



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** Honorable Mayor and Members of City Council  
**FROM:** Thomas Frutchey, City Manager  
**MEETING DATE:** August 6, 2014  
**SUBJECT:** Franchise Agreement with Green Waste Recovery for solid waste, recycling and organics collection services  
**CEQA:** Does not Constitute a "Project" per California Environmental Quality Act (CEQA) Guidelines

**RECOMMENDATION**

Adopt a resolution approving the proposed 15-year franchise agreement and initial refuse rates with Green Waste Recovery for the community's solid waste, recycling, and organics collection services, for the term of August 1, 2015 through July 31, 2030.

**BACKGROUND**

The garbage, green waste, and recycling collection services to businesses and residences throughout Pacific Grove are currently provided by Waste Management, Inc. (WMI) through a franchise agreement that expires on July 31, 2015. The franchise agreements for most of the other jurisdictions on the peninsula expire at roughly the same time. As a result, the Monterey Peninsula Regional Waste Management District (WMD) sponsored a three-year process to assist its member agencies secure new franchise agreements designed to best serve the needs of residents and businesses in each jurisdiction. The intent was, by working together, they could improve each jurisdiction's ability to attract top-flight vendors and, through economies of scale and other advantages, upgrade the jurisdictions' negotiating positions.

Throughout this process, City staffs have served on the WMD's Technical Advisory Committee, to develop the request for proposals, evaluate the proposals, select the best vendor, and develop the waste and recycling franchise agreements. Participating agencies included the cities of Carmel-by-the-Sea, Del Rey Oaks, Marina, Pacific Grove, Sand City, and Seaside, as well as the Pebble Beach Community Services District. Under the WMD's leadership, the member agencies developed an open, competitive procurement process and issued an RFP to solicit proposals from companies interested in providing solid waste, recyclable materials and organic materials collection. With the help of HF&H Consultants, a pro forma franchise agreement was created to be used in the cooperative request for proposals process. HF&H facilitated the contract procurement process, including preparing the RFP document and assisting with the evaluation of the proposals.

On January 8, 2014, the Board of the WMD received the Technical Advisory Committee Report. The report detailed the process, the proposals from the four finalist firms, and the reasons for the decisions by all of the member agencies to unanimously recommend GreenWaste Recovery (GWR).

On January 15, 2014, the Pacific Grove City Council received presentations from GreenWaste Recovery and Waste Management, Inc. regarding their proposals. In addition, the City Council heard significant public comment on this issue. Council authorized staff to negotiate with GWR, reserving the right to subsequently negotiate with WMI, if agreement could not be reached. Since the Council took its action, the governing bodies of all of the other jurisdictions agreed that the GWR proposal was best for their communities as well. As a result, Pacific Grove rate payers will benefit from the rate reductions resulting from the economies of scale that GWR will be able to achieve on the peninsula.

## **ANALYSIS**

The entire proposed franchise agreement can be accessed on the City's website, at. (<http://www.ci.Pacific Grove.ca.us>)

The proposed franchise agreement between the City and GWR is essentially the same as the agreement that the Technical Advisory Committee developed prior to the RFP process, and the WMD Board approved, with improvements already negotiated with GWR in its negotiations with the other jurisdictions. As Pacific Grove is among the last of the jurisdictions to finalize the agreement, the City benefits from the improvements generated in those other negotiations.

Primary services offered under the agreement include:

- Solid waste collection
- Recyclable collection
- Green waste collection
- Food scrap collection, initially for commercial customers
- Curbside motor oil collection
- Curbside holiday tree collection
- Curbside household battery collection
- Re-use and e-waste events
- Public education and outreach

Key provisions of the Agreement include:

- **15-Year Term.** Helped to reduce rate impact, by allowing longer depreciation schedule. Also, in exchange for the 15-year term, Green Waste Recovery will provide a \$40/ton credit for the sale of recyclable materials.
- **Rates.** The initial rate impact is an increase over current rates for most customers. This increase is unfortunate but necessary to offset the increases in services and responsiveness that is being required by the contract. As WMI will likely be seeking an increase this fall, the actual relationship of the GWR rates to the WMI rates at the time of the changeover, in August, 2015, cannot be calculated.
- **Index-Based Rate Adjustments.**
- **All requirements met.** Unlike the other proposers, GWR took no exceptions to the proposed contract standard default, indemnification, and insurance provisions.
- **Comprehensive reporting, performance standards, and liquidated damages allow better**

contract management.

- Modernized change in law, change in scope, default, and termination language.
- Continuing Senior and low income rates.
- Multiple options for commercial and multi-family customers, at lower rates.
- Self-funded commercial recycling and organics (not subsidized by residential rates).
- Reduced truck trip frequency to reduce road impacts. Refuse trucks tend to be the heaviest vehicles driving the City. Damage to roads increases significantly with vehicles that are heavier overall and that carry more weight per wheel.
- Increased commercial cart route efficiencies.
- Pilot kitchen scraps collection project.
- Electronic billing for commercial carts, to reduce bad debt.
- Electronic billing for residential customers; customers who prefer paper billing can continue to receive paper bills, with an additional monthly charge.
- Annual E-Waste collection event.
- Periodic rate evaluations.
- Intensive public education program.
- Meeting all State requirements, including food waste.
- Assistance for the City in meeting the State's required recycling standards.
- Reduction in litter. Improved trash collection services may improve the appearance of the City.

GreenWaste has committed to meeting or exceeding the current standards in all relevant areas, including:

- ❖ **Community involvement.** WMI has been an active community participant, sponsoring youth sports, donating waste collection services for community events, and otherwise demonstrating a high level of social responsibility. GWR has demonstrated involvement its current communities, and has formally committed to achieve in Pacific Grove, the same or higher level of involvement.
- ❖ **Employee continuation.** The drivers and other line employees with WMI have gained extensive knowledge of our community and built positive, long-lasting relationships with our residents and businesses. Their knowledge of our needs and their service orientation are

a primary determinant of the level of service currently being offered by WMI. GWR has committed to hire all WMI drivers and other staff who choose to continue serving Pacific Grove. GWR has already signed a letter of agreement with the union representing these employees (Attachment 4). As an example of GWR's ability to adhere to such a commitment, GWR took over the solid waste collection services from WMI or large portions of Santa Cruz County in 2007. A total of 54 of WMI's drivers chose to move over to GWR; GWR reports that all 54 are still working for GWR and serving those communities.

- ❖ **Smooth Transition.** If handled poorly, a transition between waste haulers can cause significant disruptions in a community. Fortunately, both WMI and GWR are highly professional firms, have engineered smooth transitions with each other in the past, and have committed to doing so here, if a change in franchise haulers is in fact undertaken. GWR has engineered seven transitions since 2007, with other haulers, including WMI, all of them successful.

The recommended action does not constitute a "Project" as that term is defined under the California Environmental Quality Act (CEQA) Guideline Section 15378, as it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

#### **OPTIONS**

1. Do nothing.
2. Direct staff to negotiate revised terms with GWR in specific areas.

#### **FISCAL IMPACT**

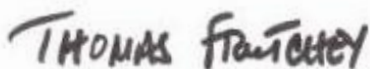
The fiscal impact to the City will be reflected in a variety of ways:

1. The increased rates may mean a small increase in the City's franchise fees; however, this may be offset by residents reducing their individual costs by downsizing their bins.
2. Less truck trip frequency in the commercial areas of the City may decrease the impact on the streets and reduce the costs of street maintenance.
3. The City will issue an RFP for street sweeping services. Depending on the proposals received, this may increase or decrease current costs.

#### **ATTACHMENTS**

1. The Revised Final Proposed Franchise Agreement, including initial rates
2. Resolution approving the Revised Final Proposed Franchise Agreement between the City of Pacific Grove and GreenWaste Recovery

**RESPECTFULLY SUBMITTED,**



---

Thomas Frutchey  
City Manager

**RESOLUTION NO. 14-\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE APPROVING THE FRANCHISE AGREEMENT WITH GREENWASTE RECOVERY**

**FINDINGS**

1. **WHEREAS**, the City of Pacific Grove has a Franchise Agreement with the Waste Management, Inc. that is expiring on July 31, 2015; and
2. **WHEREAS**, the City of Pacific Grove has participated on the Monterey Regional Waste Management District's (Waste Management District) multi-jurisdiction franchise hauler solicitation and agreement process for several years; and
3. **WHEREAS**, the Waste Management District's Technical Advisory Committee has conducted a thorough request for proposal process, reviewed all proposals received, and unanimously selected Green Waste Recovery as the best proposal; and
4. **WHEREAS**, on January 15, 2014, the City Council of the City of Pacific Grove received a full analysis of the four finalist proposals, by Green Waste Recovery, Waste Management, Inc., Bayside Sanitation, and Monarch Resource Recovery, regarding the provision of garbage, recycling, and organics collection through a new franchise agreement; and
5. **WHEREAS**, on January 15, 2014, the City Council approved a resolution authorizing staff to negotiate a franchise agreement with Green Waste Recovery; and
6. **WHEREAS**, the City Council has received public comment, received answers to its questions from staff and Green Waste Recovery, and reviewed and discussed the agreement; and
7. **WHEREAS**, this action does not constitute a "Project" as that term is defined under the California Quality Act (CEQA), CEQA Guidelines Section 15378 as it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

**NOW THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

**SECTION 2.** The City Manager is directed to execute the proposed 15-year Franchise Agreement, starting August 1, 2015, incorporating any appropriate corrections and other changes resulting from Council direction and other last-minute information.

