payable by Contractor were underpaid by two percent (2%) or more, that tonnage was misreported by two percent (2%) or more, or that more than two percent (2%) of the Customers were inaccurately Billed based on the auditor's sampling, for the period under review, City may expand the scope of the audit and recover all additional audit costs from the Contractor.

### **8.2.7 Payments and Refunds**

Should an audit disclose that fees payable by the Contractor were underpaid to City or that Customers were overcharged for the period under review, Contractor shall pay to City any underpayment of fees and/or refund to Contractor's Customers, as directed by

City, any overcharges within thirty (30) days following the date of the audit. Undercharges shall not be Billed in arrears for more than ninety (90) days of service, with any remaining undercharges absorbed by Contractor. Should an audit disclose that fees were overpaid, City shall credit such amounts against future fees payable by Contractor.

### **8.3 Reports**

#### **8.3.1 Report Formats and Schedule**

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Contractor shall utilize the Quarterly Report template included in Exhibit 6, which may be adjusted by the City at any time. Contractor may propose the format for the Annual Report that is responsive to the objectives and audiences for report. The format of the Annual Report shall be approved by City, which may require changes and/or additions to the format.

Reports shall be submitted within thirty (30) calendar days after the end of the reporting period. Annual reports shall be submitted within thirty (30) calendar days after the end of the calendar year. If requested, Contractor's complaint summary shall be sent to the City within five (5) business days of request.

All reports shall be submitted in electronic format compatible with City's software/computers, at no additional charge, to the Director of Public Works and/or other City staff designated by the Director of Public Works at e-mail addresses to be provided by City. City may additionally request hard copies, which would be delivered to:

Director of Public Works  
City of El Monte  
11333 Valley Boulevard  
El Monte, California 91731

#### **8.3.2 Quarterly Reports**

The information enumerated below shall constitute the minimum to be reported quarterly:

1. Tons of Solid Waste Collected by Contractor for the recently concluded Rate

Year quarter, sorted Customer sector and by type of Solid Waste Services provided and type of materials Collected (e.g. Construction and Demolition Debris, Solid Waste, Green Waste, inerts, wood waste, Bulky Items etc.);

2. Number and type of Solid Waste Services accounts by service sector Billed by Contractor;
3. Materials recovered indicating the types of discarded Recyclable Materials Collected and Diverted (in tons);
4. Copies of promotional and public education materials sent during the recently concluded Rate Year quarter;
5. Copies of Hazardous Waste, Hazardous Substance and hazardous contaminant Diversion records showing types and quantities, if any, of such items that were inadvertently Collected, but Diverted from landfilling;
6. Complaint summary (only if requested by City) for the quarter, on a computer disc, identifying the nature of complaints;
7. Calculations and payments of all fees and other sums payable by Contractor to City during the recently concluding Rate Year quarter;
8. Warning notices issued for contaminated materials placed in Containers;
9. Regulatory compliance information for Assembly Bill 341, Assembly Bill 1826, Senate Bill 1383, and any and all future regulations as required by CalRecycle, and/or other state or federal agencies. This will include the number of site visits performed to Multi-Family and Commercial Premises Customers that do not have an Organics Program in compliance with AB 1826 or SB 1383 requirements;
10. Any information or documentation required under Article 3 or Article 4 of this Agreement; and
11. Any other information or reports that the City may reasonably request.

Contractor shall use quarterly report forms developed by the City of El Monte and comply with all reporting requirements identified in said reporting format.

### 8.3.3 Annual Report

The Annual Report is to be essentially in the form and content of the monthly report, but shall also include:

- a) A summary of the number of Containers in service as of December 31 by size (number of gallons/yards), service frequency, and type of service (Refuse, Recycling, Organic Waste).
- b) Records of tons Collected, processed, Diverted and disposed by waste stream (Refuse, Recycling, Organic Waste Waste), by Customer type (Cart, Bin, Roll-off Box), and the Facilities (Transfer Station, MRF, processing or composting facility, or landfill) where such material was taken.
- c) Gross Receipts by sector (Residential, Multi-Family, Commercial, Residential Temporary, Temporary Roll-off, Permanent Roll-off).
- d) A complete inventory of vehicles used to provide all services, including make, year, type, fuel used, use, California license number and whether or not it is used as a spare.
- e) A complete listing of accounts receiving scout service, including service address, Billing name and address, telephone number, and proof of encroachment permit.
- f) Number of routes and route hours per day by type of service as of December 31.
- g) Documentation required by CalRecycle, and in a form acceptable to CalRecycle, for verification of City and Customer compliance with AB 939, AB 341, AB 1826, SB 1383, and any future regulatory requirements.
- h) Verification of third-party Solid Waste Diversion and program participation used by Contractor for compliance with AB 939, AB 341, AB 1826, SB 1383, and any future regulatory requirements) General information about the Contractor and its most recent annual report.
- i) Other information or reports that City may reasonably request or require.

### 8.3.4 Financial Report

The City may, at City's option, request and be provided with Contractor's financial reports/statements for the most recently completed fiscal year in connection with any audit, extraordinary rate adjustment request, or verification of other information required under, but only as they pertain to this Agreement.

Financial statements shall include a supplemental combining schedule showing Contractor's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement, separated from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost for preparation of the financial statements shall be borne by Contractor as a direct cost of service. In addition, Contractor shall provide to City the supplemental schedule on a compiled basis.

#### **8.4 Reporting Adverse Information**

Contractor shall provide City two copies (one to the City Manager, one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating in any way to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental 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 City within thirty (30) days of receipt by Contractor, or sooner if reasonably apparent that to do so is time critical, and any responses by Contractor shall be submitted to City simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

#### **8.5 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 this Agreement as described in Section 11.1 and shall subject Contractor to all remedies which are available to the City under this Agreement, the El Monte Municipal Code or otherwise.

## ARTICLE 9

### INDEMNIFICATION, INSURANCE, BOND AND LETTER OF CREDIT

#### 9.1 Indemnification

A. Contractor hereby agrees to, and in fact shall, indemnify, defend and hold free and harmless City, its elected and appointed boards, commissions, officials, officers, employees, agents, and volunteers (collectively, the "Indemnified Parties") from and against any and all disputes, losses, liabilities, penalties, forfeitures, claims, demands, actions, proceedings, or suits at law or in equity of any and every kind and description (including, but not limited to suits for injury to and/or the death of any Person and/or damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with: (i) the negligence or willful misconduct of Contractor, its officers, employees, agents, Affiliates and/or subcontractors in performing services under this Agreement; (ii) the failure of Contractor, its officers, employees, agents, Affiliates, contractors and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, all Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of Contractor, its officers, employees, agents, Affiliates, contractors and/or subcontractors in performing any of the services and tasks described or otherwise contemplated under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such disputes, losses, liabilities, penalties, forfeitures, claims, demands, actions, proceedings, suits, are caused in part by any of the Indemnified Parties' negligence, but shall not extend to matters resulting from the Indemnified Parties' sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) the Indemnified Parties against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse the City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

B. Contractor shall, upon demand of the City, made by and through the City Attorney, protect, indemnify, appear for, defend and hold free and harmless the Indemnified Parties, as defined under Paragraph (A), above, in any claim or action brought by or on behalf of third parties, whether judicial, quasi-judicial, administrative or otherwise, including, but not limited to, disputes and/or litigation over the scope and meaning of the words "Solid Waste" and/or "discarded Recyclable Materials"; the scope of the rights granted herein; conflicts between the rights granted herein and rights asserted by other Persons; or the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Solid Waste Services in the City. The provisions of this Article shall be given the broadest possible interpretation and shall survive the expiration or early termination of this Agreement.

C. With respect to any matter covered under the indemnity set forth under this Section, the City and the Contractor will confer following any trial to decide jointly whether to appeal or to oppose any appeal. If the City and the Contractor jointly agree to appeal, or to oppose any appeal, the City and the Contractor will share equally the costs of appeal. Should either the City or the Contractor decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the Party that decides to appeal, or to oppose an appeal, will bear all fees and costs of the appeal or the opposition to the appeal. The foregoing obligations will not apply to the extent of the City's sole or active negligence, willful misconduct, breach of this Agreement, or violation of law.

D. The Parties agree that the rates to be charged by Contractor to Customers are set by Contractor as a private party in the market place. The City's role with respect to rate setting is to establish rate ceilings for the protection of Customers given the exclusive status afforded Contractor by this Agreement and given the nature of the services it is to provide. Accordingly, the Parties agree that this Agreement shall be construed to maintain the status of the rates Contractor chooses to charge its Customers as privately-established rates and not as property-related fees within the scope of Article XIID of the California Constitution or taxes within the scope of Articles XIII A and XIII C of the California Constitution.

E. The Contractor's duty to indemnify and defend against the above-referenced events arising during the term of this Agreement, and as it may be extended, shall survive the expiration or earlier termination of this Agreement.

**THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

## 9.2 Hazardous Substances Indemnification

A. Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City, which acceptance shall not be unreasonably withheld), reimburse, indemnify, and hold harmless Indemnities from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

1. results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or
2. relates to material Collected, transported, Recycled, processed, treated or disposed of by Contractor.

B. Contractor's obligations pursuant to this section shall apply, without limitation, to:

1. any Claims brought pursuant to or based on the provisions of any Environmental Law;

2. any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation of Contractor of any Facility;
3. any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, Disposal, processing or use of any materials recovered by Contractor;
4. any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

C. The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

D. The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the Indemnitees' negligence, but shall not extend to matters resulting from the Indemnitees' sole negligence, or willful misconduct.

E. For purposes of this section, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste, any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this Agreement.

F. In the event that the City exercises its right under Sections 2.9 and 4.10 to direct Contractor to use a facility other than a site approved in this Agreement, and such facility is not owned and operated by Contractor or any parent, Affiliate or guarantor of the Contractor, this indemnification shall only apply to Claims arising out of Contractor's Collection and transportation to such facility.

**G. THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

### 9.3 AB 939 Indemnification and Guarantee

A. To the extent authorized by law, Contractor agrees to indemnify and hold harmless City from and against all fines and/or penalties imposed by CalRecycle in the event the source reduction and Recycling goals or any other requirement of AB 939 are not met by City with respect to the Solid Waste Collected under this Agreement.

B. Contractor warrants and represents that it is familiar with City's waste characterization study as set forth in City's Source Recovery and Recycling Element (SRRE), and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the Diversion requirements (including, without limitation, amounts of Solid Waste to be Diverted, time frames for Diversion, and any other requirements) set forth in AB 939, with respect to that portion of the Solid Waste generated in City that is the subject of this Agreement.

### 9.4 Insurance

A. Contractor shall procure and maintain throughout the Term of this Agreement and any extension term insurance against claims for injuries to Persons or damages to property which may arise from or in connection with Contractor's performance of work or services under this Agreement. Contractor's performance of work or services shall include performance by Contractor's employees, agents, representatives and subcontractors.

B. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- 1) Insurance Services Office Form No. GO 0002 or, if approved by the City, its equivalent, covering Comprehensive General Liability and Insurance Services Office Form No. GL 0303 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001);
- 2) The most recent edition of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" or code 2 "owned autos" and endorsement CA 00 25 Coverage shall also include code 8 "hired autos" and code 9 "non-owned autos";
- 3) Workers' Compensation insurance as required by the Labor Code of

the State of California and Employers Liability insurance;

- 4) Hazardous Waste and Environmental Impairment Liability Insurance;

C. Minimum Limits of Insurance. Contractor shall maintain in force for the Term of this Agreement or any extension thereto limits no less than:

- 1) Comprehensive General Liability: Five Million Dollars (\$5,000,000.00) limit aggregate and Five Million Dollars (\$5,000,000.00) limit per occurrence for bodily injury, personal injury and property damage;
- 2) Automobile Liability: Five Million Dollars (\$5,000,000.00) limit aggregate and Five Million Dollars (\$5,000,000.00) limit per accident for bodily injury and property damage;
- 3) Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability Limits of One Million Dollars (\$1,000,000.00) per accident;
- 4) Hazardous Waste and Environmental Impairment Liability: One Million Dollars (\$1,000,000.00) per claim, Three Million Dollars (\$3,000,000.00) policy aggregate covering 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 broad 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 hereunder and waive subrogation against the City and other additional insured. Notwithstanding any provision herein to the contrary, the foregoing coverage shall be maintained through continuous renewal for a period of not less than ten (10) years following expiration or termination of this Agreement.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retention is for the account of Contractor and payment of such shall be the

responsibility of Contractor solely, and must be declared to, and approved by, City's Risk Manager. If, in the reasonable opinion of the Risk Manager, Contractor does not have sufficient financial resources to protect the City from exposure with respect to any deductibles or self-insured retentions, at the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Endorsements: The policies of insurance required under this Agreement shall contain or be endorsed to contain the following provisions:

- 1) The City of El Monte and the City of El Monte's elected and appointed officials, officers, employees, agents and volunteers (collectively, the "City Insureds") are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor; products and completed operations of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including material parts or equipment furnished in connection with such work or operations;
- 2) All policies of insurance procured by Contractor in accordance with this Agreement shall be primary insurance as respect any other valid and collectable insurance the City Insureds may possess, including any self-insured retention the City Insureds may have and any other insurance the City Insureds possess shall be considered excess insurance only;
- 3) Thirty (30) calendar days prior written notice shall be given to the City in the event of cancellation, reduction in coverage or non-renewal of this policy for whatever reason (except for ten (10) calendar days notice for cancellation for non-payment). Such notice shall be sent to the City Manager c/o the Director of Public Works located at El Monte City Hall - West, 11333 Valley Boulevard, El Monte, CA 91731;
- 4) As to the Workers Compensation and Employers Liability Coverage, the insurer shall agree to waive all rights of subrogation against the City Insureds; arising from work performed by Contractor;

- 5) Each policy of insurance required under this Agreement shall be occurrence-based (except for Hazardous Waste and Environmental Impairment Liability Insurance which is claims-based);
- 6) The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier act endorsement (MCS-90) TL 1005, TL 1007 and/or other endorsements required by federal or state authorities;
- 7) All policies of insurance shall name the City of El Monte and the City of El Monte's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 8) The insurance shall act for each insured and additional 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 carrier.