**SECTION 3.** This resolution shall take effect immediately following passage and adoption.

**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE** this 6<sup>th</sup> day of August, 2014, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
BILL KAMPE, Mayor

ATTEST:

\_\_\_\_\_  
ANN CAMEL, Interim City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
DAVID C. LAREDO, City Attorney

**FRANCHISE AGREEMENT**  
**BETWEEN**  
**CITY OF PACIFIC GROVE**  
**AND**  
**GREENWASTE RECOVERY, INC.**  
**FOR**  
**SOLID WASTE, RECYCLING, AND**  
**ORGANICS COLLECTION SERVICES**

**AUGUST 6, 2014**

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**Franchise Agreement  
between  
City of Pacific Grove  
and  
GreenWaste Recovery, Inc.  
for Solid Waste, Recycling, and  
Organics Collection Services**

THIS FRANCHISE AGREEMENT is made and entered into as of August \_\_, 2014, between the City of Pacific Grove, California, a political subdivision of the State of California (hereinafter "City"), and GreenWaste Recovery, Inc., (hereinafter referred to as the "Contractor").

**RECITALS**

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This Agreement is entered into with reference to the following facts and circumstances:

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

**WHEREAS**; the State of California has found and declared that the amount of refuse generated in California, coupled with diminishing Disposal capacity and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act and subsequent related legislation including, but not limited to the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), and SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), directed the responsible State agency, and all local agencies, to promote Diversion and to maximize the use of feasible waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of refuse that must be Disposed;

**WHEREAS**; pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an Exclusive Right be awarded to a qualified Contractor to provide for the Collection of Solid Waste, Recyclable Materials, and Organic Materials, and other services related to meeting the City’s integrated waste management goals;

**WHEREAS**; the City further declares its intent to approve and maintain reasonable rates for the Collection, Recycling, Processing, Composting, and/or Disposal of Solid Waste, Recyclable Materials, and Organic Materials; and,

**WHEREAS**; the City desires, having determined that Contractor, by demonstrated experience, reputation and capacity is qualified to provide for both the Collection of Solid Waste, Recyclables Materials, and Organic Materials within the corporate limits of the City and the Transportation of such material to appropriate places of Processing, Recycling, Composting, and/or Disposal, that Contractor be engaged to perform such services on the basis set forth in this Agreement.

38 **WHEREAS;** the City and Contractor have attempted to address conditions affecting their performance of  
39 services under this Agreement but recognize that reasonably unanticipated conditions may occur during  
40 the term of this Agreement that will require the parties to meet and confer to reasonably respond to  
41 such changed conditions;

42 **NOW, THEREFORE,** in consideration of the mutual promises, covenants, and conditions contained in this  
43 Agreement and for other good and valuable consideration, the Parties agree as follows:

44 **ARTICLE 1.**  
45 **GRANT AND ACCEPTANCE OF FRANCHISE**

46 **1.1 GRANT AND ACCEPTANCE OF FRANCHISE**

47 By the signing of this Agreement, City grants to Contractor and Contractor accepts an exclusive franchise  
48 within the corporate limits of the City. The franchise granted to Contractor shall be for the scope of  
49 services described in Section 3.1 and Exhibit B of this Agreement, subject to the limitations described in  
50 Section 1.2 and except where otherwise precluded by Federal, State, and local laws and regulations.

51 **1.2 LIMITATIONS TO THE FRANCHISE**

52 The award of this Agreement shall not preclude the categories of Solid Waste, Recyclable Materials, and  
53 Organic Materials listed below from being delivered to and Collected and Transported by others  
54 provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from  
55 obtaining any authorization from City:

- 56 A. **Recyclable and Organic Materials.** Other Persons shall maintain the right to pay the service  
57 recipient for Source Separated Recyclable Materials and Source Separated Organic Materials  
58 without payment of compensation of any type by the generator of such materials to such  
59 Persons;
- 60 B. **Self-Hauled Materials.** A Commercial business Owner or Resident may Dispose of Solid Waste,  
61 Recyclable Materials, and Compostable Materials generated in or on their own Premises with  
62 their own vehicle;
- 63 C. **Donated Materials.** Any items which are Source Separated at any Premises by the Generator  
64 and donated to youth, civic, or charitable organizations;
- 65 D. **Beverage Containers.** Containers delivered for Recycling under the California Beverage  
66 Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources  
67 Code;
- 68 E. **Materials Removed by Customer's Contractor as Incidental Part of Services.** Solid Waste,  
69 Recyclable Materials, Compostable Materials, and/or C&D removed from a Premises by a  
70 contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor,  
71 Residential clean-out service) as an incidental part of the service being performed and such  
72 contractor is providing a service which is not included in the scope of this Agreement;
- 73 G. **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains from slaughterhouse

- 74 or butcher shops, grease, or used cooking oil;
- 75 H. **Sewage Treatment By-Product.** By-products of sewage treatment, including sludge, sludge ash,  
76 grit, and screenings;
- 77 I. **Excluded Waste.** Excluded Waste regardless of its source; and,
- 78 J. **Materials Generated by State, County, and Federal Facilities.** Materials generated by State,  
79 County, and Federal facilities located in the City provided that the Generator has arranged  
80 services with other Persons or has arranged services with the Contractor through a separate  
81 agreement.

82 Contractor acknowledges and agrees that the City may permit other Persons besides the Contractor to  
83 Collect any and all types of materials excluded from the scope of this Franchise, as set forth above,  
84 without seeking or obtaining approval of Contractor. If Contractor can produce evidence that other  
85 Persons are servicing Collection Containers or are Collecting and Transporting Solid Waste, Recyclable  
86 Materials, Organic Materials, and/or C&D (collectively "Franchised Materials") in a manner that is not  
87 consistent with this Agreement or the City's Municipal Code, it shall report the location, the name and  
88 phone number of the Person or company to the City's Contract Manager along with Contractor's  
89 evidence. In such case, City may notify the Generator and Person providing service of Contractor's  
90 rights under this Agreement.

91 This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law,  
92 now and during the Term of the Agreement. If future judicial interpretations of current law or new laws,  
93 regulations, or judicial interpretations limit the ability of the City to lawfully contract for the scope of  
94 services in the manner and consistent with all provisions as specifically set forth herein, Contractor  
95 agrees that the scope of the Agreement will be limited to those services and materials which may be  
96 lawfully included herein and that the City shall not be responsible for any lost profits or losses claimed  
97 by Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In  
98 such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future  
99 judicial interpretations or new laws and the Contractor may meet and confer with City and may petition  
100 for a Rate adjustment pursuant to Section 8.3.

### 101 **1.3 OBLIGATIONS OF PARTIES**

102 In addition to the specific performance required under the Agreement, City and Contractor shall:

- 103 1. Use their reasonable commercial efforts to enforce the exclusiveness of the franchise by the  
104 Contractor's identification and documentation of violations of the franchise agreement and the  
105 City's notification of generators and collection companies reasonably believed to be violating  
106 the franchise regarding the terms of this Agreement.
- 107 2. Provide timely notice to one another of a perceived failure to perform any obligations under this  
108 Agreement and access to information demonstrating the Party's failure to perform.
- 109 3. Provide timely access to the City Contract Manager and the Contractor's designated  
110 representative and complete and timely responses to requests of the other Party.
- 111 4. Provide timely notice of matters which may affect either Party's ability to perform under the

112 Agreement.

113 **ARTICLE 2.**  
114 **TERM OF AGREEMENT**

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115 **2.1 TERM AND OPTION TO EXTEND**

116 The Term of this Agreement shall commence August 1, 2015 (Commencement Date) and continue in full  
117 force for a period of fifteen (15) years, through and including July 31, 2030, unless the Agreement is  
118 extended in accordance with this Section or terminated in pursuant to Section 10.2.

119 At City's sole discretion, this Agreement may be extended without amendment for a period of no less  
120 than one (1) and no more than five (5) additional years for a total Term that does not exceed twenty  
121 (20) years. If City desires to extend the Agreement, City shall provide the Contractor with written notice  
122 of its decision to extend the Agreement at least one (1) year before the expiration of the Term. Such  
123 notice by City shall specify the duration of the extension.

124 Between the Effective Date and Commencement Date, Contractor shall perform all activities necessary  
125 to prepare itself to start providing services required by this Agreement on the Commencement Date.

126 **2.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

127 The obligation of City to permit this Agreement to become effective and to perform its undertakings  
128 provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which  
129 may be waived, in written form, in whole or in part by City.

130 **A. Accuracy of Representations.** The Contractor's representations and warranties made in  
131 Contractor's Proposal and Article 11 of this Agreement are true and correct on and as of the  
132 Effective Date.

133 **B. Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the  
134 insurance and performance bond required by Article 9 that is satisfactory to the City.