Prior to the Effective Date, Contractor shall provide the City with copies of all required endorsements.

F. Carrier Rating. As required under Section 18.12.050 of the El Monte Municipal Code, all policies of insurance shall be placed with carriers admitted to issue such policies of insurance in the State of California and approved by the California Department of Insurance. All policies of insurance shall be procured from carriers with an A.M. Best's rating of no less than A:VII. If Environmental Impairment and/or is not available from an admitted insurer, the coverage may be written with the City's permission by a non-admitted insurance carrier, provide that any such non-admitted carrier shall have an A.M. Best rating of A:VII or higher.

G. Verification of Coverage. Contractor shall furnish City with original certificates of insurance and with original endorsements affecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies; at any time. Proof of insurance shall be provided prior to the Effective Date and shall

be mailed to the following address or any subsequent address as may be directed in writing by City:

Director of Public Works  
El Monte City Hall – West  
11333 Valley Boulevard  
El Monte, CA 91731

If City requests, copies of each policy, together with all endorsements, the copies shall also be promptly delivered to City. Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverage throughout the Term.

H. Contractors and Subcontractors. Contractor shall include all contractors and subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for companies and subcontractors shall be subject to all of the requirements stated herein.

I. Other Insurance Requirements. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against Contractor or any Contractor or subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to City.

If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and recover costs from the Contractor's Performance Bond provided under Section 9.5.

## **9.5 Faithful Performance Bond**

A. Concurrently with the execution of this Agreement, Contractor shall deliver to City a performance bond in the amount of One Million Dollars (\$1,000,000.00). The performance bond shall be executed by a surety company that (i) is acceptable to the City; (ii) is an admitted surety company licensed to do business in the State of California; (iii) has an A:VII or better rating by A.M. Best or Standard and Poors; and

(iv) is included on the list of surety companies approved by the Treasurer of the United States. The bond shall contain the original notarized signature of an authorized officer of the surety, and affixed thereto shall be a certified and current copy of this power of attorney. The bond shall contain the original notarized signature of an authorized officer of the surety, and affixed thereto shall be a certified and current copy of this power of attorney.

B. As an alternative to the performance bond required under this Agreement, City, in its sole and absolute discretion, may permit Contractor to deposit with City an irrevocable letter of credit in the amount of One Million Dollars (\$1,000,000.00). If allowed, the letter of credit shall be issued by an FDIC insured banking institution chartered to do business in the State of California, in City's name, and shall be callable at the discretion of the City. Nothing in this subsection shall, in any way, obligate City to accept a letter of credit in lieu of the performance bond.

C. The performance bond or letter of credit (hereinafter referred to collectively as the "bond") shall serve as security for the faithful performance of all conditions and provisions of this Agreement, including, without limitation, payment of past due sums owed by Contractor to City, payment of any penalties any work to cure a breach of this Agreement. The bond shall be unconditional and remain in force (through renewals) during the entire Term of the Agreement or any extension term. The bond shall be in favor of the City of El Monte and shall not extend to the right of recovery against the sureties by third parties. After any recovery against the bond by the City, the bond amount shall be restored to the required sum of One Million Dollars (\$1,000,000.00). The bond may contain a provision giving the sureties the option to cancel the bond upon first giving notice in writing, not less than thirty (30) calendar days before the effective date of the cancellation to the Director of Public Works; provided, however, such cancellation shall not impair the right of the City to reimbursement for the correction of conditions resulting from the breach of this Agreement or any contractor or resolution made pursuant to the provisions of this Agreement which breaches occurred before the effective date of the cancellation of the bond, whether the work of correction was performed before or after such effective date. In the event of suspension, cancellation or termination of the bond by the provider, City may pursue any and all remedies available to City under Section 11.1 of this Agreement in the event Contractor fails to procure a new bond within the cure period set forth under Section 11.1. Contractor shall be liable to the City for any

and all damages suffered by the City arising out of such suspension, cancellation or termination.

#### **9.6 Forfeiture of Performance Bond**

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the performance bond forfeited to the City up to an amount which is necessary to recompense and make whole the City. Upon partial or full forfeiture of the performance bond, Contractor shall restore the performance bond to its face amount within thirty (30) days of the City's declaration. Failure to restore the performance bond to its full amount within thirty (30) days shall be a material breach of the Agreement.

#### **9.7 Performance Security Beyond Service Term**

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 4.2.6, will not be substantiated until after the final service date. Therefore, the Contractor shall not terminate the performance bond, letter of credit or deposit, and will renew them to ensure continuous availability to the City, until receiving a written release from the City or until the second annual anniversary of the end of the Term. Permission from the City to discontinue holding these performance securities does not relieve Contractor of payments to the City that may be due, or may become due.

## ARTICLE 10

### CITY'S RIGHT TO PERFORM SERVICE

#### 10.1 General

A. In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste as required by this Agreement, at the same time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that such accumulation endangers, menaces or otherwise threatens the public health, safety or welfare, then City shall have the right, but not the obligation, upon twenty-four (24) hours written notice to Contractor during the period of such emergency as determined by City: (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take possession of any or all of Contractor's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within City which Contractor would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

B. Section 12.12 notwithstanding, notice of Contractor's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours of the oral notification.

C. Contractor further agrees that in such event:

- 1) It will take direction from City to affect the transfer of possession of equipment and property to City for City's use, or for use by any Person or entity designated by the City;
- 2) It will, if City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition;

- 3) City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees previously or then employed by Contractor. Contractor further agrees, if City so requests, to furnish City the services of any or all management or office Personnel employed by Contractor whose services are necessary or useful for the Solid Waste Services provided by this Agreement, and for the Billing and Collection of fees for these services;
- 4) City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession; and
- 5) If the interruption or discontinuance of service is caused by any of the reasons listed in Section 11.3, City shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Contractor has rendered Bills in advance of service, for the class of service involved.

## **10.2 Temporary Possession of Contractor's Property**

If City suffers an interruption or discontinuance of service (including interruptions and discontinuance due to events described in Section 11.3), City may take possession of and use all of Contractor's property described above until other suitable arrangements can be made for the provision of Solid Waste Services, which may include the grant of a franchise to another Solid Waste enterprise.

## **10.3 Billing and Compensation to City During City's Possession**

During such time that City is providing Solid Waste Services, as above provided, Contractor shall Bill and collect payment from all users of the above-mentioned services as described in Section 5.1. Contractor further agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by City beyond that Billed and received by City in taking over possession of the above-mentioned equipment and property for Solid Waste Service in such a manner and to an extent as would otherwise be required of Contractor under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Contractor of each statement listing such costs and expenses, but in no event later than five (5) business days from and after each submission.

#### **10.4 City's Right to Relinquish Possession**

It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Contractor and thereupon demand that Contractor resume the integrated waste services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

#### **10.5 City's Possession Not a Taking**

It is expressly agreed between the Parties that City's exercise of its rights under this Article: (a) does not constitute a taking of private property for which compensation must be paid; (b) shall not create any liability on the part of City to Contractor; and (c) does not exempt Contractor from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section provided that the Contractor is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

#### **10.6 Duration of City's Possession**

City's right pursuant to this Article to retain temporary possession of Contractor's facilities and equipment, and to render Collection services, shall terminate when City determines that such services can be resumed by Contractor, or when City no longer reasonably requires such property or equipment. In any case, City has no obligation to maintain possession of Contractor's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Contractor.

## ARTICLE 11

### DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

#### 11.1 Events of Default

Each of the following provisions, without limitation, are considered material and shall constitute an event of default by the Contractor.

A. Fraud or Deceit or Misrepresentation. If the Contractor engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation regarding material information to City.

B. Insolvency or Bankruptcy or Financial Irresponsibility. If 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 Contractor fails to provide or maintain or cause its subcontractors to provide or maintain, in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

D. Violations of Regulations. If Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that 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 Contractor ceases to provide all or a portion of the Collection, processing or Recycling services, or any other Solid Waste Collection Services as required under this Agreement for a period of seven (7) consecutive days or more, unless, and only to the extent, performance is excused pursuant to Section 11.4.

F. Failure to Pay. If Contractor fails to make any payments required under this Agreement and/or refuses to provide 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. Failure to Cooperate with Audits. Failure to complete, perform or cooperate with any audit as described by this Agreement.

H. Failure to Submit Reports or Documentation. Failure to complete or to provide required reports or documents to City as required by this Agreement.

I. Acts or Omissions.

1. Any act or omission by Contractor relative to the services provided under this Agreement which violates the terms, conditions, or requirements of this Agreement, or AB 939, or any law, statute, ordinance, order, directive, rule, or regulation issued pursuant to AB 939 not corrected or remedied within the time set in the written notice of the violation from the issuing entity or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if 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.
2. Any situation in which Contractor or any of its officers, directors or employees are found guilty of any crime related to the performance of this Agreement, or of any crime related to anti-trust activities, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials. The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty as well as any admission of guilt by Contractor or any of Contractor's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge."

J. False or Misleading Statements. Any representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

K. Attachment. The seizure of, attachment of, or levy on, the operating equipment of Contractor, including, without limits, its equipment, maintenance or office facilities, or any part thereof.

L. Suspension or Termination of Service. Any termination or suspension of the transaction of business by Contractor, including, without limitation, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than seven (7) consecutive days, unless, and only to the extent, performance is excused pursuant to Section 11.4.

M. Failure to Provide Assurance of Performance. If Contractor fails to provide reasonable assurances of performance as required under Section 11.6.

N. Commingling of Recyclables With Refuse/Landfilling of Recyclables. If Contractor empties a Container of properly set out Recyclable Materials or Organic Waste into a Refuse load, or transports Recyclable Materials or Organic Waste to a landfill or other location at which the material will not be Diverted from landfilling (with the exception of Green Waste used as Alternative Daily Cover provided full Diversion credit is received).

O. Failure to Meet Diversion Goals. Contractor fails to achieve Diversion goals specified in Section 4.2.6, for two consecutive calendar years, beginning with calendar year 2011.

P. Lapse of Performance Bond and/or Letter of Credit and/or Deposit. Contractor fails to restore the full balance of the Performance Bond and/or Letter of Credit and/or deposit required under Section 9.5 to the full required value within 30 days of being depleted due to payment to City under Sections 9.6, or Contractor allows any of the securities at any time for any other reason to lapse or fall below required minimums for any period of time.

Contractor shall have forty-eight (48) hours from the time it is given notification by City to cure any default arising under subsections E, F, G, H, K, L, M, N, and P provided, however, that City shall not be obligated to provide Contractor with a notice and cure opportunity if Contractor has committed the same or similar breach within a twenty-four (24) month period. It is expressly understood that Contractor is not entitled to receive notice of default, or to cure such default, with respect to those matters listed in subsections A, B, C, D, I, J and O above.

## **11.2 Right to Terminate Upon Default and Right to Specific Performance**

If Contractor commits a material breach, including specifically any of the matters listed in subsections A through P of Section 11.1 above (and, if permitted to cure, does not cure it within the forty-eight (48) hours), City shall be entitled to unilaterally terminate this Agreement or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other conditions it deems appropriate short of termination) as it shall deem proper pursuant to the provisions in this Agreement or the El Monte Municipal Code. Should City decide to terminate this Agreement upon a default by Contractor, City shall have the right to do so upon giving ten (10) days notice to Contractor, and shall not be required by this Agreement to take any further action (such as holding any hearing, bringing any suit or taking any other action).

City's rights to terminate this Agreement and City's termination of this Agreement shall not constitute an election of remedies. Instead, such remedies shall be in addition to any and all other legal and equitable rights and remedies which City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service for preservation of the public health, safety and welfare, the time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to seek injunctive relief and/or specific performance of any breach of this Agreement.

## **11.3 Liquidated Damages**

A. General. City finds, and 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 City as a result of a breach by Contractor of certain specific obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of 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 specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Solid Waste Collection Service is of utmost importance to City and the public health, safety and welfare and that City has considered and relied on Contractor's representations as to its quality of service commitment in entering this Agreement with 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 Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, 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 City will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default under this Article 11, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. 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.