135 **ARTICLE 3.**  
136 **SCOPE OF AGREEMENT**

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137 **3.1 SUMMARY SCOPE OF SERVICES**

138 The Contractor or its Subcontractor(s) shall be responsible for the following:

139 **A.** Collecting Solid Waste, Recyclable Materials, Organic Materials, and C&D generated by and  
140 placed for Collection by Customers that are subscribers of Contractor's services pursuant to  
141 requirements of Article 4 and Exhibit B;

142 **B.** Transporting Collected materials to the appropriate Approved Facilities pursuant to  
143 requirements of Article 4 and Exhibit B;

144 **C.** Performing all other services required by this Agreement including, but not limited to, Customer

145 billing, public education, Customer service, record keeping, and reporting pursuant to Articles 4  
146 and 6 and Exhibits C (Public Education & Outreach) and D (Reporting);

147 D. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and  
148 all other items and services necessary to perform its obligations under this Agreement;

149 E. Paying all expenses related to provision of services required by this Agreement including, but  
150 not limited to, taxes, regulatory fees (including City fees), and utilities;

151 F. Performing or providing all services necessary to fulfill its obligations in full accordance with this  
152 Agreement at all times using best industry practice for comparable operations; and,

153 G. Complying with all Applicable Laws.

154 The enumeration and specification of particular aspects of service, labor, or equipment requirements  
155 shall not relieve Contractor of the duty to perform all other tasks and activities necessary to fulfill its  
156 obligations under this Agreement, regardless of whether such requirements are enumerated elsewhere  
157 in the Agreement, unless excused in accordance with Section 10.7.

### 158 **3.2 USE OF APPROVED FACILITIES**

159 The Contractor, without constraint and as a free-market business decision in accepting this Agreement,  
160 agrees to use the Approved Facilities for the purposes of Processing and/or Disposing of all Solid Waste,  
161 Recyclable Materials, Organic Materials, C&D, and other materials Collected in the City. Such decision by  
162 Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow  
163 control limitations or any definition thereof.

### 164 **3.3 SUBCONTRACTING**

165 Contractor shall not engage any Subcontractors for Collection, Transportation, or Processing of Solid  
166 Waste, Recyclable Materials, Organic Materials, or C&D services without the prior written consent of  
167 City Contract Manager. As of the Effective Date of this Agreement, City has approved Contractor's use of  
168 those subcontractors identified in Contractor's Proposal, included herein as Exhibit G5. If the Contractor  
169 plans to engage other affiliated or related party entities in the provision of services, Contractor shall  
170 provide City Contract Manager with thirty (30) days written notification of its plans and provide an  
171 explanation of any potential impacts related to the quality, timeliness, or cost of providing services  
172 under this Agreement.

### 173 **3.4 RESPONSIBILITY FOR MATERIALS**

174 Once Solid Waste, Recyclable Materials, Organic Materials, and C&D are placed in the Contractor's  
175 Containers and at the Collection location, the responsibility for their proper handling shall transfer  
176 directly from the Generator to Contractor, with the exception of Excluded Waste if the Contractor can  
177 identify the Generator pursuant to Section 5.7.B. Once Solid Waste, Recyclable Materials, Organic  
178 Materials, or C&D are deposited by Contractor at the appropriate Approved Facility, such materials shall  
179 become the responsibility of the Owner or operator of the Approved Facility with the exception of  
180 Excluded Waste pursuant to Section 5.7.C.

181 Responsibility for Excluded Waste that has been inadvertently Collected by the Contractor shall remain



182 with the Contractor if it cannot identify the Generator, and Contractor shall assume all responsibility for  
183 its proper Disposal.

### 184 **3.5 CITY-DIRECTED CHANGES TO SCOPE**

185 City may meet and confer with Contractor to establish the scope of any additional services or  
186 modification to existing services (which may include use of Approved Facilities) to be provided under  
187 this Agreement. In such case, Contractor shall present, within thirty (30) calendar days of City's request,  
188 a written proposal to provide such modified or additional services.

189 City shall review the Contractor's proposal for the change in scope of services. City and Contractor may  
190 meet and confer to negotiate Contractor's proposed revisions and costs and shall amend this  
191 Agreement, as appropriate, to reflect the mutually agreed-upon changes in scope.

## 192 **ARTICLE 4.** 193 **SCOPE OF SERVICES**

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194 Contractor shall perform the Solid Waste, Recyclable Materials, Organic Materials, Reusable Materials,  
195 and C&D services described in this Article 4. This Article 4 describes the general requirements for the  
196 services to be provided. More specific requirements for how each service shall be provided to each  
197 Customer Type are described in Exhibit B. Failure to specifically require an act necessary to perform the  
198 service does not relieve Contractor of its obligation to perform such act.

### 199 **4.1 SOLID WASTE**

200 Contractor shall offer and provide Solid Waste Collection services as described in Exhibit B.

201 Contractor acknowledges that City is committed to Diverting materials from Disposal through the  
202 implementation of source reduction, reuse, Recycling, Composting, and other programs, and that City  
203 may implement new programs in accordance with Section 3.5 that may impact the overall quantity or  
204 composition of Solid Waste to be Collected by Contractor, subject to Contractor's right to petition for a  
205 Rate change pursuant to Section 8.3.

206 Contractor shall Transport all Solid Waste Collected in City to the Approved Disposal Facility. Contractor  
207 shall pay all costs associated with Transporting and Disposal of Solid Waste including payment of any  
208 gate fees charged at the Approved Disposal Facility. Contractor shall observe and comply with all  
209 regulations and posted rules in effect at the Approved Disposal Facility and cooperate with and take  
210 direction from the operator thereof with respect to delivery of Solid Waste.

211 **4.2 RECYCLABLE MATERIALS**

212 **A. Collection and Delivery.** Contractor shall provide Recyclable Materials Collection services as  
213 described in Exhibit B. Contractor agrees to Transport and deliver all Source Separated  
214 Recyclable Materials placed by Customers in Recyclable Material Containers in City to the  
215 Approved Recyclable Materials Processing Facility. All tipping fees and other costs associated  
216 with Transporting to and Processing such Recyclable Materials at the Approved Recyclable  
217 Materials Processing Facility and Disposing of the residue as required in Section 4.2.D below  
218 shall be paid by Contractor.

219 Contractor shall observe and comply with all regulations in effect at the Approved Recyclable  
220 Materials Processing Facility and cooperate with and take direction from the operator thereof  
221 with respect to delivery of Recyclable Materials. Contractor shall actively work with the  
222 Approved Recyclable Materials Processing Facility operator throughout the Term of this  
223 Agreement to minimize contamination of the Recyclable Materials Collected under this  
224 Agreement and delivered to the Processing Facility.

225 **B. Processing.** Contractor has guaranteed sufficient capacity at its Approved Recyclable Materials  
226 Processing Facility to Process all Source Separated Recyclable Materials Collected by Contractor  
227 under this Agreement throughout the Term of the Agreement. Contractor shall have no  
228 obligation to maintain a guarantee of capacity following a City-directed change in the Approved  
229 Recyclable Materials Processing Facility, pursuant to Section 4.2.E.

230 Contractor shall keep all existing permits and approvals necessary for use of the Approved  
231 Recyclable Materials Processing Facility in full regulatory compliance. Upon request, Contractor  
232 shall provide copies of facility permits and/or notices of violations (obtained from its Processing  
233 Facility Subcontractor if necessary) to City Contract Manager.

234 If Contractor is unable to use the Approved Recyclable Materials Processing Facility due to an  
235 emergency or sudden unforeseen closure of the Processing Facility, Contractor may use an  
236 alternative Processing Facility provided that the Contractor provides written notice to City  
237 Contract Manager. Within forty-eight (48) hours of emergency or sudden and unforeseen  
238 closure, the Contractor shall provide a written description of the reasons the use of the  
239 Approved Recyclable Materials Processing Facility is not feasible and the period of time  
240 Contractor proposes to use the alternative Processing Facility.

241 If the need to use the alternative Processing Facility is discretionary or for reasons within  
242 Contractor's, or its Processing Facility Subcontractor's, reasonable control, Contractor's  
243 Compensation shall not be adjusted for any change in Transportation and Processing costs  
244 associated with use of the alternative Processing Facility. If the need to use the alternative  
245 Processing Site results from reasons beyond Contractor's, or its Subcontractor's, reasonable  
246 control, City shall adjust, either up or down, Contractor's Compensation for changes in  
247 Transportation and Processing costs associated with use of the alternative Processing Facility. In  
248 the event that a change in the Processing Facility results in increased costs, City may identify and  
249 direct Contractor to an alternative Processing Facility that results in less cost than the  
250 Contractor-identified alternative.

251 Contractor may permanently change its selection of the Approved Recyclable Materials  
252 Processing Facility following City's written approval. If Contractor elects to use a Recyclable  
253 Materials Processing Facility that is different than the Approved Recyclable Materials Processing  
254 Facility, it shall request written approval from the City Contract Manager sixty (60) calendar days  
255 prior to use of the site and obtain City's written approval no later than ten (10) calendar days  
256 prior to use of the site.

257 **C. Marketing.** The Contractor shall be responsible for marketing Source Separated Recyclable  
258 Materials Collected in City that are delivered for Processing at Contractor's Approved Recyclable  
259 Materials Processing Facility. Contractor's marketing strategy shall promote the highest and best  
260 use of materials presented in the waste management hierarchy established by the Act. Where  
261 practical, the marketing strategy should include use of local, regional, and domestic markets for  
262 Recyclable Materials. Contractor shall have no obligation to market Recyclable Materials that  
263 have been redirected pursuant to Section 4.2.E.