Contractor  
Initial Here DMP

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

1. Collection Reliability

- a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceeds five (5) such failures annually: \$100.00
- b) For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer account on the scheduled Collection day and not make up the Collection within the time allotted per Section 4.7.1: \$100.00

2. Collection Quality

- a) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten (10) such occurrences annually: \$100.00
- b) For each occurrence of excessive noise or discourteous behavior which exceed ten (10) annually: \$250.00
- c) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$250.00
- d) For each failure to clean up Solid Waste spilled from Solid Waste Containers within ninety (90) minutes that exceeds ten (10) such failures annually: \$150.00

3. Customer Responsiveness

- a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed, which exceed five (5) annually: \$150.00
- b) For each failure to process Customer complaints as required by Article 5, which exceed five (5) annually: \$150.00
- c) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within two (2) business days of request from City or Customer: \$ 50.00 per day

- d) For each failure to clean or exchange Containers in the Klingerman-Bonwood Multi-Family Area of the City, and in the Valley Mall Retail Area two (2) times per Rate Year:
 

\$25.00 per Container
- e) For each failure to clean or replace a Container within five (5) business days of request from City or Customer:
 

\$ 50.00 per day
- f) For each failure to repair or replace a damaged Container within two (2) business days of request from City or Customer, or replace a stolen or lost Container within one (1) business day of request from City or Customer:
 

\$ 25.00 per day
- h) For each failure to initially respond in writing to a claim for damages within thirty (30) days from the date submitted to Contractor:
 

\$100.00

4. Diversion Efforts

- a) For each calendar year, beginning calendar year 2020 through the end of term, in which Contractor fails to provide support to the City within sixty (60) days of year-end, documenting that it Diverted at least 35% of the Solid Waste Contractor Collected under this Agreement:
 

\$25 for each ton below tonnage level  
necessary to meet 35% Diversion goal

5. Timeliness of Submissions to City

Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be:

- i) Quarterly Reports:
 

\$25 per day
- ii) Annual Reports:
 

\$50 per day

6. Accuracy of Billing

Each Customer invoice that is not prepared in accordance with the City's approved rate schedule, in excess of ten (10) annually: \$25.00

7. Cooperation with Service Provider Transition

- a) For each day routing information requested by City in accordance with Section 12.8 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service : \$1,000.00/day
- b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Section 12.8: \$1,000.00/day
- c) For delay in not meeting the requirements contained in Section 12.8 in a timely manner, in addition to the daily liquidated damages for breach under 7(a) and 7(b) above, liquidated damages of: \$35,000.00

8. General Contract Adherence

For each day that Franchisee fails to provide services required under the Agreement, or comply with terms of the Agreement, five (5) business days after receipt of written notification from City that such services are not being provided or terms are not being met: \$100.00/day

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representatives or through investigation of Customer complaints by such Persons. If any failure is permitted or excused by another section of this Agreement, such a failure shall not count towards assessment of liquidated damages (such as a failure to Collect would not apply if it were due to the presence of contamination, provided Contractor left a warning notice).

Prior to assessing liquidated damages, the City Manager shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/ non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/ non-performance.

Contractor may, within ten (10) days after receiving the notice, request a meeting with

City Manager. Contractor may present evidence in writing and through testimony at the meeting of its employees and others relevant to the incident(s)/ non-performance. City Manager will provide Contractor with a written explanation of its determination on each incident(s)/ non-performance prior to authorizing the assessment of liquidated damages. The decision of City Manager shall be final.

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

D. Timing of Payment. Contractor shall pay any liquidated damages assessed by City within ten 60 days after receipt of notice that liquidated damages are being assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond, letter of credit, or deposit required by the Agreement or find Contractor in default and terminate this Agreement pursuant to Section 11.2, or both.

#### **11.3.1 Procedure for Review and Payment of Liquidated Damages**

A. City may determine through the observation of its own employees or representatives or through investigation of Customer complaints by such persons that the occurrence of one or more events set forth in Section 11.3 gives rise to liquidated damages in favor of City. If any failure is permitted or excused by another section of this Agreement, such an observed failure shall not result in an assessment of liquidated damages (such as a failure to Collect would not apply if it were due to the presence of contamination, provided Contractor left a warning notice).

Prior to assessing liquidated damages for the occurrence of one or more events giving rise to liquidated damages under Section 11.3, the City Manager shall give Contractor notice of City's intention to do so. The City's notice will include a brief description of the incident(s)/ non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/ non-performance. Contractor may, within ten (10) days after receiving such notice from the City, request that the City Manager meet with Contractor to conduct a mutual review of the City's notice of intention to assess liquidated damages. If such a written request for review is timely filed by Contractor, the matter shall be set for a meeting with the City Manager within fourteen (14) days of the City's receipt of such a request from Contractor. At the time and date designated by the City for such a meeting, Contractor

and the City shall present evidence in writing and through testimony at the meeting of the employees of either of them and others relevant to the incident(s)/ non-performance given rise to the proposed assessment of liquidated damages. The City Manager, or his or her designee, shall serve as the hearing officer during such a meeting for the review of the City's notice of intention to assess liquidated damages. Such a meeting may be continued from time-to-time by the City Manager. Subject to the cooperation of Contractor, the City Manager shall provide a final written decision (the "Final Decision") with respect to the assessment of liquidated damages by the City within fourteen (14) days following the conclusion of each such meeting. The Final Decision of City Manager with respect to each shall be final and non-appealable to the City Council.

B. Within ninety (90) days following Contractor's receipt of the Final Decision, Contractor may appeal the Final Decision to the Superior Court. The provisions of Code of Civil Procedure Section 1094.5 shall apply to the inquiry by the Superior Court into the validity of each Final Decision.

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

D. Timing of Payment of Liquidated Damages. If Contractor does not request a meeting as provided in Section 11.3.1.A., Contractor shall pay the liquidated damage amount as assessed by City within ten (10) days after receipt of notice that liquidated damages are being assessed. If Contractor requests a meeting as provided in Section 11.3.1.A., the amount of the liquidated damages as confirmed by the Final Decision of the City Manager shall be paid to the City within ten (10) days after the date of Contractor's receipt of the Final Decision. If any liquidated damage amount as assessed is not paid within the applicable ten (10) day period, City may proceed with collection of the amount of liquidated damages as so assessed against the performance bond, letter of credit, or deposit required by the Agreement. If the aggregated amount of all liquidated damage assessments in a calendar year may exceed the sum of Five Thousand Dollars (\$5,000), the City may, cumulative with the remedy of collection of any pending and unpaid liquidated damages, issue separate notice declaring Contractor to be in default and terminate this Agreement pursuant to Section 11.2.

## 11.4 Suspension of Performance

### 11.4.1 Force Majeure

The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

The interruption or discontinuance of Contractor's services caused by one (1) or more of the events excused shall not constitute a default by Contractor under this Agreement provided that other services delivered to properties in El Monte (such as and without limitation electricity, gas, water, or residential Solid Waste Collection Services) have been similarly disrupted as a direct result of the catastrophic event. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this section, City may contract with another provider to perform all or part of this Agreement until such time Contractor is able to perform. If Contractor is unable to renew its performance of this Agreement for a period of thirty (30) days or more, where the City is not significantly impacted by the catastrophic event, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice.

### 11.4.2 Labor Unrest

Labor unrest, including work stoppage or slowdown or sick-out conducted by Contractor's employees or directed at Contractor is excused from performance only to the extent that the following requirements are met:

- Contractor provides a contingency plan to the City prior to the execution of this Agreement demonstrating how services will be provided. Plan is subject to City Manager approval and Contractor shall amend plan until it meets City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction.
- Contractor shall meet all requirements of this plan; if Contractor does not meet all requirements, City may choose to revoke this excuse from performance offered

under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 11.1, 11.2 and 11.3.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this section.

The interruption or discontinuance of Contractor's services caused by labor-related events excused under this Section 11.4.2 shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this section for a period of thirty (30) days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, and may contract with another party for Solid Waste Collection Services.

## **11.5 Dispute Resolution**

Except as may otherwise be set forth expressly herein, all disputes arising under this Agreement shall be resolved as set forth in this section.

### **11.5.1 Negotiation and Mediation**

The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between the Parties' authorized representatives. The disputing Party shall give the other Parties written notice of any dispute. Within five (5) days after delivery of such notice, the authorized representatives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If the matter has not been resolved within ten (10) days of the first meeting, any Party may initiate a mediation of the dispute. The mediation shall be facilitated by a mediator that is acceptable to all Parties and shall conclude within thirty (30) days of its commencement, unless the Parties agree to extend the mediation process beyond such deadline. Upon agreeing on a mediator, the Parties shall enter into a written agreement for the mediation services with each Party paying a pro rata share of the mediator's fee, if any. The mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association; provided, however, that no consequential damages shall be awarded in any such proceeding and each Party shall bear its own legal fees and expenses.

### **11.5.2 Confidentiality**

All negotiations and any mediation conducted pursuant to this section shall be confidential and shall be treated as compromise and settlement negotiations, to which Section 1152 of the California Evidence Code shall apply, which Section is incorporated in this Agreement by reference.

### **11.5.3 Injunctive Relief**

Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo.

### **11.5.4 Continuing Obligation**

Each Party shall continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

### **11.5.5 Failure of Mediation**

If after good faith efforts to mediate a dispute under the terms of this Agreement the parties cannot agree to a resolution of the dispute, any party may pursue whatever legal remedies may be available to it at law or in equity before a court of competent jurisdiction and with venue in Los Angeles County.

## **11.6 Assurance of Performance**

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

## ARTICLE 12

### OTHER AGREEMENTS OF THE PARTIES

#### 12.1 Relationship of Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venture with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, 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. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Affiliates, contractors, subcontractors and agents. Neither Contractor nor its officers, employees, Affiliates, contractors, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

#### 12.2 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and any federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended.

#### 12.3 Governing Law

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

#### 12.4 Jurisdiction

Except for those matters where Federal Courts have exclusive 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 Los Angeles County.

## 12.5 Assignment

Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "assignment") to any other Person without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section the term "assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of 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 Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor of any of its Affiliates, 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 Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

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

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its sole discretion. Any request for an assignment must be approved by the City Manager in writing, and no request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met (or with respect to matters that would only occur upon completion of the assignment if approved, made reasonable assurances that it will meet) the following requirements:

- a) Contractor shall pay City its reasonable expenses for attorney'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 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.
- b) Contractor shall pay the City a transfer fee equal to one percent (1%) of the Gross Receipts it, or its assignee, will receive during the remaining Term of the Agreement at rates and service levels in effect at the time of the assignment, as estimated by City.
- c) Contractor shall furnish City with audited financial statements for itself, and the proposed assignee's operations for the immediately preceding three (3) operating years.
- 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.
- e) Contractor shall furnish 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 scale of operations conducted by 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 City with a complete list of any 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 City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall City be obliged to consider any proposed assignment by City if Contractor is in default at any time during the period of consideration. Should City consent to any assignment request, such assignment shall not take effect until all conditions relating to City's approval have been met in accordance with Chapter 8.16 of the El Monte Municipal Code, as amended from time to time.

#### **12.6 Contracting or Subcontracting**

Contractor shall not engage any contractors or subcontractors for the Collection of Solid Waste.

#### **12.7 Binding on Assigns**

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns (if any) of the Parties.

#### **12.8 Cooperation in Preparation for Termination or Expiration of Contract**

Prior to, and at the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent Solid Waste enterprise it designates to assure a smooth transition of Solid Waste Collection Services. Contractor's cooperation shall include, but not be limited to, providing route lists, Billing information and other operating records needed to service all Premises 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 (number and size of Containers and pickup days) at least 90 days prior to the transition date, and provide an updated list two 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 business 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.

#### **12.9 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.

#### **12.10 Waiver**

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any moneys which become due hereunder 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.

#### **12.11 Contractor's Investigation**

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

#### **12.12 Notice**

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates, unless otherwise specified in this Agreement, shall be in writing and shall either be personally

delivered to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City:

City Manager  
City of El Monte  
11333 Valley Boulevard  
El Monte, California 91731

If to Contractor: David Perez  
V.P. Operations  
Valley Vista Services  
17445 E. Railroad St.  
City of Industry, CA 91748

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 mailed, three days from the date it is deposited in the mail.

This notice shall also be sent by e-mail to the City Manager.

### **12.13 Representatives of the Parties**

All actions to be taken by City shall be taken by the City Council except as expressly provided herein. The City Council may delegate authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate some or all of such authority to subordinate employees. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority so delegated to them.

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

#### **12.14 City Free to Negotiate with Third Parties**

City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste for periods during which this Agreement has expired or been terminated. Without limiting the generality of the foregoing, City may solicit proposals from Contractor and from third parties for the provision of Solid Waste Collection Services which are the subject of this Agreement, including without limitation Collection services, Disposal services, Recycling services, Green Waste, 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 of this Agreement pursuant to Section 11.2 or otherwise.

#### **12.15 Compliance with Municipal Code**

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

#### **12.16 Privacy**

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 company, 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 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.

#### **12.17 Proprietary Information, Public Records**

The City acknowledges that a number of the records and reports of Contractor are proprietary and confidential. Contractor is obligated to permit City inspection of its records on demand and to provide copies to City where requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Contractor.

Notwithstanding the foregoing, any documents provided by Contractor to City that are public records may be disclosed pursuant to the California Public Records Act.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

#### 13.1 Entire Agreement

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals (including Contractor's Proposal), and agreements between the Parties, whether written or oral. The Parties acknowledges this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no Party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other Party to execute this instrument.

#### 13.2 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.

#### 13.3 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.

#### 13.4 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.

#### 13.5 Agreement

This Agreement may not be modified or amended in any respect except by a writing signed by the Parties.

### **13.6 Severability**

Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance, and that same shall remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Agreement and/or the rights and obligations of the parties hereto.

### **13.7 Exhibits**

Each of Exhibits identified as Exhibit "1" through "10" is attached hereto and incorporated herein and made a part hereof by this reference.

### **13.8 Attorneys' Fees**

If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding between the Parties in any way connected with this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable attorney's fees and costs from the opposing Party. Attorneys' fees shall include attorney's fees on any appeal. A Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, expert fees, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action.

### **13.9 Effective Date**

This Agreement shall be effective upon the date it has been executed by both Parties. Once so executed, the City's City Clerk shall insert the later date thereof in the opening paragraph of this Agreement.

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

CITY OF EL MONTE

("City")

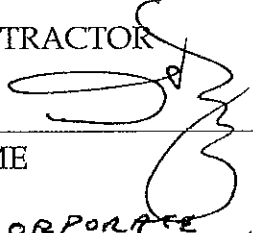
DATED: \_\_\_\_\_

DATED: MARCH 5, 2019

CITY OF EL MONTE

CONTRACTOR

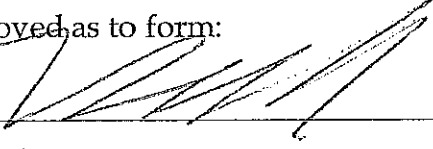
By: 

By:  , DAVID PEREZ  
NAME

-  
City Manager

CORPORATE SECRETARY  
TITLE

Approved as to form:

By: 

Valley Vista Services, Inc.  
NAME OF CONTRACTOR

-  
City Attorney

17445 Railroad Street, Industry, CA  
ADDRESS

ATTEST:



(626) 961-6291  
TELEPHONE

-  
City Clerk

**EXHIBIT 1**

**PUBLIC EDUCATION PLAN**

(to be attached after City approval per Section 5.3)

## EXHIBIT 2 INITIAL MAXIMUM RATES

### Residential Refuse and Recycling Services Rates Effective May 1, 2019 through June 30, 2021

Service Item	Specification	Cost	Service Description
Basic Service	1 Brown Cart – Trash 1 Blue Cart – Recycling 1 Green Cart – Green Waste	\$30.99 /Month	Each cart is lidded, wheeled, and 96 gallon capacity.
Extra cart(s)	Brown Cart – Trash	\$6.18 /Month	Each extra 96 gallon cart.
Extra cart(s)	Green Cart – Green Waste	No charge on first extra, \$5.88 /Month after 2	Each extra 96 gallon cart.
Extra cart(s)	Blue Cart – Recycling	No charge, unlimited.	Each extra 96 gallon cart.
Senior Service A	Basic Service with discount based on HUD low-income eligibility. Discount equal to 50%.	\$15.50 /Month	See Basic Service; subject to application process and City approval.
Senior Service B	Basic Service with discount and 64 gallon carts.	\$26.03 /Month	All carts are 64 gal capacity; subject to application process and City approval.
Senior Service C	Basic Service with discount based on HUD low-income eligibility, and 35 gallon carts.	\$13.95 /Month	All carts are 35 gal capacity; subject to application process and City approval.
Disabled Service A	Basic Service with discount based on HUD low-income eligibility. Discount equal to 50%.	\$15.50 /Month	See Basic Service; free valet service to curbside; subject to application process and City approval.
Disabled Service B	Basic Service with discount based on HUD low-income eligibility, and 35 gallon carts.	\$13.95 /Month	All carts are 35 gal capacity; free valet service to curbside; subject to application process and City approval.
Valet Service for Qualifying Seniors and Disabled Residents	Available to qualifying senior citizens as defined in Section 5.1.1.3, and disabled persons.	No charge	Movement of carts from storage point to curbside, and return to storage point after collection
Valet Service Cart Customers	Available to any residential cart customer upon request.	\$10.50 Month	Movement of carts from storage point to curbside, and return to storage point after collection
Cart Overage	Cart customers may be charged Overage Fee for overages above two instances as described in Section 4.1.2.1. Overage Fee shall not be charged for the two weeks beginning December 26 of each contract year.	\$6.18 /Occurrence	Equivalent to extra trash cart.
Manure Recycling Service	Up to four 64 gallon carts for the collection of manure, serviced once per week.	No charge for four carts \$6.18 /cart thereafter	Collection and recycling of manure.
Temporary Bins	3 Cubic Yard Bin Service	\$105.82 /Bin, flat fee. Seven day term. \$9.13 /each additional day.	Only available to residential refuse customers doing clean-ups or renovation projects on existing residence. Exempt from AB939 and Franchise Fees.
Temporary Roll-off	10 or 40 cubic yard	\$538.08 /roll-off, flat fee. MSW, six ton limit.	Only available to residential refuse customers doing clean-ups or renovation projects on existing residence. Overweight charge is \$58/ton. Exempt from AB939 and Franchise Fees.
	12 cubic yard	\$418.52 /roll-off, flat fee. MSW, three ton limit.	
	10 cubic yard	\$334.56 /roll-off, flat fee. Inert material, eight ton limit.	
Self-Haul	Self-haul of temporary waste to Grand Central Recycling and Transfer Station	\$69.35 /ton	Self-haul option available to residential refuse customers only, using a vehicle of 1 ton capacity or less. Exempt from AB939 and Franchise Fees.
Bulky Items	Large Item	Free up to 20 items per year per household; \$16.63 each item thereafter.	Includes rugs, sofas, appliances, TVs, furniture, mattresses, tree stumps, computers and monitors. Note: Bulky Items exclude C&D debris, dirt, rock, asphalt, and concrete. Note: Multiple bundled green waste/yard vegetation tied in 18" x 18" x 36" bundles is counted as one bulky item/bulky item collection.
Replacement of Container	Damage due to Customer misuse	Actual cost of replacement.	Replacement of damaged cart or bin.

**EXHIBIT 2  
INITIAL MAXIMUM RATES**

**PUD Refuse and Recycling Bin Services**  
Rates Effective May 1, 2019 through June 30, 2019

Service Frequency per Week	Cost/Month/Bin	Billing
<b>Refuse Bins - 3 cubic-yard (all service sizes and frequencies include one recycling cart and one green waste cart per dwelling unit upon request)</b>		
1X	\$161.83	Monthly, Directly to Customer (s)
2X	\$246.51	Monthly, Directly to Customer (s)
3X	\$331.20	Monthly, Directly to Customer (s)
4X	\$415.91	Monthly, Directly to Customer (s)
5X	\$500.62	Monthly, Directly to Customer (s)
6X	\$576.75	Monthly, Directly to Customer (s)
All other bin sizes.	Charge is extrapolated from the 3yd rates above. Example extrapolation for 4yd, 1x/wk: $\$161.83/3 = \$53.94/\text{yd}$ therefore, $\$53.94/\text{yd} \times 4\text{yd} = \underline{\$215.76}$	
Scout Service	Per bin per month. Use of scout vehicle to service bins to move a bin 26 feet or more to facilitate collection. Multiply \$61.80 by service frequency (up to 6x/week).  \$61.80	Monthly, Directly to Customer (s)
<b>Recycling Bins - 3 cubic-yard (40% Reduction in Refuse Rate)</b>		
1X	\$97.10	Monthly, Directly to Customer (s)
2X	\$147.91	Monthly, Directly to Customer (s)
3X	\$198.72	Monthly, Directly to Customer (s)
4X	\$249.55	Monthly, Directly to Customer (s)
5X	\$300.37	Monthly, Directly to Customer (s)
6X	\$346.05	Monthly, Directly to Customer (s)
All other bin sizes.	Charge is extrapolated from the 3yd rates above. Example extrapolation for 4yd, 1x/wk: $\$97.10/3 = \$32.37/\text{yd}$ therefore, $\$32.37/\text{yd} \times 4\text{yd} = \underline{\$129.48}$	
Scout Service	Per bin per month. Use of scout vehicle to service bins to move a bin 26 feet or more to facilitate collection. Multiply \$61.80 by service frequency (up to 6x/week).  \$61.80	Monthly, Directly to Customer (s)

## EXHIBIT 2 INITIAL MAXIMUM RATES

**Commercial Refuse Services**  
Rates Effective May 1, 2019 through June 30, 2019

Service Level	2018/19 Service Rates	2018/19 Franchise Fee	AB 939 Fee	2018/19 Total Fees	2018/19 Total Rates
65-Gallon - 1x/Wk	21.52	3.23	0.54	3.77	25.29
65-Gallon - 2x/Wk	35.52	5.33	1.08	6.41	41.93
65-Gallon - 3x/Wk	47.95	7.19	1.62	8.81	56.76
65-Gallon - 4x/Wk	59.94	8.99	2.16	11.15	71.09
65-Gallon - 5x/Wk	71.92	10.79	2.70	13.49	85.41
65-Gallon - 6x/Wk	82.70	12.41	3.24	15.65	98.35
98-Gallon - 1x/Wk	32.95	4.94	0.83	5.77	38.72
98-Gallon - 2x/Wk	54.39	8.16	1.66	9.82	64.21
98-Gallon - 3x/Wk	73.42	11.01	2.48	13.49	86.91
98-Gallon - 4x/Wk	91.78	13.77	3.31	17.08	108.86
98-Gallon - 5x/Wk	110.13	16.52	4.14	20.66	130.79
98-Gallon - 6x/Wk	126.64	19.00	4.96	23.96	150.60
1 Yd3 - 1x/Wk	67.25	10.09	1.69	11.78	79.03
1 Yd3 - 2x/Wk	110.99	16.65	3.38	20.03	131.02
1 Yd3 - 3x/Wk	149.83	22.47	5.07	27.54	177.37
1 Yd3 - 4x/Wk	187.30	28.10	6.75	34.85	222.15
1 Yd3 - 5x/Wk	224.75	33.71	8.44	42.15	266.90
1 Yd3 - 6x/Wk	258.45	38.77	10.13	48.90	307.35
1.5 Yd3 - 1x/Wk	75.28	11.29	2.53	13.82	89.10
1.5 Yd3 - 2x/Wk	124.23	18.63	5.07	23.70	147.93
1.5 Yd3 - 3x/Wk	167.73	25.16	7.60	32.76	200.49
1.5 Yd3 - 4x/Wk	209.65	31.45	10.13	41.58	251.23
1.5 Yd3 - 5x/Wk	251.57	37.74	12.67	50.41	301.98
1.5 Yd3 - 6x/Wk	289.32	43.40	15.20	58.60	347.92
2 Yd3 - 1x/Wk	100.39	15.06	3.38	18.44	118.83
2 Yd3 - 2x/Wk	165.65	24.85	6.75	31.60	197.25
2 Yd3 - 3x/Wk	223.63	33.54	10.13	43.67	267.30
2 Yd3 - 4x/Wk	279.53	41.93	13.51	55.44	334.97
2 Yd3 - 5x/Wk	335.43	50.31	16.89	67.20	402.63
2 Yd3 - 6x/Wk	385.75	57.86	20.26	78.12	463.87
3 Yd3 - 1x/Wk	149.83	22.47	5.07	27.54	177.37
3 Yd3 - 2x/Wk	247.23	37.08	10.13	47.21	294.44
3 Yd3 - 3x/Wk	333.78	50.07	15.20	65.27	399.05
3 Yd3 - 4x/Wk	417.22	62.58	20.26	82.84	500.06
3 Yd3 - 5x/Wk	500.63	75.09	25.33	100.42	601.05
3 Yd3 - 6x/Wk	575.74	86.36	30.40	116.76	692.50
4 Yd3 - 1x/Wk	199.29	29.89	6.75	36.64	235.93
4 Yd3 - 2x/Wk	328.83	49.32	13.51	62.83	391.66
4 Yd3 - 3x/Wk	443.90	66.59	20.26	86.85	530.75
4 Yd3 - 4x/Wk	554.89	83.23	27.02	110.25	665.14
4 Yd3 - 5x/Wk	665.87	99.88	33.77	133.65	799.52
4 Yd3 - 6x/Wk	765.74	114.86	40.53	155.39	921.13
6 Yd3 - 1x/Wk	299.68	44.95	10.13	55.08	354.76
6 Yd3 - 2x/Wk	494.47	74.17	20.26	94.43	588.90
6 Yd3 - 3x/Wk	667.53	100.13	30.40	130.53	798.06
6 Yd3 - 4x/Wk	834.41	125.16	40.53	165.69	1000.10
6 Yd3 - 5x/Wk	1001.31	150.20	50.66	200.86	1202.17
6 Yd3 - 6x/Wk	1151.48	172.72	60.79	233.51	1384.99

**EXHIBIT 2**  
**INITIAL MAXIMUM RATES**

**Multi-Family Refuse Services**

Rates Effective May 1, 2019 through June 30, 2019

Service Level	2018/19 Service Rates	2018/19 Franchise Fee	2018/19 AB 939 Fee	2018/19 Total Fees	2018/19 Total Rates
1 Yd3 - 1x/Wk	70.95	10.64	1.69	12.33	83.28
1 Yd3 - 2x/Wk	105.72	15.86	3.38	19.24	124.96
1 Yd3 - 3x/Wk	141.73	21.26	5.07	26.33	168.06
1 Yd3 - 4x/Wk	178.01	26.70	6.75	33.45	211.46
1 Yd3 - 5x/Wk	214.29	32.14	8.44	40.58	254.87
1 Yd3 - 6x/Wk	246.91	37.04	10.13	47.17	294.08
1.5 Yd3 - 1x/Wk	79.28	11.89	2.53	14.42	93.70
1.5 Yd3 - 2x/Wk	118.09	17.71	5.07	22.78	140.87
1.5 Yd3 - 3x/Wk	158.69	23.80	7.60	31.40	190.09
1.5 Yd3 - 4x/Wk	199.30	29.90	10.13	40.03	239.33
1.5 Yd3 - 5x/Wk	239.92	35.99	12.67	48.66	288.58
1.5 Yd3 - 6x/Wk	276.46	41.47	15.20	56.67	333.13
2 Yd3 - 1x/Wk	105.67	15.85	3.38	19.23	124.90
2 Yd3 - 2x/Wk	157.42	23.61	6.75	30.36	187.78
2 Yd3 - 3x/Wk	211.59	31.74	10.13	41.87	253.46
2 Yd3 - 4x/Wk	265.74	39.86	13.51	53.37	319.11
2 Yd3 - 5x/Wk	319.90	47.99	16.89	64.88	384.78
2 Yd3 - 6x/Wk	368.61	55.29	20.26	75.55	444.16
3 Yd3 - 1x/Wk	157.71	23.66	5.07	28.73	186.44
3 Yd3 - 2x/Wk	234.97	35.25	10.13	45.38	280.35
3 Yd3 - 3x/Wk	315.79	47.37	15.20	62.57	378.36
3 Yd3 - 4x/Wk	396.63	59.49	20.26	79.75	476.38
3 Yd3 - 5x/Wk	477.47	71.62	25.33	96.95	574.42
3 Yd3 - 6x/Wk	550.15	82.52	30.40	112.92	663.07
4 Yd3 - 1x/Wk	209.76	31.46	6.75	38.21	247.97
4 Yd3 - 2x/Wk	312.50	46.88	13.51	60.39	372.89
4 Yd3 - 3x/Wk	420.00	63.00	20.26	83.26	503.26
4 Yd3 - 4x/Wk	527.52	79.13	27.02	106.15	633.67
4 Yd3 - 5x/Wk	635.04	95.26	33.77	129.03	764.07
4 Yd3 - 6x/Wk	731.70	109.76	40.53	150.29	881.99
6 Yd3 - 1x/Wk	315.42	47.31	10.13	57.44	372.86
6 Yd3 - 2x/Wk	469.93	70.49	20.26	90.75	560.68
6 Yd3 - 3x/Wk	631.60	94.74	30.40	125.14	756.74
6 Yd3 - 4x/Wk	793.26	118.99	40.53	159.52	952.78
6 Yd3 - 5x/Wk	954.94	143.24	50.66	193.90	1148.84
6 Yd3 - 6x/Wk	1100.29	165.04	60.79	225.83	1326.12