264 **D. Residue Disposal.** Residue from the Processing of Source Separated Recyclable Materials  
265 Collected under this Agreement at Contractor's Approved Recyclable Materials Processing  
266 Facility, which cannot be marketed, shall be Disposed of by Contractor, or the Processing Facility  
267 Subcontractor, at the Approved Disposal Facility. Residue delivered to the Approved Disposal  
268 Facility shall not include any Excluded Waste.

269 **E. City Right to Redirect Recyclable Materials.** The City may, at any time during the term of this  
270 Agreement, require Contractor to deliver Recyclable Materials Collected under this Agreement  
271 to a Processing Facility owned by the MRWMD. In the event that City makes such a requirement,  
272 Sections 4.2.B through 4.2.D of this Agreement shall be suspended and the Tipping Fee used to  
273 calculate the Processing Component of the Rate (Step 4, Exhibit E1) shall be adjusted to the  
274 amount charged or paid by the MRWMD to Contractor for the delivery of Recyclable Materials.  
275 Contractor shall comply with such direction within ten (10) Business Days of the City's notice or  
276 the date specified in such notice, if more than ten (10) Business Days from the date of notice.

### 277 **4.3 ORGANIC MATERIALS**

278 Contractor shall provide Organic Materials Collections services as described in Exhibit B.

279 Contractor shall Transport all Organic Materials Collected under this Agreement to the Approved  
280 Organic Materials Processing Facility. Contractor shall pay all tipping fees and other costs associated  
281 with Transporting and Processing Organic Materials.

282 Contractor shall observe and comply with all regulations in effect at the Approved Organic Materials  
283 Processing Facility and cooperate with and take direction from the operator thereof with respect to  
284 delivery of Organic Materials. Contractor shall actively work with the Approved Organic Materials  
285 Processing Facility operator throughout the Term of this Agreement to minimize contamination of the  
286 Organic Materials Collected under this Agreement and delivered to the Processing Facility.

### 287 **4.4 CONSTRUCTION AND DEMOLITION DEBRIS (C&D)**

288 Contractor shall offer Source Separated and Mixed C&D Collection services as described in Exhibit B.  
289 C&D Collection service shall be a temporary service, provided only at sites where construction,  
290 alteration, remodeling, repair, or demolition operations are being performed. C&D Collection services

291 shall be provided to any Customer upon request.

292 Contractor shall Transport all C&D Collected under this Agreement to the Approved C&D Processing  
293 Facility. Contractor shall pay all tipping fees and other costs associated with Transporting and Processing  
294 C&D.

295 Contractor shall observe and comply with all regulations in effect at the Approved C&D Processing  
296 Facility and cooperate with and take direction from the operator thereof with respect to delivery of  
297 C&D.

#### 298 **4.5 BULKY ITEMS AND REUSABLE MATERIALS**

299 Contractor shall offer Bulky Item and Reusable Materials Collection services as described in Exhibit B.  
300 Bulky Item and Reusable Materials Collection services shall be offered to Single-Family and Multi-Family  
301 Customers pursuant to Exhibit B either free of charge or for an additional charge, and Commercial  
302 Customers on an on-call basis within five (5) Business Days after the Customer-requested service date  
303 for an additional charge. Contractor shall make reasonable efforts to schedule on-call Bulky Item and  
304 Reusable Materials Collections on a day that is convenient to the Customer.

305 Contractor may, at its sole discretion and expense, identify those Bulky Items and Reusable Materials  
306 that can be Collected by local youth, community, or other charitable organizations and arrange with  
307 such organizations to provide the Collection. Regardless of Contractor's use of such an organization,  
308 Contractor shall be responsible for ensuring that service is provided to the Customer in a professional  
309 and timely manner.

310 Contractor shall Transport all Bulky Items or Reusable Materials Collected under this Agreement to the  
311 Approved Reusable Materials Processing Facility. Contractor shall pay all costs associated with  
312 Transporting and Processing Bulky Items and Reusable Materials. Contractor shall be relieved of this  
313 obligation for any items Collected by a local youth, community, or other charitable organization.  
314 Contractor shall observe and comply with all regulations in effect at the Approved Reusable Materials  
315 Processing Facility and cooperate with and take direction from the operator thereof with respect to  
316 delivery of Bulky Items and/or Reusable Materials.

#### 317 **4.6 SPECIAL EVENTS**

318 Contractor shall provide Solid Waste, Recyclable Materials, and Organic Materials services to the special  
319 events identified in Exhibit B7 at no cost to the event or City. In addition, Contractor shall provide the  
320 special event services to other events that are primarily funded by City upon thirty (30) days advance  
321 request by the City Contract Manager. Special event services include:

322 **1. Event Collection Stations.** Each event collection station shall include a separate receptacle for  
323 each of Solid Waste, Recyclable Materials, and Organic Materials, as appropriate. Contractor  
324 shall provide a sufficient number of event collection stations of sufficient capacity to meet the  
325 needs of the event as determined by Contractor in cooperation with the event organizer.  
326 Contractor may utilize the inventory of event receptacles owned and maintained by the  
327 MRWMD.

328 **2. Collection Station Monitors.** Collection station monitors should service event collection  
329 stations and educate event attendees about what materials are acceptable in each event

330 collection station receptacle. Contractor shall staff the event with a sufficient number of  
331 employees or volunteers to ensure that event collection stations are serviced frequently enough  
332 to prevent overflow and litter.

333 **3. Containers.** Contractor shall provide Containers for the aggregation of material removed from  
334 event collection stations during the course of the event. Contractor shall provide Containers in  
335 sufficient number of appropriate type(s) for the needs of the event as determined by Contractor  
336 in cooperation with the event organizer. Contractor shall service Containers, as agreed-upon  
337 with the event organizer, and deliver Collected materials to the appropriate Approved Facility  
338 for Processing and/or Disposal.

339 **4. Public Education Booth.** Upon request of either the City Contract Manager or the event  
340 organizer, Contractor shall staff a booth or exhibit at the event for the purpose of educating the  
341 public about the services and programs provided by Contractor under this Agreement and the  
342 benefits of source reduction, reuse, Recycling, and Composting.

343 **5. Reporting.** Within fourteen (14) calendar days of the end of the event, Contractor shall submit a  
344 report to the City Contract Manager and event organizer. The report should include, at a  
345 minimum: the number of event collection stations deployed at the event, the number of  
346 collection station monitors, the tonnage of each material type (i.e., solid waste, recyclable  
347 materials, and organic materials) collected, and a description of the public education provided at  
348 the event.

349 Contractor may, at its sole discretion and expense, coordinate with local youth, community, or  
350 charitable organizations to provide some or all of the required services. Regardless of Contractor's use  
351 of such an organization, Contractor shall be responsible for ensuring that service is provided to the  
352 Customer in a professional and timely manner.

353 For special events which are not identified in Exhibit B7 or otherwise hosted or primarily funded by the  
354 City, Contractor shall provide the above-described special event services at the request of the event  
355 organizer and may negotiate the charges for such services with the event organizer based on the specific  
356 needs of the event.

## 357 **4.7 PUBLIC EDUCATION AND OUTREACH**

358 The public education and outreach activities included in the scope of services provided by Contractor  
359 under this Agreement are described in Exhibit C.

### 360 **4.7.1 Program Objectives**

361 Contractor's public education and outreach strategy shall focus on improving Customer understanding  
362 of the benefits of and opportunities for source reduction, reuse, Recycling, and Composting. In general,  
363 Contractor-provided public education and outreach should: (i) inform Customers about the services that  
364 are provided under this Agreement with specific focus on describing the methods and benefits of source  
365 reduction, reuse, Recycling, and Composting; (ii) instruct Customers on the proper method for placing  
366 materials in Containers for Collection and setting Containers out for Collection with specific focus on  
367 minimizing contamination of Recyclable and Organic Materials; and, (iii) clearly define the Excluded  
368 Waste and educate Customers about the hazards of such materials and their opportunities for proper  
369 handling.

370 **4.7.2 Coordination with City and MRWMD Educational Efforts**

371 Contractor acknowledges that they are part of a multi-party effort to operate and educate the public  
372 about the regional integrated waste management system. Contractor shall cooperate and coordinate  
373 with the City Contract Manager and the MRWMD staff on public education activities to minimize  
374 duplicative, inconsistent, or inappropriately timed education campaigns. Contractor is aware that the  
375 MRWMD is responsible for regional public education and outreach for schools, self-hauled waste, and  
376 home Composting. Contractor shall not engage in public education and outreach around these subjects  
377 without coordination with and approval of the City Contract Manager or the MRWMD.

378 Contractor shall allow the City Contract Manager a reasonable opportunity to review, request  
379 modifications to, and approve all public education materials including, but not limited to: print, radio,  
380 television, or internet media before publication, distribution, and/or release. Contractor shall also offer  
381 MRWMD the opportunity to review and provide input on public education materials that include  
382 messaging for regional public education and outreach for schools, self-hauled waste, and home  
383 Composting. City shall have the right to request that Contractor include City and/or MRWMD  
384 identification and contact information on public education materials and approval of such requests shall  
385 not be unreasonably withheld.

386 **4.8 BILLING**

387 Contractor shall bill all Customers and be solely responsible for collecting billings at Rates set in  
388 accordance with Article 8. Billing shall be performed on the basis of services rendered and this  
389 Agreement shall create no obligation on the part of any Person on the sole basis of the ownership of  
390 property.