**EXHIBIT 2**  
**INITIAL MAXIMUM RATES**

**Commercial and Multi-Family Recycling Services**  
**Rates Effective May 1, 2019 through June 30, 2019**

Service Level	2018/19 Service Rates	2018/19 Franchise Fee	AB 939 Fee	2018/19 Total Fees	2018/19 Total Rates
98 Gal - 1x/Wk	20.21	3.03	0.83	3.86	24.07
98 Gal - 2x/Wk	33.35	5.00	1.66	6.66	40.01
98 Gal - 3x/Wk	45.04	6.76	2.48	9.24	54.28
98 Gal - 4x/Wk	56.29	8.44	3.31	11.75	68.04
98 Gal - 5x/Wk	67.55	10.13	4.14	14.27	81.82
98 Gal - 6x/Wk	77.69	11.65	4.96	16.61	94.30
1 Yd3 - 1x/Wk	40.43	6.06	1.69	7.75	48.18
1 Yd3 - 2x/Wk	66.71	10.01	3.38	13.39	80.10
1 Yd3 - 3x/Wk	90.06	13.51	5.07	18.58	108.64
1 Yd3 - 4x/Wk	112.58	16.89	6.75	23.64	136.22
1 Yd3 - 5x/Wk	135.11	20.27	8.44	28.71	163.82
1 Yd3 - 6x/Wk	155.38	23.31	10.13	33.44	188.82
1.5 Yd3 - 1x/Wk	45.26	6.79	2.53	9.32	54.58
1.5 Yd3 - 2x/Wk	74.69	11.20	5.07	16.27	90.96
1.5 Yd3 - 3x/Wk	100.84	15.13	7.60	22.73	123.57
1.5 Yd3 - 4x/Wk	126.06	18.91	10.13	29.04	155.10
1.5 Yd3 - 5x/Wk	151.28	22.69	12.67	35.36	186.64
1.5 Yd3 - 6x/Wk	173.98	26.10	15.20	41.30	215.28
2 Yd3 - 1x/Wk	60.35	9.05	3.38	12.43	72.78
2 Yd3 - 2x/Wk	99.59	14.94	6.75	21.69	121.28
2 Yd3 - 3x/Wk	134.46	20.17	10.13	30.30	164.76
2 Yd3 - 4x/Wk	168.08	25.21	13.51	38.72	206.80
2 Yd3 - 5x/Wk	201.71	30.26	16.89	47.15	248.86
2 Yd3 - 6x/Wk	231.98	34.80	20.26	55.06	287.04
3 Yd3 - 1x/Wk	90.07	13.51	5.07	18.58	108.65
3 Yd3 - 2x/Wk	148.64	22.30	10.13	32.43	181.07
3 Yd3 - 3x/Wk	200.69	30.10	15.20	45.30	245.99
3 Yd3 - 4x/Wk	250.88	37.63	20.26	57.89	308.77
3 Yd3 - 5x/Wk	301.07	45.16	25.33	70.49	371.56
3 Yd3 - 6x/Wk	346.25	51.94	30.40	82.34	428.59
4 Yd3 - 1x/Wk	119.79	17.97	6.75	24.72	144.51
4 Yd3 - 2x/Wk	197.70	29.66	13.51	43.17	240.87
4 Yd3 - 3x/Wk	266.91	40.04	20.26	60.30	327.21
4 Yd3 - 4x/Wk	333.66	50.05	27.02	77.07	410.73
4 Yd3 - 5x/Wk	400.41	60.06	33.77	93.83	494.24
4 Yd3 - 6x/Wk	460.49	69.07	40.53	109.60	570.09

**EXHIBIT 2**  
**INITIAL MAXIMUM RATES**

**Commercial & Multi-Family Organic Recycling Services**  
**Rates Effective May 1, 2019 through June 30, 2019**

Service Level	2018/19 Service Rates	2018/19 Franchise Fee	AB 939 Fee	2018/19 Total Fees	2018/19 Total Rates
98-Gallon - 1x/Wk	70.44	10.57	0.83	11.40	81.84
98-Gallon - 2x/Wk	140.88	21.13	1.66	22.79	163.67
98-Gallon - 3x/Wk	211.32	31.70	2.48	34.18	245.50
98-Gallon - 4x/Wk	281.76	42.26	3.31	45.57	327.33
98-Gallon - 5x/Wk	352.20	52.83	4.14	56.97	409.17
98-Gallon - 6x/Wk	422.64	63.40	4.96	68.36	491.00
1 Yd3 - 1x/Wk	109.29	16.39	1.69	18.08	127.37
1 Yd3 - 2x/Wk	195.00	29.25	3.38	32.63	227.63
1 Yd3 - 3x/Wk	276.48	41.47	5.07	46.54	323.02
1 Yd3 - 4x/Wk	355.94	53.39	6.75	60.14	416.08
1 Yd3 - 5x/Wk	435.43	65.31	8.44	73.75	509.18
1 Yd3 - 6x/Wk	511.16	76.67	10.13	86.80	597.96
1.5 Yd3 - 1x/Wk	138.12	20.72	2.53	23.25	161.37
1.5 Yd3 - 2x/Wk	250.89	37.63	5.07	42.70	293.59
1.5 Yd3 - 3x/Wk	356.60	53.49	7.60	61.09	417.69
1.5 Yd3 - 4x/Wk	462.33	69.35	10.13	79.48	541.81
1.5 Yd3 - 5x/Wk	567.09	85.06	12.67	97.73	664.82
1.5 Yd3 - 6x/Wk	668.66	100.30	15.20	115.50	784.16
2 Yd3 - 1x/Wk	184.41	27.66	3.38	31.04	215.45
2 Yd3 - 2x/Wk	334.30	50.15	6.75	56.90	391.20
2 Yd3 - 3x/Wk	476.31	71.45	10.13	81.58	557.89
2 Yd3 - 4x/Wk	616.87	92.53	13.51	106.04	722.91
2 Yd3 - 5x/Wk	756.81	113.52	16.89	130.41	887.22
2 Yd3 - 6x/Wk	890.16	133.52	20.26	153.78	1,043.94
3 Yd3 - 1x/Wk	276.48	41.47	5.07	46.54	323.02
3 Yd3 - 2x/Wk	499.91	74.99	10.13	85.12	585.03
3 Yd3 - 3x/Wk	713.13	106.97	15.20	122.17	835.30
3 Yd3 - 4x/Wk	921.61	138.24	20.26	158.50	1,080.11
3 Yd3 - 5x/Wk	1,131.69	169.75	25.33	195.08	1,326.77
3 Yd3 - 6x/Wk	1,333.44	200.02	30.40	230.42	1,563.86
4 Yd3 - 1x/Wk	367.96	55.19	6.75	61.94	429.90
4 Yd3 - 2x/Wk	666.17	99.93	13.51	113.44	779.61
4 Yd3 - 3x/Wk	948.30	142.25	20.26	162.51	1,110.81
4 Yd3 - 4x/Wk	1,227.95	184.19	27.02	211.21	1,439.16
4 Yd3 - 5x/Wk	1,507.58	226.14	33.77	259.91	1,767.49
4 Yd3 - 6x/Wk	1,776.12	266.42	40.53	306.95	2,083.07
6 Yd3 - 1x/Wk	552.37	82.86	10.13	92.99	645.36
6 Yd3 - 2x/Wk	998.87	149.83	20.26	170.09	1,168.96
6 Yd3 - 3x/Wk	1,425.22	213.78	30.40	244.18	1,669.40
6 Yd3 - 4x/Wk	1,844.81	276.72	40.53	317.25	2,162.06
6 Yd3 - 5x/Wk	2,264.39	339.66	50.66	390.32	2,654.71
6 Yd3 - 6x/Wk	2,666.26	399.94	60.79	460.73	3,126.99

## EXHIBIT 2 INITIAL MAXIMUM RATES

### Commercial & Multi-Family Temporary Services Rates Effective May 1, 2019 through June 30, 2019

Temporary Services Items	Disposal (per ton)	Diversion (per ton)	Per Load	Per Pull Rate
	Total Disp/Ton	Total	Total Per Load	Total Per Pull Rate
<b>Source-Separated Inert Solids</b>			<b>100% Div</b>	<b>Max Rate</b>
10 Yd - Includes Disposal and Per Pull			\$197.20	
20 Yd - Includes Disposal and Per Pull			\$236.89	
30 Yd - Includes Disposal and Per Pull			\$276.60	
<b>Mixed C&amp;D - Open Top Containers</b>				
10 Yd	\$60.17	\$104.81		\$ 239.85
20 Yd	\$60.17	\$104.81		\$ 251.45
30 Yd	\$60.17	\$104.81		\$ 290.87
40 Yd	\$60.17	\$104.81		\$ 330.29
<b>Mixed C&amp;D - 3 Yd</b>	<b>Total</b>	<b>Total</b>		
3 Yd - Includes Disposal/Diversion and Per Pull	\$178.42	\$211.01		NA N/A
<b>Miscellaneous Container Services</b>				
10 Yd Green Waste Collection	\$28.13	\$35.76		\$ 237.47
Container Rental Charges (2x/mo or more)	Free	Free		
Container Rental for 1 Pull or less per mo	\$75	\$75		
Over Weight Charges per Ton Over 8 Tons (120%)	\$72.20	\$125.77		NA

**EXHIBIT 2  
INITIAL MAXIMUM RATES**

**Permanent Roll Off Services**

Rates Effective - July 1, 2018 through June 30, 2019

Permanent Services Items		Diversion (per ton)	Per Pull Rate
	Total Per Load	Total Per Load	<i>Max Rate</i>
<b>Open Top Containers</b>			
10 Yd	\$60.17	\$104.81	\$239.85
20 Yd	\$60.17	\$104.81	\$251.45
30 Yd	\$60.17	\$104.81	\$290.87
40 Yd	\$60.17	\$104.81	\$330.29
50 Yd	\$60.17	\$104.81	\$369.70
<b>Open Top Containers</b>			
<b>Miscellaneous Container Services</b>			
Container Rental Charges (2x or more per month)	Free	Free	NA
Container Rental for 1 Pull or Less per Month	\$75.00	\$75.00	NA
Over Weight Charges per Ton Over 8 Tons (120%)	\$72.20	\$125.77	NA
Compactor Rental Charges <sup>1</sup>	Cost	Cost	NA

<sup>1</sup> Contractor shall not charge more than rental, lease, amortization, and/or maintenance cost.

## EXHIBIT 2 INITIAL MAXIMUM RATES

### Additional Services

Rates Effective May 1, 2019 through June 30, 2019

Service Level	2018/19 Service Rates	2018/19 Franchise Fee	2018/19 Total Rates
<b>Emergency Services (1 truck and 1 crew)<sup>1</sup></b>			
Emergency Services - one to eight hours			79.21
Emergency Services - above 8 hours			91.21
<b>Multi-Family Bulky Item Fee (above free service defined in Section 4.1.7)</b>	19.54	2.93	22.47
<b>Commercial Bulky Item Fee</b>	19.54	2.93	22.47
<b>Extra Dump Fee</b>	84.91	12.74	97.65
<b>Return Trip Fee</b>	21.74	3.26	25.00
<b>Locking Lids</b>			24.86
<b>Commercial and Multi-Family Restart Fee<sup>1</sup></b>			55.00
<b>Bin Enclosure Cleaning Fee - Overflowing containers only</b>	43.48	6.52	50.00
<b>Bin Cleaning Fee (above one per year for Commercial and Multi-Family Customers; above two per year for Klingerman-Bonwood and Valley Mall Customers)<sup>1</sup></b>	26.09	3.91	30.00
<b>Bin Compactor Service (excluding rental) - Monthly surcharge per weekly yard of service</b>	45.91	6.89	52.80

<sup>1</sup> Excludes franchise fees

**EXHIBIT 2  
INITIAL MAXIMUM RATES**

**Scout and Push Out Services**

**Commercial and Multi-Family Refuse, Recycling and Organics  
(Applies to 1 cy to 6 cy bin service, does not apply to cart service)**

Rates Effective May 1, 2019 through June 30, 2019

Scout Service	2018/19 Rates					
	1x/Wk	2x/Wk	3x/Wk	4x/Wk	5x/Wk	6x/Wk
Commercial Refuse	\$ 65.73	\$ 131.46	\$ 197.19	\$ 262.92	\$ 328.63	\$ 394.35
Multi-Family Refuse	\$ 66.34	\$ 132.70	\$ 198.89	\$ 265.26	\$ 331.60	\$ 397.94
Commercial and Multi-Family Recycling and Organics	\$ 61.47	\$ 122.93	\$ 184.39	\$ 245.86	\$ 307.32	\$ 368.80

Push Out Service	2018/19 Rates					
	1x/Wk	2x/Wk	3x/Wk	4x/Wk	5x/Wk	6x/Wk
Commercial Refuse	\$ 49.62	\$ 99.25	\$ 148.86	\$ 198.50	\$ 248.12	\$ 297.76
Multi-Family Refuse	\$ 49.72	\$ 99.48	\$ 149.16	\$ 198.89	\$ 249.62	\$ 298.35
Commercial and Multi-Family Recycling and Organics	\$ 49.73	\$ 99.49	\$ 149.22	\$ 198.97	\$ 248.68	\$ 298.43

Note: Push Out Rate applies when a bin is moved 16 to 25 feet manually prior to collection. Scout Rate applies when a scout vehicle is used to retrieve and move a bin 26 feet or more in order to facilitate collection. There is no charge for movement or adjustment of a bin 15 feet or less. Contractor may not charge for Scout and Push Out simultaneously.