391 Contractor's website shall provide Customers with the ability to pay their bills through an electronic  
392 check or credit card and include the ability for Customer billings to be automatically charged on a  
393 recurring basis. Contractor shall prepare, mail, and collect bills from Customers who decline to use such  
394 internet-based billing system. Contractor shall make arrangements to allow Customers to pay bills by  
395 cash, check, electronic check, money order, and credit card.

396 Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of  
397 this Agreement, for inspection and verification by the City Contract Manager at any reasonable time but  
398 in no case more than thirty (30) calendar days after receiving a request to do so.

399 Contractor shall be responsible for collection of payment from Customers with past due accounts ("bad  
400 debt"). Contractor shall make reasonable efforts to obtain payment from delinquent accounts through  
401 issuance of late payment notices, telephone requests for payments, and assistance from collection  
402 agencies.

403 In the event that any account becomes more than forty-five (45) calendar days past due, Contractor  
404 shall notify such Customer of the delinquency via written correspondence and telephone contact.  
405 Should any account become more than ninety (90) calendar days past due, Contractor shall provide  
406 notice to the Customer via written correspondence, with a copy to the City Contract Manager, that  
407 service may be discontinued if the account becomes more than one hundred twenty (120) calendar days  
408 past due. Should any account become more than one hundred twenty (120) calendar days past due,  
409 Contractor may discontinue providing service to the Customer. No less than seven (7) calendar days  
410 prior to discontinuing service to a Customer, Contractor shall notify the City Contract Manager of the

411 address, Service Level, service frequency, and delinquent billing amount. Contractor may withhold  
412 service from a delinquent account until past delinquencies are paid in full. Upon restoring service to a  
413 previously delinquent account, Contractor may require a deposit from the Customer not to exceed one  
414 (1) month's billings at the Customer's Service Level.

## 415 **4.9 CUSTOMER SERVICE PROGRAM**

### 416 **4.9.1 Program Requirements**

417 **A. Availability of Representatives.** A representative of the Contractor who is knowledgeable of  
418 the service area, services, and rates shall be available from 7 a.m. to 6 p.m. Monday through  
419 Friday to communicate with the public in person and by telephone. Contractor shall maintain a  
420 local or toll-free telephone number which it shall publicize. Contractor shall also maintain an  
421 after-hours telephone number allowing twenty-four (24) hour per day access to Contractor  
422 management by City Contract Manager in the event of an emergency involving Contractor's  
423 equipment or services including, but not necessarily limited to, fires, blocked access, or property  
424 damage.

425 **B. Telephone.** Contractor shall maintain a telephone system in operation from 7 a.m. to 6 p.m.  
426 and shall have sufficient equipment in place and staff available to handle the volume of calls  
427 experienced on the busiest days and such telephone equipment shall be capable of recording  
428 the responsiveness to calls. Recording of Contractor's responsiveness to calls shall include, at a  
429 minimum, all items included in the "Service Quality and Reliability" and "Customer Service"  
430 performance standards listed in Exhibit F. An answering machine or voicemail service shall  
431 record Customer calls and voice messages between 6:00 p.m. and 7:00 a.m.

432 **C. Website.** Contractor shall develop and maintain a website that is accessible by the public.  
433 Contractor's website shall include all public education and outreach materials described in  
434 Exhibit C and provide the public the ability to e-mail Contractor questions, service requests, or  
435 Complaints.

436 **D. Local Office.** Throughout the Term of this Agreement Contractor shall maintain a local office  
437 within Monterey County where, at a minimum, the representatives identified in 4.9.1.A above  
438 are located.

### 439 **4.9.2 Service Requests, Compliments, Complaints**

440 Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable  
441 resolution of, all Customer service requests and complaints. Contractor shall record in a separate log,  
442 approved as to form by City Contract Manager, all complaints, noting the name and address of  
443 complainant, date and time of complaint, nature of complaint, and nature and date of resolution. The  
444 Contractor shall retain this complaint log for the Term. Upon request by the City Contract Manager,  
445 Contractor shall compile and submit a summary statistical table of the complaint log.

446 Contractor shall respond to all complaints received within twenty-four (24) hours, weekends and  
447 Holidays excluded. In particular, if a complaint involves a failure to Collect Solid Waste, Recyclable  
448 Materials or Organic Materials from a Premises in the City, Contractor shall Collect the material in  
449 question within twenty-four (24) hours of receipt of the Complaint, provided that Generator has  
450 properly placed materials for Collection.

451 **ARTICLE 5.**  
452 **STANDARD OF PERFORMANCE**

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453 **5.1 GENERAL**

454 Contractor shall at all times comply with Applicable Laws and provide services in a manner that is safe to  
455 the public and the Contractor's employees. Except to the extent that a higher performance standard is  
456 specified in this Agreement, Contractor shall perform services in accordance with Solid Waste,  
457 Recyclable Materials, Organic Materials, and C&D management practices common to Northern  
458 California.

459 **5.2 OPERATING HOURS AND SCHEDULES**

460 **A. Hours of Collection.** Unless otherwise authorized by the City Contract Manager, Contractor's  
461 days and hours for Collection operations shall be as follows:

462 **1. Residential Premises.** Collection from Residential Premises shall only occur between  
463 the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.

464 **2. Commercial Premises.** Collection from Commercial Premises that are two hundred  
465 (200) feet or less from Residential Premises shall only occur between the hours of 6:00  
466 a.m. and 6:00 p.m., Monday through Friday. Collection from Commercial Premises more  
467 than two hundred (200) feet from Residential Premises shall only occur between the  
468 hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.

469 **B. Holiday Collection Schedule.** Contractor, at its sole discretion, may choose not to provide  
470 Collection services on a Holiday. In such event, Contractor shall provide Collection services on  
471 the day following the Holiday thereby adjusting subsequent work that week; however,  
472 Customer service days shall be returned to the normal schedule within one (1) week of the  
473 Holiday. The Contractor shall provide Customers notice of Holiday-related changes in Collection  
474 schedules at least two weeks prior to the change.

475 **5.3 COLLECTION STANDARDS**

476 **A. Servicing Containers.** Contractor shall pick up and return each Container to the location where  
477 the Occupant properly placed the Container for Collection. Contractor shall place the Containers  
478 upright with lids properly secured.

479 Contractor, at the request of Customers, may provide special services including: (i) unlocking  
480 Containers; (ii) accessing Container enclosures with a key; or, (iii) pulling or pushing Containers  
481 to the Collection vehicle. Contractor may charge Customers for extra services at the Rates  
482 approved by City for such services.

483 **B. Litter Abatement.** Contractor shall use due care to prevent spills or leaks of material placed for  
484 Collection, Used Motor Oil, fuel, and fluids while providing services under this Agreement. If any  
485 materials are spilled or leaked during Collection and Transportation, the Contractor shall clean  
486 up all spills or leaks before leaving the site of the spill.



487 Contractor shall not transfer loads from one vehicle to another on any public street, unless it is  
488 necessary to do so because of mechanical failure, hot load (combustion of material in the truck),  
489 or accidental damage to a vehicle.

490 Contractor shall cover all open Drop Boxes at the pickup location before Transporting materials  
491 to the Approved Facility.

492 Contractor shall conduct public outreach and staff training to Customers on best management  
493 practices for litter abatement at no extra charge to the City when no additional direct expenses  
494 are incurred by Contractor that are outside the scope of the Public Education and Outreach  
495 Program as described in Exhibit C. If requested outreach and staff training would result in  
496 additional direct expenses to Contractor, City shall be notified. If City decides to pay direct  
497 expenses, Contractor shall conduct activities for no additional charge. If City does not agree to  
498 pay direct expenses, Contractor shall be under no obligation to provide the requested services.  
499 Such best management practices include, without limitation:

500 • Closing Container lids and right sizing service: Contractor staff will tag overfull  
501 containers with "reminder stickers," which will serve as outreach and education to the  
502 Customer. Photos of the container will be taken by drivers, attached to the Customer's  
503 account, and will be available to outreach and Customer service staff in order to  
504 demonstrate to the Customer where a problem exists.

505 • Outreach to Customer on importance of bagging lightweight materials such as plastic  
506 bags, film plastics, foam peanuts, and other materials that can easily become litter due  
507 to their lightweight nature.

508 • Driver training on litter reduction techniques and litter removal best management  
509 practices.

510 • Affixing signage to the back of Contractor trucks which reads "Help us keep our  
511 roadways and waterways clean. If you see litter falling out of this truck please contact  
512 800-XXX-XXXX".

513 • Collaboration with City's street sweeping operators, as appropriate, in order to align  
514 schedules with Collection schedules to have sweeping following the standard Collection  
515 day.

516 **C. Development and Review of Collection Specifications.** Contractor shall work with the City to  
517 develop standard specifications for Collection Container enclosures at Commercial and Multi-  
518 Family Premises. These specifications shall be developed to ensure that the Collection Container  
519 enclosures are built to provide adequate space for and suitable configuration to allow the  
520 Contractor to safely and efficiently service Solid Waste, Recyclable Materials, and Organic  
521 Materials Containers. Contractor's Operations Manager or other appropriately qualified staff  
522 shall, upon request by the City Contract Manager, provide a review of plans for new Multi-family  
523 and Commercial development or project design drawings. Contractor shall provide comments  
524 and recommendations resulting from the review in writing within ten (10) days of receipt of the  
525 documents for review. In each review report, Contractor shall comment on the acceptability of  
526 the proposed enclosure arrangements in terms of: i) the adequacy of space for Solid Waste,  
527 Recyclable Materials, and Organic Materials Containers; ii) the accessibility of the Containers for

528 Collection including whether additional charges (e.g., push/pull, etc.) would apply; and iii) ease  
529 of use by tenants.

#### 530 **5.4 VEHICLE REQUIREMENTS**

531 Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently  
532 perform the work required by the Agreement in strict accordance with its terms. Contractor shall have  
533 available sufficient back-up vehicles for each type of Collection vehicle used to respond to scheduled  
534 and unscheduled maintenance, service requests, complaints, and emergencies. All such vehicles shall  
535 have watertight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall meet  
536 On-Road Heavy Duty Vehicle emissions requirements for model year 2011, regardless of the actual  
537 model year of Contractor's vehicles, and generally comply with all Federal, State, and local laws and  
538 regulations.

539 Collection vehicles shall present a clean appearance while providing service under this Agreement.  
540 Contractor's name and local telephone number shall be displayed on all vehicles in at least four (4) inch  
541 characters. Vehicles shall be equipped with sign board holders or other hardware to allow public  
542 education signage of no less than thirty-six (36) by forty-eight (48) inches to be displayed on both sides  
543 of the vehicle.

544 Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles  
545 that are not operating properly shall be taken out of service until they are repaired and operate  
546 properly. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which  
547 repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment  
548 in a safe and operable condition. City Contract Manager may inspect vehicles at any reasonable time,  
549 and within three (3) calendar days of such a request, to determine compliance with sanitation  
550 requirements.

#### 551 **5.5 CONTAINER REQUIREMENTS**

552 Contractor shall provide all Carts, Bins, and Drop Boxes to all Customers as part of its services.  
553 Contractor-provided Containers shall be designed and constructed to be watertight and prevent the  
554 leakage of liquids. All Containers shall display the Contractor's name, local telephone number, and some  
555 identifying inventory or serial number.

556 In the interest of creating effective and consistent public education and outreach, Contractor will utilize  
557 its Containers to reinforce public education messages. All Solid Waste Containers shall be black or grey  
558 in color. All Recyclable Materials Containers shall be blue in color. All Organic Materials Containers shall  
559 be green in color. Contractor's Containers shall also be labeled with a list of acceptable materials and a  
560 list of prohibited materials and such labels shall be in both English and Spanish. Specific color selections  
561 and labels shall be approved by the City Contract Manager prior to placing the order for any new  
562 Containers.

563 All Containers shall be maintained in a safe, serviceable, and functional condition and present a clean  
564 appearance. Customers using Carts shall be responsible for cleaning such Carts. Contractor shall steam  
565 clean and repaint all Containers, except Carts, as requested by Customer or as deemed necessary by  
566 Contractor to present a clean appearance. If Customer requests steam cleaning more frequently than  
567 one (1) time per year, Contractor may charge the Customer at approved Rates for such service. If any  
568 Container is impacted by graffiti, Contractor shall remedy the situation within fourteen (14) calendar

569 days of notification at no additional charge.

## 570 **5.6 PERSONNEL**

571 **A. General.** Contractor shall furnish such qualified personnel as may be necessary to provide the  
572 services required by this Agreement in a safe and efficient manner. Contractor shall designate at  
573 least one (1) qualified employee as City's primary point of contact with Contractor who is  
574 principally responsible for Collection operations and resolution of service requests and  
575 complaints.

576 Contractor shall use its best efforts to assure that all employees present a neat appearance and  
577 conduct themselves in a courteous manner. Contractor shall not permit its employees to accept,  
578 demand, or solicit, directly or indirectly, any additional compensation, or gratuity from members  
579 of the public.

580 **B. Hiring of Displaced Employees.** Immediately following award of this Agreement, Contractor  
581 shall work with the current hauler to obtain a complete list of full-time non-management  
582 employees in good standing working exclusively to provide direct collection services to the City  
583 and collection support services on January 8, 2014 to one of the seven (7) communities on the  
584 Monterey Peninsula involved in the consolidated Request for Proposals (RFP) process.  
585 Contractor shall conduct outreach, complete interviews and offer employment to eligible  
586 employees and Contractor will not be required to hire positions in excess of the maximum  
587 anticipated positions or hire employees for positions if those employees have not been  
588 successfully executing duties similar to those desired by Contractor. The maximum anticipated  
589 positions needed to provide the services described herein to the six (6) Monterey Peninsula  
590 Cities and the Pebble Beach Community Services District are identified in Exhibit H.

591 **C. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,  
592 issued by the California Department of Motor Vehicles. Contractor shall use the Class II  
593 California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers  
594 for safety.

595 **D. Safety Training.** Contractor shall provide suitable operational and safety training for all of its  
596 employees who operate Collection vehicles or equipment. Contractor shall train its employees  
597 involved in Collection to identify, and not to collect, Excluded Waste. Upon the City Contract  
598 Manager's request, Contractor shall provide a copy of its safety policy and safety training  
599 program, the name of its safety officer, and the frequency of its trainings.

## 600 **5.7 HAZARDOUS WASTE INSPECTION AND HANDLING**

601 **A. Inspection Program and Training.** Contractor shall develop a load inspection program that  
602 includes the following components: (i) personnel and training; (ii) load checking activities; (iii)  
603 management of wastes; and, (iv) record keeping and emergency procedures.

604 Contractor's load checking personnel, including its Collection vehicle drivers, shall be trained in:  
605 (i) the effects of Hazardous Substances on human health and the environment; (ii) identification  
606 of prohibited materials; and, (iii) emergency notification and response procedures. Collection  
607 vehicle drivers shall inspect Containers before Collection when practical.

608 **B. Response to Excluded Waste Identified During Collection.** If Contractor determines that  
609 material placed in any Container for Collection is Excluded Waste or presents a hazard to  
610 Contractor's employees, the Contractor shall have the right to refuse to accept such material.  
611 The Generator shall be contacted by the Contractor and requested to arrange proper Disposal. If  
612 the Generator cannot be reached immediately, the Contractor shall, before leaving the  
613 Premises, leave a tag at least two (2) inches by six (6) inches in size, which indicates the reason  
614 for refusing to Collect the material and lists the phone number of a facility that accepts the  
615 Excluded Waste or a phone number of an entity that can provide information on proper Disposal  
616 of the Excluded Waste. Under no circumstances shall Contractor's employees knowingly Collect  
617 Excluded Waste or remove unsafe or poorly containerized Excluded Waste from a Collection  
618 Container. Prior to Commencement of this Agreement, the tag that will be used to notice  
619 Customers of reason for non-Collection shall be reviewed and approved by the City Contract  
620 Manager.

621 If Excluded Waste is found in a Collection Container or Collection area that could possibly result  
622 in imminent danger to people or property, the Contractor shall immediately notify the Fire  
623 Department.

624 **C. Response to Excluded Waste Identified At Disposal or Processing Facility.** Materials Collected  
625 by Contractor will be delivered to the Approved Facilities for purposes of Processing or Disposal.  
626 In the event that load checkers and/or equipment operators at such facility identify Excluded  
627 Waste in the loads delivered by Contractor, such personnel shall remove these materials for  
628 storage in approved, on-site, Excluded Waste storage Container(s). Contractor shall arrange for  
629 removal of the Excluded Wastes at its cost by permitted haulers in accordance with Applicable  
630 Laws and regulatory requirements. The Contractor may at its sole expense attempt to identify  
631 and recover the cost of Disposal from the Generator. If the Generator can be successfully  
632 identified, the cost of this effort, as well as the cost of Disposal shall be chargeable to the  
633 Generator.

## 634 **5.8 CITY CONTRACT MANAGER**

635 City has designated staff, the City Contract Manager, to be responsible for the monitoring and  
636 administration of this Agreement. Contractor shall meet and confer with the City Contract Manager to  
637 resolve differences of interpretation and implement and execute the requirements of this Agreement in  
638 an efficient, effective, manner that is consistent with the stated objectives of this Agreement.

639 From time to time the City Contract Manager may designate other agents of City or MRWMD to work  
640 with Contractor on specific matters. In such cases, those individuals should be considered designates of  
641 the City Contract Manager for those matters to which they have been engaged. Such designates shall be  
642 afforded all of the rights and access granted thereto. In the event of a dispute between the City Contract  
643 Manager's designate and Contractor, the City Contract Manager's determination shall be conclusive.

644 In the event of dispute between the City Contract Manager and the Contractor regarding the  
645 interpretation of or the performance of services under this Agreement, the City Contract Manager's  
646 determination shall be conclusive except where such determination results in a material impact to the  
647 Contractor's revenue and/or cost of operations. In the event of a dispute between the City Contract  
648 Manager and the Contractor results in such material impact to the Contractor, Contractor may appeal  
649 the determination of the City Contract Manager to the City Manager, whose determination shall be

650 conclusive. For the purposes of this section, “material impact” is an amount equal to or greater than  
651 one-quarter (1/4) of one (1) percent of Contractor’s annual Gross Receipts under this Agreement.

652 City Contract Manager or his or her designee shall have the right to observe and review Contractor  
653 operations and Processing Facilities and enter Premises for the purposes of such observation and  
654 review, including review of Contractor’s records, during reasonable hours with reasonable notice. In no  
655 event shall Contractor prevent access to such Premises for a period of more than three (3) calendar days  
656 after receiving such a request. City Contract Manager shall have Read-Only access to sections of  
657 Contractor’s Customer service database which facilitates City retrieval and reporting of Customer service  
658 data.