## EXHIBIT 2 INITIAL MAXIMUM RATES

**Klingerman Avenue/Bonwood Road  
Special Trash Area - Annual Charges Report  
Rates Effective May 1, 2019 through June 30, 2019**

Tax Assessors Parcel No.	Address	Units	Per Unit Charge	Charges	Acct #
8105-019-018	11104 Klingerman Avenue	5	365.56	\$1,827.80	144.84
8105-019-019	11106 Klingerman Avenue	6	365.56	\$2,193.36	144.84
8105-019-020	11112 Klingerman Avenue	6	365.56	\$2,193.36	144.84
8105-019-021	11116 Klingerman Avenue	6	365.56	\$2,193.36	144.84
8105-019-022	11120 Klingerman Avenue	6	365.56	\$2,193.36	144.84
8105-019-023	11126 Klingerman Avenue	12	365.56	\$4,386.72	144.84
8105-019-024	11127 Bonwood Road	12	365.56	\$4,386.72	144.84
8105-019-025	11123 Bonwood Road	6	365.56	\$2,193.36	144.84
8105-019-026	11119 Bonwood Road	6	365.56	\$2,193.36	144.84
8105-019-027	11111 Bonwood Road	6	365.56	\$2,193.36	144.84
8105-019-028	11107 Bonwood Road	4	365.56	\$1,462.24	144.84
8105-019-029	11101 Bonwood Road	4	365.56	\$1,462.24	144.84
8105-019-030	11102 Bonwood Road	9	365.56	\$3,290.04	144.84
8105-019-031	11106 Bonwood Road	12	365.56	\$4,386.72	144.84
8105-019-032	11112 Bonwood Road	6	365.56	\$2,193.36	144.84
8105-019-033	11118 Bonwood Road	6	365.56	\$2,193.36	144.84
8105-019-034	11122 Bonwood Road	6	365.56	\$2,193.36	144.84
8105-019-035	11126 Bonwood Road	6	365.56	\$2,193.36	144.84
8105-019-036	11132 Bonwood Road	4	365.56	\$1,462.24	144.84
8105-020-001	11144 Klingerman Avenue	12	365.56	\$4,386.72	144.84
8105-020-002	11150 Klingerman Avenue	10	365.56	\$3,655.60	144.84
8105-020-003	11202 Klingerman Avenue	10	365.56	\$3,655.60	144.84
8105-020-004	11208 Klingerman Avenue	10	365.56	\$3,655.60	144.84
8105-020-005	11214 Klingerman Avenue	6	365.56	\$2,193.36	144.84
8105-020-006	11220 Klingerman Avenue	6	365.56	\$2,193.36	144.84
8105-020-007	11224 Klingerman Avenue	6	365.56	\$2,193.36	144.84
8105-020-008	11230 Klingerman Avenue	6	365.56	\$2,193.36	144.84
8105-020-009	11179 Bonwood Road	4	365.56	\$1,462.24	144.84
8105-020-010	11171 Bonwood Road	10	365.56	\$3,655.60	144.84
8105-020-011	11167 Bonwood Road	10	365.56	\$3,655.60	144.84
8105-020-012	11161 Bonwood Road	10	365.56	\$3,655.60	144.84
8105-020-013	11155 Bonwood Road	10	365.56	\$3,655.60	144.84
8105-020-014	11151 Bonwood Road	6	365.56	\$2,193.36	144.84
8105-020-015	11145 Bonwood Road	6	365.56	\$2,193.36	144.84
8105-020-016	11144 Bonwood Road	4	365.56	\$1,462.24	144.84
8105-020-017	11150 Bonwood Road	4	365.56	\$1,462.24	144.84
8105-020-029	11154 Bonwood Road	4	365.56	\$1,462.24	144.84
8105-020-019	11160 Bonwood Road	4	365.56	\$1,462.24	144.84
8105-020-020	11166 Bonwood Road	4	365.56	\$1,462.24	144.84
8105-020-021	11170 Bonwood Road	4	365.56	\$1,462.24	144.84
8105-020-025	11138 Klingerman Avenue	8	365.56	\$2,924.48	144.84
8105-020-026	11139 Bonwood Road	10	365.56	\$3,655.60	144.84
8105-020-027	11140 Bonwood Road	4	365.56	\$1,462.24	144.84

## EXHIBIT 3A

### EXAMPLE RATE ADJUSTMENT FORMULA

**Residential, PUD, Multi-Family and Commercial Refuse, Recycling and Organics;  
Residential Temporary Bins; Temporary Source-Separated Inert Solid Waste Roll-Off  
Containers; and Temporary 3 Cubic-Yard Mixed Construction and Demolition Bins**

Operations and Disposal Component <small>(CPI All items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted - CUURS49ASA0)</small>				Fuel Component <small>(PPI Commodity data for Fuels and related products and power, Commercial natural gas WPU05S22101)</small>			
MONTH	INDEX	INDEX	CHANGE	MONTH	INDEX	INDEX	CHANGE
	2017	2018			2017	2018	
JAN	252.373	261.235	8.862	JAN	192.10	193.10	1.00
CHANGE DIVIDED BY PRIOR YR			3.51%	CHANGE DIVIDED BY PRIOR YR			0.52%
CPI Weight			95%	FCA Weight			5%
Increase/Decrease			3.33%	Increase/(Decrease)			0.03%

FINAL CALCULATIONS OF OPERATIONS AND DISPOSAL, AND CNG ADJUSTMENT <sup>(1)</sup>				
COMPONENT	WEIGHT	%CHANGE		ADJ %
Operations and Disposal	95%	3.51%		3.33%
Fuel Component	5%	0.52%		0.03%
	100%		Adjustment Multiplier	3.36%

#### Annual Fee Adjustment - Example

2018/19 Administrative Fee <sup>(2)</sup>	\$ 190,000
CPI Adjustment	3.51%
2019/20 Administrative Fee	\$ 196,669
2019/20 Franchise Fee	15%
2018/19 HHW and E-waste Fee	\$ 110,000
CPI Adjustment	3.51%
2019/20 HHW and E-waste Fee <sup>(2)</sup>	\$ 113,861
2018/19 Bulky Item Program Fee <sup>(2)</sup>	\$ 80,000
CPI Adjustment	3.51%
2019/20 Bulky Item Program Fee	\$ 82,808
2018/19 Road Maintenance Cost Reimbursement Fee <sup>(2)</sup>	\$ 120,000
CPI Adjustment	3.51%
2019/20 Road Maintenance Cost Reimbursement Fee	\$ 124,212

#### AB 939 Fee Adjustment - Example

	2018/19	CPI Adjustment	2019/20
Residential Per Account	\$ 0.65	3.51%	\$ 0.67
Commercial/Multi-Family Bin and Cart Per Yard	\$ 0.39	3.51%	\$ 0.40
Roll-Off Per Yard	\$ 1.16	3.51%	\$ 1.20

<sup>(1)</sup> If the Adjustment Multiplier is calculated to be 0% or less, there shall be no changes to charges and rates during the Rate Year corresponding the Adjustment Multiplier calculation. In the case of a calculated rate decrease, the amount of such decrease shall be carried forward as an offset to future rate increases. Contractor must implement the City-approved rate increase on the July 1st Customer billing for the Rate Year in which the increase is to take effect.

<sup>(2)</sup> If CPI remains unchanged or decreases, City fees remain the same as previous year.

## EXHIBIT 3B

### EXAMPLE RATE ADJUSTMENT FORMULA

#### Service "Pull" Plus Dump Roll-Off Rates

Service or "Pull" Component				
<b>Operations Component</b> <small>(CPI All Items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted - CUURS49ASA0)</small>			<b>Fuel Component</b> <small>(PPI Commodity data for Fuels and related products and power, Commercial natural gas WPU05522101)</small>	
MONTH	INDEX	INDEX	CHANGE	
	2017	2018		
JAN	252.373	261.235	8.862	
	CHANGE DIVIDED BY PRIOR YR		3.51%	
	CPI Weight		90%	
	Increase/Decrease		3.16%	
MONTH	INDEX	INDEX	CHANGE	
	2017	2018		
JAN	192.10	193.10	1.00	
	CHANGE DIVIDED BY PRIOR YR		0.52%	
	FCA Weight		10%	
	Increase/(Decrease)		0.05%	

FINAL CALCULATIONS OF OPERATIONS AND CNG ADJUSTMENT <sup>(1)</sup>				
COMPONENT	WEIGHT	%CHANGE	ADJ %	
Operations	90%	3.51%	3.16%	
Fuel Component	10%	0.52%	0.05%	
	<b>100%</b>	<b>Adjustment Multiplier</b>	<b>3.21%</b>	

Disposal/Diversion Component				
FINAL CALCULATIONS OF DISPOSAL/DIVERSION ADJUSTMENT <sup>(1)</sup> <small>(CPI All Items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted - CUURS49ASA0)</small>				
MONTH	INDEX	INDEX	CHANGE	
	2017	2018		
JAN	252.373	261.235	8.862	
	CHANGE DIVIDED BY PRIOR YR		3.51%	
	Increase/Decrease		3.51%	

<sup>(1)</sup> If the Adjustment Multiplier is calculated to be 0% or less, there shall be no changes to charges and rates during the Rate Year corresponding the Adjustment Multiplier calculation. In the case of a calculated rate decrease, the amount of such decrease shall be carried forward as an offset to future rate increases. Contractor must implement the City-approved rate increase on the July 1st Customer billing for the Rate Year in which the increase is to take effect.

## EXHIBIT 4

### Contractor's Faithful Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_, a California \_\_\_\_\_, as PRINCIPAL, and \_\_\_\_\_, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of One Million Dollars (\$1,000,000.00) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "FRANCHISE AGREEMENT FOR SOLID WASTE SERVICES" with City, to do and perform the following work, to wit: Collect, Process and dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

In the event suit is brought by OBLIGEE to enforce the provisions of this bond, said Surety will pay to OBLIGEE a reasonable attorney's fee, plus costs of suit, in an amount to be fixed by the court.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
a California Corporation

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_

By: \_\_\_\_\_

(PRINCIPAL)

(ATTORNEY IN FACT)

(SEAL)

(SEAL)

**EXHIBIT 5**

**NOTARY CERTIFICATION**

**ACKNOWLEDGMENT**

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me,  
\_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf  
of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

# EXHIBIT 6

## Example Quarterly Report Formats

### CITY OF EL MONTE Checklist of Quarterly Report Submittals

Quarter: 2  
Year: 2019

Company Name: Valley Vista Services

<u>Quarterly Reporting Requirement*</u>	<u>Complete</u>
1.) Signed and Dated AB 939 & Franchise Fee Calculation Form	_____
2.) Signed and Dated Summary of Quarterly Fees	_____
3.) Signed and Dated Quarterly Tonnage Forms: Commercial, Residential, Multi-Family, and Temporary	_____
4.) AB 341 Report Summary	_____
5.) AB 341 Site Visit Form	_____
6.) AB 1826 Report Summary	_____
7.) AB 1826 Customer Matrix	_____
8.) AB 1826 Site Visit Forms: Tiers 1&2, and Tier 3 (potentially Tier 4)	_____
9.) Copies of Public Education and Outreach (only include outreach that was provided to El Monte customers for the specified reporting period)	_____
10.) Complaint Summary - Only if requested by City (summary to identify the nature of complaints)	_____
11.) Warning Notices Issued during reporting period	_____

\*Please do not include other information, forms or marketing materials unless they are directly related and/or requested by the City of El Monte. City may reasonably request additional reports per Section 8.3.2.12 of the Solid Waste Agreement.

All Forms to be mailed to: City of El Monte  
Environmental Services Division  
11333 Valley Boulevard  
El Monte, CA 91731

All Forms to be E-mailed to: byu@elmonteca.gov, laquilar@elmonteca.gov, dmorris@hfh-  
consultants.com,  
and hkunert@hfh-consultants.com

"I verify that all of the above referenced documents are included with the submittal of this report and that I am authorized to make such a statement."