## 659 **5.9 ENVIRONMENTALLY-PREFERRABLE PURCHASING**

660 Contractor shall abide by its Environmentally Preferable Purchasing Policy adopted in January 2011 and  
661 included as Exhibit I. Contractor shall include a summary of their environmentally-preferable purchasing  
662 activities in their Annual Report to City (e.g., volume of recycled content paper purchased, source  
663 reduction strategies implemented during the year and the quantified results of that strategy, etc.).

## 664 **5.10 LOCAL PURCHASING PREFERENCE**

665 Contractor shall, throughout the Term of this Agreement, give preference to purchasing materials and  
666 supplies used in connection with Agreement from local vendors within the County or State; and in that  
667 order of preference. At a minimum, Contractor shall purchase the following items from vendors within  
668 the County: vehicle supplies (e.g., fuel, fluids, tires, parts, etc.); printing and publishing services for any  
669 and all public education and outreach materials; uniforms, safety clothing/equipment, and work boots;  
670 and office supplies.

# 671 **ARTICLE 6.**

## 672 **RECORD KEEPING AND REPORTING**

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### 673 **6.1 RECORD KEEPING**

674 Contractor shall maintain accounting, statistical, operational, and other records related to its  
675 performance as shall be necessary to provide reporting under the Act and demonstrate compliance with  
676 this Agreement. Unless otherwise required in this Article, Contractor shall retain all records and data  
677 required to be maintained by this Agreement for the Term of this Agreement plus three (3) years after  
678 its expiration or earlier termination. Records and data shall be in chronological and organized form and  
679 readily and easily interpreted. Upon request, any such records shall be retrieved in a timely manner by  
680 Contractor and made available to the City Contract Manager. Contractor shall maintain adequate record  
681 security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an  
682 earthquake. Electronically-maintained data and records shall be protected and backed-up.

683 City views its ability to defend itself against Comprehensive Environmental Response, Compensation and  
684 Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, City  
685 regards its ability to prove where Collected Solid Waste is taken for transfer or Disposal. Contractor shall  
686 maintain records which can establish where Solid Waste Collected was Disposed. This provision shall  
687 survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records  
688 for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor

689 shall provide these records to City (upon request or at the end of the record retention period) in an  
690 organized and indexed manner rather than destroying or Disposing of them.

691 Solid Waste, Recyclable Materials, Organic Materials, and C&D Collected pursuant to this Agreement,  
692 which are combined with materials collected from other jurisdictions, shall be allocated by Contractor to  
693 City. The allocation shall be based on volume or Tonnage using a method approved by the City Contract  
694 Manager and such approval shall not be unreasonably withheld. On a quarterly basis, Contractor shall  
695 provide detailed calculations documenting the allocation of materials to City for materials Collected in  
696 vehicles serving multiple jurisdictions.

## 697 **6.2 REPORT SUBMITTAL REQUIREMENTS**

698 Contractor shall submit quarterly reports within thirty (30) calendar days after the end of the calendar  
699 quarter. Contractor shall submit annual reports no later than forty-five (45) calendar days after the end  
700 of each calendar year. Quarterly and annual reports shall, at a minimum, include all data and  
701 information as described in Exhibit D.

702 Contractor may propose report formats that are responsive to the objectives and audiences for each  
703 report. The format of each report shall be approved by the City Contract Manager and such approval  
704 shall not be unreasonably withheld. City Contract Manager may, from time to time during the Term,  
705 review and request changes to Contractor's report formats and content and Contractor shall not  
706 unreasonably deny such requests.

707 Contractor shall submit (via mail and e-mail) all reports to the City Contract Manager with a copy to the  
708 General Manager (or their designated representative) of the MRMWD.

709 City reserves the right to require Contractor to provide additional reports or documents as City Contract  
710 Manager reasonably determines to be required for the administration of this Agreement or compliance  
711 with Applicable Law.

## 712 **ARTICLE 7.** 713 **FRANCHISE FEES AND OTHER FEES**

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### 714 **7.1 FRANCHISE FEE**

715 In consideration of the rights provided Contractor herein, Contractor shall pay Franchise Fees to City  
716 each quarter equal to ten percent (10%) of Gross Receipts for all services performed under this  
717 Agreement. Unless otherwise directed by the City, the Franchise Fee shall be increased by two (2)  
718 percentage points per year, starting with Rate Period Two, until the Franchise Fee equals sixteen  
719 percent (16%) of Gross Receipts. This fee may be adjusted by City Council resolution.

### 720 **7.2 ADMINISTRATIVE FEE**

721 The Contractor shall pay an Administrative Fee to City each quarter. The amount of the Administrative  
722 Fee shall be zero dollars (\$0) in Rate Period One and shall be paid in equal quarterly installments. City  
723 shall use the Administrative Fee to offset expenses including staffing costs related to contract  
724 management, compliance, and monitoring, and to enforce the franchise with respect to any violations  
725 by third parties, including initiating and/or assisting in prosecuting enforcement actions. The City shall

726 retain the sole right to set priorities for its contract monitoring and enforcement among City personnel.  
727 This fee shall be a pass-through cost.

728 **7.3 AB 939 FEE**

729 The Contractor shall pay an AB 939 Fee to City each quarter. The amount of the AB 939 Fee shall be zero  
730 dollars (\$0) in Rate Period One and shall be paid in equal quarterly installments. City shall use the AB 939  
731 Fee to offset expenses for City and/or the MRWMD programs, pilot studies, education and outreach  
732 campaigns, reporting, compliance, or other activities involved in compliance with the Act. The City shall  
733 retain the sole right to set priorities for the use of its AB 939 Fee. This fee shall be a pass-through cost.

734 **7.4 HHW FEE**

735 The Contractor shall pay an HHW Fee to City each quarter in the amount of zero dollars (\$0) per month  
736 per Residential dwelling unit served under this Agreement. This fee shall only be included in the  
737 calculation of Single-Family and Multi-Family Residential Rates. City shall use the HHW Fee to offset  
738 expenses for Household Hazardous Waste programs and facilities which benefit all Residents of City.

739 **7.5 VEHICLE IMPACT FEE**

740 Contractor shall pay a Vehicle Impact Fee to City each quarter. The amount of the Vehicle Impact Fee  
741 shall be zero dollars (\$0) in Rate Period One and shall be paid in equal quarterly installments This fee is  
742 to reimburse the City for street maintenance costs incurred because of Collection vehicles traveling on  
743 City streets.

744 **7.6 LITTER ABATEMENT FEE**

745 Contractor shall pay a Litter Abatement Fee to City each quarter equal to three and ninety-five  
746 hundredths percent (3.95%) of Gross Receipts for all services performed under this Agreement. This fee  
747 is to reimburse the City for the cost of street sweeping, servicing public litter and Recycling Containers,  
748 and other activities related to minimizing or abating litter within City or complying with City's National  
749 Pollutant Discharge Elimination System permit requirements regarding eliminating Solid Waste from  
750 storm water run-off.

751 **7.7 ADJUSTMENT TO FEES**

752 City may set other fees or adjust the fees established in this Article from time-to-time during the Term  
753 of this Agreement and such adjustments shall be included in the adjustment of Rates as described in  
754 Exhibit E.

755 The amounts of the Administrative Fee, AB 939 Fee, HHW Fee, Vehicle Impact Fee, and Litter Abatement  
756 Fee for subsequent Rate Periods shall be adjusted annually in accordance with the adjustment method  
757 described in Exhibit E, or shall be the amount specified by the City.

758 **7.8 PAYMENT SCHEDULE AND LATE FEES**

759 Within thirty (30) calendar days of the end of each calendar quarter, during the Term of this Agreement,  
760 Contractor shall remit to City all fees as described in this Article. Such fees shall be remitted to City and  
761 sent or delivered to the City Contract Manager. If such remittance is not paid to City on or before the

762 thirtieth (30<sup>th</sup>) calendar day following the end of a calendar quarter, all fees dues shall be subject to a  
763 delinquency penalty of one and one half percent (1.5%), which attaches on the first day of delinquency.  
764 The delinquency penalty shall be increased an additional one and one half percent (1.5%) for each  
765 additional month the payment remains delinquent.

766 Each quarterly remittance to City shall be accompanied by a statement listing the amount of each fee  
767 paid; calculation of each fee; and, statement of Gross Receipts, by Customer Type for the period  
768 collected from all operations conducted or permitted by this Agreement. City Contract Manager may, at  
769 any time during the Term, request a detailed calculation of Gross Receipts which may include, but is not  
770 necessarily limited to, the number of Customers charged at each Service Level and Rate for each billing  
771 period.

772 City Contract Manager may, at any time during the Term, perform an audit of Contractor's billings and  
773 payment of fees. Contractor shall cooperate with the City Contract Manager in any such audit. Should  
774 City or its agent perform this review and identify billing errors or other errors in payment of fees valued  
775 at one (1) percent or more of Gross Receipts, Contractor shall, in addition to compensating City for lost  
776 fees, reimburse the City's cost of the review.