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_

# EXHIBIT 6

## Example Quarterly Report Formats

### AB939 & Franchise Fees

REPORTING QUARTER (quarter/year):

Name of Hauler/Contractor: Valley Vista Services  
 Contact Person: Heather Bragdon Title: Contract Compliance Spec. Phone No: 626-855-5581  
 Contractor Address: 17445 E. Railroad Street, City of Industry, CA 91748

#### 1. Residential Service Fees

Cart Served (# of dwelling units this qtr)	x	\$0.65/Mo/Dwelling Unit	AB939 Fee	Gross Receipts	x 15%	Franchise Fee
-	x	\$0.65	=			\$0.00
Bin Served (yards serviced this qtr)	x	\$0.39/Mo/Yard	AB939 Fee			
-	x	\$0.39	=			\$0.00
<b>SUBTOTAL, residential</b>			<b>\$0.00</b>	-	x 15%	<b>= \$0.00</b>

#### 2a. PUD Bin Service Fees

Bin Size	x	Pick-ups this Qtr	x	Rate/Yard	=	AB939 Fee	Gross Receipts	x 15%	Franchise Fee
1 cu. yd.	x		x	\$0.39	=	\$0.00			
1.5 cu. yds.	x		x	\$0.39	=	\$0.00			
2 cu. yds.	x		x	\$0.39	=	\$0.00			
3 cu. yds.	x		x	\$0.39	=	\$0.00			
4 cu. yds.	x		x	\$0.39	=	\$0.00			
6 cu. yds.	x		x	\$0.39	=	\$0.00			
<b>SUBTOTAL, multi-family</b>						<b>\$0.00</b>	-	x 15%	<b>= \$0.00</b>

#### 2b. Multi-Family Bin/Cart Service Fees

Bin/Cart Size	x	Pick-ups this Qtr	x	Rate/Yard	=	AB939 Fee	Gross Receipts	x 15%	Franchise Fee
98 gallon	x		x	\$0.19	=	\$0.00			
1 cu. yd.	x		x	\$0.39	=	\$0.00			
1.5 cu. yds.	x		x	\$0.39	=	\$0.00			
2 cu. yds.	x		x	\$0.39	=	\$0.00			
3 cu. yds.	x		x	\$0.39	=	\$0.00			
4 cu. yds.	x		x	\$0.39	=	\$0.00			
6 cu. yds.	x		x	\$0.39	=	\$0.00			
<b>SUBTOTAL, multi-family</b>						<b>\$0.00</b>	-	x 15%	<b>= \$0.00</b>

#### 3. Commercial Bin/Cart Service Fees

Bin/Cart Size	x	Pick-ups this Qtr	x	Rate/Yard	=	AB939 Fee	Gross Receipts	x 15%	Franchise Fee
65 gallon	x		x	\$0.12	=	\$0.00			
98 gallon	x		x	\$0.19	=	\$0.00			
1 cu. yd.	x		x	\$0.39	=	\$0.00			
1.5 cu. yds.	x		x	\$0.39	=	\$0.00			
2 cu. yds.	x		x	\$0.39	=	\$0.00			
3 cu. yds.	x		x	\$0.39	=	\$0.00			
4 cu. yds.	x		x	\$0.39	=	\$0.00			
6 cu. yds.	x		x	\$0.39	=	\$0.00			
<b>SUBTOTAL, commercial</b>						<b>\$0.00</b>	-	x 15%	<b>= \$0.00</b>

# EXHIBIT 6

## Example Quarterly Report Formats

### AB939 & Franchise Fees (continued)

#### 4. Commercial and Multi-Family Organics Cart/Bin Service Fees

Bin/Cart Size	x	Pick-ups this Qtr	x	Rate/Yard	=	AB939 Fee	Gross Receipts	x 15%	=	Franchise Fee
98 gallon	x		x	\$0.19	=	\$0.00				
1 cu. yd.	x		x	\$0.39	=	\$0.00				
1.5 cu. yds.	x		x	\$0.39	=	\$0.00				
2 cu. yds.	x		x	\$0.39	=	\$0.00				
3 cu. yds.	x		x	\$0.39	=	\$0.00				
4 cu. yds.	x		x	\$0.39	=	\$0.00				
6 cu. yds.	x		x	\$0.39	=	\$0.00				
<b>SUBTOTAL, organics</b>						<b>\$0.00</b>	-	x 15%	=	<b>\$0.00</b>

#### 5. Permanent Roll-Off Service Fees

Bin Size	x	Pick-ups this Qtr	x	Rate/Yard	=	AB939 Fee	Gross Receipts	x 15%	=	Franchise Fee
10 cu. yds.	x		x	\$1.16	=	\$0.00				
20 cu. yds.	x		x	\$1.16	=	\$0.00				
30 cu. yds.	x		x	\$1.16	=	\$0.00				
40 cu. yds.	x		x	\$1.16	=	\$0.00				
0 compacted yds.	x		x	\$1.16	=	\$0.00				
<b>SUBTOTAL, permanent roll-off</b>						<b>\$0.00</b>	-	x 15%	=	<b>\$0.00</b>

#### 6. Temporary Service Fees (non-residential)

Bin Size	x	Pick-ups this Qtr	x	Rate/Yard	=	AB939 Fee	Gross Receipts	x 15%	=	Franchise Fee
3 cu. yds.	x		x	\$0.39	=	\$0.00				
10 cu. yds.	x		x	\$1.16	=	\$0.00				
20 cu. yds.	x		x	\$1.16	=	\$0.00				
30 cu. yds.	x		x	\$1.16	=	\$0.00				
40 cu. yds.	x		x	\$1.16	=	\$0.00				
0 cu. yds.	x		x	\$1.16	=	\$0.00				
<b>SUBTOTAL, temporary</b>						<b>\$0.00</b>	-	x 15%	=	<b>\$0.00</b>

	<b>AB939 Fee</b>	<b>Gross Receipts</b>	<b>Franchise Fee</b>
<b>GRAND TOTAL for the Reporting Quarter:</b>	<b>\$0.00</b>	<b>-</b>	<b>\$0.00</b>

#### 7. Exempt Residential Temporary Services

Bin Size	Pick-ups this Qtr	Total Gross Receipts
2 cu. yds. (MSW)		\$ -
3 cu. yds. (MSW)		
10 cu. yds. (MSW)		
10 cu. yds. (INERT)		
12 cu. yds. (MSW)		
23 cu. yds. (MSW)		
40 cu. yds. (MSW)		

<b>TOTAL AB939 &amp; FRANCHISE FEES DUE THIS QUARTER:</b>	<b>\$0.00</b>
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# EXHIBIT 6

## Example Quarterly Report Formats

### AB939 & Franchise Fees (continued)

I, **THE UNDERSIGNED**, an authorized officer of the above named company, declare under penalty of perjury that this report represents a true and accurate account of services provided by said company during the reporting period as indicated. I have read and understand the reporting and fee requirements of the City of El Monte specified in the Franchise Agreement and Municipal Code Section 18.12, and I hereby agree to comply with these requirements. On behalf of said company, I further agree to submit an audit of pertinent business records upon request of the City to verify the accuracy of the information included in this report.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

In order to finance activities mandated by the California Integrated Waste Management Act of 1989 (AB939), the City of El Monte adopted Ordinance No. 2338 on December 10, 1991, and Ordinance No. 2470 on November 18, 1997 which allow the City Council to establish fees by resolution and apply those fees to waste haulers or disposal companies providing solid waste disposal services in the City of El Monte. The applicable AB939 Fee is found in Section 3.3 of the Franchise Agreement between the company and the City of El Monte.

The AB939 Fee is due on a quarterly basis and is based on the container size and the frequency of service provided to your customers each quarter. A Franchise Fee is also due on a quarterly basis and is calculated as a percentage of gross receipts for each quarter. The report and payments for each quarter must be received by the City within forty-five (45) days after the end of each quarter. Failure to pay the fees when due shall result in a late fee equal to 2% of the delinquent amount. If the outstanding sum is not paid by the seventh day following the initial 45 day grace period, an additional late fee equal to 3.5% of the delinquent amount will be assessed. In accordance with El Monte Municipal Code Section 1.24.010, failure to pay the required fees is considered a misdemeanor, and further penalties may be assessed.

A Quarterly Tonnage Summary (attached) must be submitted along with this Remittance Form. All quarterly reporting requirements as set forth in Section 8.3 of the Franchise Agreement must be satisfied by the Contractor.

Please return form with payment and accompanying documents to:

**CITY OF EL MONTE**  
Environmental Services Division  
Attention: Haley Kuentz  
1333 Valley Boulevard  
El Monte, CA 91731  
(626) 580-2062

THIS DOCUMENT IS NOT A PUBLIC RECORD  
DO NOT FILE WITH OTHER RECORDS ACCESSIBLE TO THE PUBLIC

# EXHIBIT 6

## Example Quarterly Report Formats

### Summary of Quarterly Fees

Enter Reporting Period: Q2 2019

Franchise Fees and Quarterly Reports are due on the 30th day after the Quarter ends

Description	Total Quarterly Amount	Enter Annual Fee Amount
<b>TOTAL QUARTERLY FEES</b>		
>Enter Annual Administrative Fee for Current Rate Year	\$ 47,500.00	\$ 190,000.00
>Enter Annual HHW and E-waste Fee for Current Rate Year	\$ 27,500.00	\$ 110,000.00
>Enter Annual Bulky Item Program Fee for Current Rate Year	\$ 20,000.00	\$ 80,000.00
>Enter Annual Road Maintenance Cost Reimbursement Fee for Current Rate Year	\$ 30,000.00	\$ 120,000.00
Franchise Fees from Fee Remittance Form	\$ -	N/A
AB 939 Fees from Fee Remittance Form	\$ -	N/A
<b>Sum of Quarterly Fees due to City</b>	<b>\$ 125,000.00</b>	

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Please Return To: City of El Monte  
 Environmental Services Division  
 11333 Valley Blvd.  
 El Monte, CA 91731-3293  
 626-580-2052

# EXHIBIT 6

## Example Quarterly Report Formats

### Tonnage Summary

Reporting Quarter: Q2

Calendar Year 2019

Commercial

Materials	Tonnage																												
	April	May	June	Total																									
<b>Total Waste Landfilled</b>				-																									
<b>Recyclables</b>																													
Glass				-																									
Mixed Paper				-																									
Plastic				-																									
Cardboard				-																									
Ferrous Metal				-																									
Aluminum and Tin				-																									
Concrete				-																									
Asphalt				-																									
Wood				-																									
Dirt				-																									
Mixed C&D				-																									
Bulky Wastes				-																									
White Goods				-																									
Electronic Waste				-																									
Other Recyclables:				-																									
<b>Total Waste Recycled</b>	-	-	-	-																									
<b>Organics (Recycled)</b>																													
Green Waste				-																									
Food Waste & Food Soiled Paper				-																									
<b>Total Organics Recycled</b>	-	-	-	-																									
<table style="width: 100%; border: none;"> <tr> <td style="width: 30%;"><b>Landfilled</b></td> <td style="width: 10%; text-align: center;">-</td> <td style="width: 10%; text-align: center;">Tons</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td><b>Recyclables</b></td> <td style="text-align: center;">-</td> <td style="text-align: center;">Tons</td> <td></td> <td></td> </tr> <tr> <td><b>Organics</b></td> <td style="text-align: center;">-</td> <td style="text-align: center;">Tons (Green Waste + Food Waste)</td> <td></td> <td></td> </tr> <tr> <td><b>Total Waste Generated</b></td> <td style="text-align: center;">-</td> <td style="text-align: center;">Tons</td> <td></td> <td></td> </tr> <tr> <td><b>Diversion Percentage</b></td> <td colspan="4" style="text-align: center;">0.0% ((Organics + Recyclables) ÷ Total Hauler Waste Generated)</td> </tr> </table>					<b>Landfilled</b>	-	Tons			<b>Recyclables</b>	-	Tons			<b>Organics</b>	-	Tons (Green Waste + Food Waste)			<b>Total Waste Generated</b>	-	Tons			<b>Diversion Percentage</b>	0.0% ((Organics + Recyclables) ÷ Total Hauler Waste Generated)			
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<b>Disposal Site Information</b>																													
MRF(s) Used for Recycling																													
Recycling Center(s) Used																													
Organics Recycling Center(s) Used																													
Disposal Site(s) Used																													

# EXHIBIT 6

## Example Quarterly Report Formats

### Tonnage Summary

Reporting Quarter: Q2

Calendar Year 2019

Residential

Materials	Tonnage																																	
	April	May	June	Total																														
<b>Total Waste Landfilled</b>				-																														
<b>Recyclables</b>																																		
Glass				-																														
Mixed Paper				-																														
Plastic				-																														
Cardboard				-																														
Ferrous Metal				-																														
Aluminum and Tin				-																														
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Bulky Wastes				-																														
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Electronic Waste				-																														
Other Recyclables:				-																														
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<b>Organics (Recycled)</b>																																		
Green Waste				-																														
Food Waste & Food Soiled Paper				-																														
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<b>Landfilled</b>	-	Tons																																
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<b>Disposal Site Information</b>																																		
MRF(s) Used for Recycling																																		
Recycling Center(s) Used																																		
Organics Recycling Center(s) Used																																		
Disposal Site(s) Used																																		

# EXHIBIT 6

## Example Quarterly Report Formats

### Tonnage Summary

Reporting Quarter: Q2

Calendar Year 2019

Multi-Family

Materials	Tonnage			
	April	May	June	Total
<b>Total Waste Landfilled</b>				-
<b>Recyclables</b>				
Glass				-
Mixed Paper				-
Plastic				-
Cardboard				-
Ferrous Metal				-
Aluminum and Tin				-
Concrete				-
Asphalt				-
Wood				-
Dirt				-
Mixed C&D				-
Bulky Wastes				-
White Goods				-
Electronic Waste				-
Other Recyclables:				-
<b>Total Waste Recycled</b>	-	-	-	-
<b>Organics (Recycled)</b>				
Green Waste				-
Food Waste & Food Soiled Paper				-
<b>Total Organics Recycled</b>	-	-	-	-
<b>Landfilled</b>	-			Tons
<b>Recyclables</b>	-			Tons
<b>Organics</b>	-			Tons (Green Waste + Food Waste)
<b>Total Waste Generated</b>	-			Tons
<b>Diversion Percentage</b>	0.0% ((Organics + Recyclables) ÷ Total Hauler Waste Generated)			
<b>Disposal Site Information</b>				
MRF(s) Used for Recycling				
Recycling Center(s) Used				
Organics Recycling Center(s) Used				
Disposal Site(s) Used				

# EXHIBIT 6

## Example Quarterly Report Formats

### Tonnage Summary

Reporting Quarter: Q2 Calendar Year 2019  
 Temporary Service

Materials	Tonnage			
	April	May	June	Total
<b>Total Waste Landfilled</b>				-
<b>Recyclables</b>				
Glass				-
Mixed Paper				-
Plastic				-
Cardboard				-
Ferrous Metal				-
Aluminum and Tin				-
Concrete				-
Asphalt				-
Wood				-
Dirt				-
Landclearing Debris <sup>(1)</sup>				-
LEED C&D				-
Mixed C&D				-
Bulky Wastes				-
White Goods				-
Electronic Waste				-
Mixed Inert <sup>(2)</sup>				-
Other Recyclables:				-
<b>Total Waste Recycled</b>	-	-	-	-
<b>Total Organics Recycled</b>				-
<b>Landfilled</b>	- Tons			
<b>Recyclables</b>	- Tons			
<b>Organics</b>	- Tons (Organics)			
<b>Total Waste Generated</b>	- Tons			
<b>Diversion Percentage</b>	0.0% ((Organics + Recyclables) ÷ Total Waste Generated)			
<b>Disposal Site Information</b>				
MRF(s) Used for Recycling				
Recycling Center(s) Used				
Organics Recycling Center(s) Used				
Disposal Site(s) Used				
<p><sup>(1)</sup>CalGreen Building Code: 5.408.3 Excavated soil and land clearing debris. 100 percent of trees, stumps, rocks and associated vegetation and soils resulting primarily from land clearing shall be reused or recycled. For a phased project, such material may be stockpiled on site until the storage site is developed. Reuse, either on-or-off-site, or vegetation of soil contaminated by disease or pest infestation</p> <p><sup>(2)</sup>Several local facilities are no longer diverting mixed inerts from landfilling. Hauler is responsible for verifying that facilities utilized divert a portion or all of this material to claim diversion.</p>				

## EXHIBIT 6

### Example Quarterly Report Formats

#### AB 341 Summary Report

	Enter Current Quarter	Q2
	Current Year	2019
<b>Permanent Business Customers</b>		<b>Quarterly Total</b>
Total Permanent Business Customers		
Total Permanent Business Customers with Recycling Programs in the City <sup>(1)</sup>		
Number of AB 341 Business Properties <sup>(2)</sup>		
Number of AB 341 Business Properties Receiving Recycling Service from Your Company		
Number of AB 341 Business Properties Using 3rd Party Recycling Methods <sup>(4)</sup>		

		Quarterly Total
<b>Permanent Multi-Family Customers (5 units or more)</b>		
Total Permanent Multi-Family Customers		
Total Permanent Multi-Family Customers with Recycling Programs in the City <sup>(1)</sup>		
Number of AB 341 Multi-Family Properties <sup>(3)</sup>		
Number of AB 341 Multi-Family Properties Receiving Recycling Service from Your Company		
Number of AB 341 Multi-Family Properties Using 3rd Party Recycling Methods <sup>(4)</sup>		

<sup>(1)</sup> All businesses receiving recycling services from Valley Vista Services or through third party methods.

<sup>(2)</sup> Businesses that receive 4 or more cubic yards of solid waste service per week.

<sup>(3)</sup> Multi-Family Properties with 5 or more units

<sup>(4)</sup> Only include customers who recycle with third-parties, or self haul and are not receiving recycling service from your company

#### AB 341 Public Education and Outreach

Please complete the table below for outreach efforts provided to help promote recycling to your AB 341 customers during this quarter<sup>(5)</sup>

Activity		# of Customers Targeted
<b>Total</b>		<b>0</b>

<sup>(5)</sup> Examples of public education and outreach include: printed materials distributed to customers (flyers, brochures, billing insets, etc.); and, in-person outreach such as customer site visits.



## EXHIBIT 6

### Example Quarterly Report Formats

#### AB 1826 Summary Report

	Enter Current Quarter	Q2
	Current Year	2019
<b>AB 1826 Reporting</b>		
<b>Permanent Business Customers</b>	<b>Quarterly Total</b>	
Total number of Businesses with Organics Recycling in the City (includes those not under AB 1826)		
Number of AB 1826 Tier 1 Business Properties <sup>(1)</sup>		
Number of AB 1826 Tier 2 Business Properties <sup>(2)</sup>		
Number of AB 1826 Tier 3 Business Properties <sup>(3)</sup>		
Total Number of Exempted AB 1826 Business Properties <sup>(4)</sup>		
Number of AB 1826 Business Properties Receiving Organics Recycling Service from Your Company		
Number of AB 1826 Business Properties Using 3rd Party Organics Recycling Methods <sup>(5)</sup>		
<b>Permanent Multi-Family Customers (5 units or more)</b>	<b>Quarterly Total</b>	
Total Number of Multi-Family Customers with Organics Recycling in the City (includes those not under AB 1826)		
Total Permanent Multi-Family Customers		
Number of AB 1826 Multi-Family Properties <sup>(6)</sup>		
Total Number of Exempted AB 1826 Multi-Family Properties <sup>(4)</sup>		
Number of AB 1826 Multi-Family Properties Receiving Green Waste Recycling Service from Your Company		
Number of AB 1826 Multi-Family Properties Using 3rd Party Organics Recycling Methods <sup>(5)(6)</sup>		
<sup>(1)</sup> Businesses that generate 8 cubic yards of organic waste per week or more shall arrange for organic waste recycling services <sup>(2)</sup> Businesses that generate 4 cubic yards of organic waste per week or more <sup>(3)</sup> Businesses that generate 4 cubic yards of Solid Waste per week or more <sup>(4)</sup> On a case-by-case basis properties that are verified and documented through a site visit, may be classified under the exemptions to AB 1826 described in the Public Resources Code 42649.82.(e). However, exemptions may be revoked on or after January 1, 2020 if the state determines that statewide disposal of organics waste has not sufficiently reduced by 50% of 2014 levels. <sup>(5)</sup> Only include customers who recycle with third-parties, or self haul and are not receiving recycling service from your company <sup>(6)</sup> Multi-Family Properties with 5 or more units and that meet the threshold requirements of AB 1826.		
<b>Total Edible Food Donation Customers</b>	<b>Quarterly Total</b>	
Number of Customers that are currently donating edible food		
<b>Public Education and Outreach Efforts</b>		
Please complete the table below for outreach efforts provided to help promote organics recycling to your customers during this quarter <sup>(7)</sup>		
<b>Activity</b>	<b># of Customers Targeted</b>	
<b>Total</b>		<b>0</b>
<sup>(7)</sup> Examples of public education and outreach include: printed materials distributed to customers (flyers, brochures, billing insets, etc.); and, in-person outreach such as customer site visits.		

## EXHIBIT 6

### Example Quarterly Report Formats

#### Organics Customer Matrix

Enter Current Quarter Q2  
 Current Year 2019

Service Level	Enter Current Number of Customers with Each Service Level
98-Gallon - 1x/Wk	
98-Gallon - 2x/Wk	
98-Gallon - 3x/Wk	
98-Gallon - 4x/Wk	
98-Gallon - 5x/Wk	
98-Gallon - 6x/Wk	
1 Yd3 - 1x/Wk	
1 Yd3 - 2x/Wk	
1 Yd3 - 3x/Wk	
1 Yd3 - 4x/Wk	
1 Yd3 - 5x/Wk	
1 Yd3 - 6x/Wk	
1.5 Yd3 - 1x/Wk	
1.5 Yd3 - 2x/Wk	
1.5 Yd3 - 3x/Wk	
1.5 Yd3 - 4x/Wk	
1.5 Yd3 - 5x/Wk	
1.5 Yd3 - 6x/Wk	
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6 Yd3 - 5x/Wk	
6 Yd3 - 6x/Wk	
<b>Total Customers with Organics Service</b>	0





## EXHIBIT 7

### Listing of City Owned Facilities

Facility	Address	Service Type	Bin/Cart Size	Qty	Frequency
Fletcher Park	3404 Fletcher Park Way	MSW	3 CY	1	Weekly
Fletcher Park	3404 Fletcher Park Way	MSW	Scout	1	Weekly
El Monte Trolley Station	3643 Center Ave	MSW	3 CY	1	2 times per week
Transportation Facility	3629 Cypress Ave	MSW	3 CY Locking Lid	1	2 times per week
Jerry Ortiz Youth Center	3557 Lexington Ave	MSW	3 CY	1	Weekly
Mountain View Park	12127 Elliott Ave	MSW	3 CY Locking Lid	1	4 times per week
Lambert Park	11431 McGirk Ave	MSW	3 CY Locking Lid	2	3 times per week
Arcero Park	3130 Tyler Ave	MSW	3 CY	1	3 times per week
Rio Vista Park	4275 Ranger Ave	MSW	3 CY	1	3 times per week
Zamora Park	3820 Penn Mar Ave	MSW	3 CY	1	3 times per week
Community Center	3130 Tyler Ave	MSW	3 CY	2	5 times per week
Community Center	3130 Tyler Ave	Recycling	98 Gallon	1	On-Call
Aquatic Center	11001 Mildred St	MSW	3 CY	2	2 times per week
El Monte Police Dept	11333 Valley Blvd	MSW	3 CY	2	2 times per week
City Hall Parking Lot	11333 Valley Blvd	MSW	3 CY	1	3 times per week
City Hall West (Johnson Ave)	11333 Valley Blvd	MSW	3 CY	1	3 times per week
City Hall West (Johnson Ave)	11333 Valley Blvd	Recycling	4 CY Locking Lid	1	2 times per week
City Hall West (Johnson Ave)	11333 Valley Blvd	Recycling	35 Gallon	6	On-Call
City Hall West (Johnson Ave)	11333 Valley Blvd	Recycling	98 Gallong	8	Weekly
Gibson Mariposa Park	4140 Gibson Rd	MSW	3 CY	1	3 times per week
El Monte Public Works Yard	3990 Arden Dr	MSW	26 CY Low Boy	1	4 times per week
El Monte Public Works Yard	3990 Arden Dr	E-Waste	40 CY Roll-Off	1	On-Call
El Monte Public Works Yard	3990 Arden Dr	Scrap Metal	40 CY Roll-Off	1	On-Call
El Monte Public Works Yard	3990 Arden Dr	Tires	40 CY Roll-Off	1	On-Call
El Monte Public Works Yard	3990 Arden Dr	MSW	40 CY Roll-Off	1	4 times per week
Bulky Daily Public Works Pick Up	3990 Arden Dr	MSW	40 CY Roll-Off	1	4 times per week

## EXHIBIT 8

### Commercial Organics Cart Rate Adjustment Calculations - Example

As stated in Section 6.3.4.2, City or Contractor may request a review of the Commercial Organics Cart rate after January 1, 2022, to become effective the following July 1. If a review determines an adjustment to the Commercial Organics Cart rate is warranted, the calculations included in the table below will be used based on new Cost Factor data.

Row	Cost Factor	Data	Notes
	<b>Service Cost Per Cart</b>		
1	Route Hours Per Month	54.25	Provided by VVS. Average hours per month for 12 months
2	Truck Operating Cost Per Hour <sup>(1)</sup>	\$ 83.76	Provided by VVS. One truck, one crew
3	Truck Operating Cost Per Month	\$ 4,544	Line 1 x Line 2
4	Lifts Per Month	500	Provided by VVS. Average lifts per month for 12 months
5	Cost Per Lift	\$ 9.09	Line 3 ÷ Line 4
6	Lifts Per Cart Per Month	4.33	Number of weeks per month
7	Service Cost Per Month Per Cart	\$ 39.36	Line 5 x Line 6
	<b>Disposal Cost Per Cart</b>		
8	Organics Processing Cost Per Ton <sup>(1)</sup>	\$ 85.00	Provided by VVS
9	Tons Per Month	28.72	Provided by VVS. Average tons per month for 12 months
10	Disposal Cost	\$ 2,441	Line 8 x Line 9
11	Lifts Per Month	500	Provided by VVS. Average lifts per month for 12 months
12	Cost Per Lift	\$ 4.88	Line 10 ÷ Line 11
13	Lifts Per Cart Per Month	4.33	Number of weeks per month
14	Monthly Disposal Cost Per Cart	\$ 21.13	Line 12 x Line 13
15	<b>Cart Depreciation <sup>(1)</sup></b>	\$ 0.50	\$60 cart price, 10-year depreciation
16	<b>Service, Disposal and Cart Depreciation Cost Per Month</b>	\$ 60.99	Line 7 + Line 14 + Line 15
17	<b>Outreach and Overhead at 5%</b>	\$ 3.05	5% of Line 16
18	<b>Total Cost Excluding Profit</b>	\$ 64.04	Line 16 + Line 17
19	<b>Profit at 10%</b>	\$ 6.40	10% of Line 18
20	<b>Total Rate Per Month May 1, 2019</b>	<b>\$ 70.44</b>	Line 18 + Line 19

(1) Cost Factors are in 2018 price levels and will be updated to future price levels by the change in the CPI.



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ATTORNEYS AT LAW



OLIVAREZ MADRUGA LEMIEUX O'NEILL, LLP

COPY

A LIMITED LIABILITY PARTNERSHIP

WWW.OMLOLAW.COM

500 S. GRAND AVENUE ■ 12TH FLOOR ■ LOS ANGELES, CA 90071  
PHONE 213.744.0099 ■ FAX 213.744.0093

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To: Leticia Aguilar

From: Richard Padilla

Date: March 12, 2019

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**Subject Matter being Delivered and Purpose of Delivery:** Original fully executed Franchise Agreement for Solid Waste Services between Valley Vista Services and the City of El Monte – for your files.

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Follow-up Required:  Yes  No

Describe Follow-up: \_\_\_\_\_

**CONFIRMATION OF RECEIPT:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