777 **ARTICLE 8.**  
778 **CONTRACTOR'S COMPENSATION AND RATE**  
779 **SETTING**

---

780 **8.1 GENERAL**

781 The Contractor's compensation for performance of all its obligations under this Agreement shall be  
782 Gross Receipts. Contractor's compensation provided for in this Article shall be the full, entire, and  
783 complete compensation due to Contractor pursuant to this Agreement for all labor, equipment,  
784 materials and supplies, Processing and Disposal fees, fees due to City, taxes, insurance, bonds,  
785 overhead, operations, profit, and all other things necessary to perform all the services required by this  
786 Agreement in the manner and at the times prescribed. Nothing herein shall obligate City to provide any  
787 compensation to Contractor beyond Gross Receipts.

788 If Contractor's actual costs, including fees due to City, are more than Gross Receipts, Contractor shall not  
789 be compensated for the difference in actual costs and actual Gross Receipts. If Contractor's actual costs  
790 are less than the actual Gross Receipts, Contractor shall retain the difference provided that Contractor  
791 has paid City fees pursuant to Article 7.

792 Under this Agreement, Contractor shall have the right and obligation to charge and collect from  
793 Customers, Rates in Exhibit G3 that are approved by the City for provision of services to Customers. The  
794 Rates for Rate Period One are based on the Contractor's Proposal. Contractor's proposed costs and  
795 operating assumptions for Rate Period One are presented in Exhibit G2.

796 The Approved Recyclable Materials Processing Facility shall retain revenues received for the sale of  
797 Recyclable Materials including California Redemption Value revenues. Such revenues have been  
798 considered in the establishment of Rates for services provided under this Agreement. Neither  
799 Contractor nor the Approved Recyclable Materials Processing Facility are entitled to grant funds  
800 available through the Department of Resources Recycling and Recovery (CalRecycle) through its  
801 "Curbside Supplemental Payments" for registered Curbside Recycling programs or "City/County



802 Payment Program” pursuant to Section 14581(a)(5)(A) of the California Beverage Container Recycling  
803 and Litter Reduction Act.

## 804 **8.2 RATES AND ANNUAL ADJUSTMENTS**

805 **A. General.** The City shall be responsible for approving Rates as described in this Article. If at any  
806 time during the Term of the Agreement, the Contractor determines the need for a Rate that  
807 does not appear on the City-approved Rate schedule in Exhibit G3, Contractor shall immediately  
808 notify the City and request establishment of such Rate. For example, if a Customer requires  
809 Collection of Organic Materials in a fifteen (15) cubic yard Compactor five (5) times per week  
810 and the City-approved Rate schedule does not include this level of service, the Contractor must  
811 request that the City approve a Rate for this level of service.

812 **B. Rates for Rate Period One.** Rates for Rate Period One, which are presented in Exhibit G3, were  
813 determined by Contractor and City and were approved by City resolution on or before the  
814 execution of the Agreement. The Rates for Rate Period One shall be effective from the  
815 Commencement Date of this Agreement through June 30, 2016.

816 **C. Rates for Subsequent Rate Periods.** Rates for subsequent Rate Periods shall be adjusted  
817 annually in accordance with this Section 8.2 and Exhibit E.

818 The index-based adjustment, which is described in Exhibit E1, involves use of various cost  
819 adjustment factors (such as the percentage change in the consumer price index and percentage  
820 change in the Approved Facility tipping fees) to calculate adjusted Rates. Such Rate adjustment  
821 calculations shall be performed in strict conformance to the procedures described in Exhibit E1.

822 Up to three times during the initial term of the Agreement and up to once per extension period,  
823 each Party may request that Rates be adjusted using the cost-based methodology described in  
824 Exhibit E2 that involves a review of Contractor’s actual costs and projection of cost for the  
825 coming Rate Period. This cost-based Rate adjustment, if requested by either Party, will be  
826 performed instead of the index-based rate adjustment for that Rate Period. The option to  
827 request a cost-based adjustment process during the Term of the Agreement is intended to  
828 provide the Parties an opportunity to adjust Rates to more accurately reflect actual costs of  
829 operations if the cost indices are not tracking with actual changes in costs. Such Rate adjustment  
830 calculations shall be performed in strict conformance to the procedures described in Exhibit E2.

831 **D. Rate Structure.** The City and Contractor shall meet and confer to change the relationship of  
832 individual Rates in comparison with other Rates. Any such changes would occur in conjunction  
833 with the annual Rate adjustment process described in Section 8.2.C or in conjunction with a Rate  
834 adjustment resulting from an extraordinary Rate adjustment in accordance with Section 8.3.  
835 Changes to the rates charged under the new structure shall be calculated in such a way that the  
836 revised Rate structure generates at least the same amount of total revenue when the number of  
837 accounts at each Service Level are multiplied by the Rates charged for each Service Level and  
838 the total for all Service Levels are summed.

## 839 **8.3 EXTRAORDINARY RATE ADJUSTMENTS**

840 It is understood that the Contractor accepts the risk for changes in cost of providing services and the  
841 service levels requested by Customers and therefore the extraordinary adjustments to Rates shall be

842 limited to a Change in Law or a City-directed change in scope. If a Change in Law or City-directed change  
843 in scope (pursuant to Section 3.5) occurs, the Contractor may petition City for an adjustment to the  
844 Rates in excess of the annual adjustment described in Section 8.2.

845 Contractor shall prepare an application for the extraordinary Rate increase. Such submittal shall be  
846 prepared in compliance with the procedures described in Exhibit E2 and shall provide all information  
847 requested by City Contract Manager specific to the nature of the request being made. Contractor shall  
848 pay all reasonable costs incurred by City, including the costs of outside accountants, attorneys, and/or  
849 consultants, in order to make a determination of the reasonableness of the requested Rate adjustment.  
850 The application shall clearly document the reason for the proposed adjustment, include calculation of  
851 the proposed Rate adjustments, and provide supporting documentation.

852 In the event of such an application for extraordinary Rate increase, it is understood that the Contractor  
853 shall have the burden of demonstrating to the reasonable satisfaction of the City Contract Manager that  
854 the failure of City to adjust the Rates will result in the Contractor's financial loss or failure to achieve  
855 reasonable profitability due to the Change in Law or City-directed change in scope. The Contractor will  
856 have to demonstrate financial loss or a failure to achieve reasonable profitability by allowing for City  
857 Contract Manager review of financial statements and supporting documentation.

858 The City Contract Manager shall have the right to request any other information that they, in their sole  
859 judgment, determine is necessary to establish the reasonableness or accuracy of Contractor's request  
860 for an extraordinary Rate increase. Contractor's failure to fully cooperate in a timely manner with any  
861 reasonable request for information by the City Contract Manager may result in either the denial of or a  
862 delay in the approval of the request for an extraordinary Rate increase

863 **ARTICLE 9.**  
864 **INDEMNITY, INSURANCE, AND PERFORMANCE**  
865 **BOND**

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866 **9.1 INDEMNIFICATION**

867 **A. General.** Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless  
868 (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and  
869 agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs  
870 (including without limitation costs and fees of litigation, including attorneys' and expert witness  
871 fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's  
872 performance under this Agreement, or its failure to comply with any of its obligations contained  
873 in the Agreement, except to the extent such loss or damage was caused by the negligence or  
874 willful misconduct of City.

875 **B. Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the  
876 entire Term of this Agreement with all Applicable Laws. Contractor shall not store, transport,  
877 use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

878 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of  
879 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly  
880 take all investigatory and/or remedial action reasonably required for the remediation of such  
881 environmental contamination. Prior to undertaking any investigatory or remedial action,

882 however, Contractor shall first obtain City's approval of any proposed investigatory or remedial  
883 action. Should Contractor fail at any time to promptly take such action, City may undertake such  
884 action at Contractor's sole cost and expense, and Contractor shall reimburse City for all such  
885 expenses within thirty (30) calendar days of being billed for those expenses, and any amount not  
886 paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and  
887 subject to the delinquent fee payment provision of Section 7.8. These obligations are in addition  
888 to any defense and indemnity obligations that Contractor may have under this Agreement. The  
889 provisions of this Section shall survive the termination or expiration of this Agreement.

890 Notwithstanding the foregoing, Contractor's duties under this subsection shall not extend to any  
891 claims arising from the Disposal of Solid Waste at the Approved Disposal Facility, including, but  
892 not limited to, claims arising under Comprehensive Environmental Response, Compensation and  
893 Liability Act (CERCLA) unless such claim is a direct result of Contractor's negligence or willful  
894 misconduct.

895 **C. Environmental Indemnity.** Contractor shall defend, indemnify, and hold City harmless against  
896 and from any and all claims, suits, losses, penalties, damages, and liability for damages of every  
897 name, kind and description, including attorneys' fees and costs incurred, attributable to the  
898 negligence or willful misconduct of Contractor in handling Excluded Waste.

899 **D. Related to the Act.** Contractor's duty to defend and indemnify herein includes all fines and/or  
900 penalties imposed by CalRecycle, subject to the restrictions set forth in Public Resources Code  
901 Section 40059.1, if the requirements of the Act are not met by the Contractor with respect to  
902 the waste stream Collected under this Agreement, and such failure is: (i) due to the failure of  
903 Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays in  
904 providing information that prevents Contractor or City from submitting reports required by the  
905 Act in a timely manner.

906 **E. Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of  
907 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution  
908 (Commonly Proposition 218), which impacts the Rates for the Collection services established in  
909 accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the  
910 impact of such Change in Law on either Party's ability to perform under this Agreement.

911 If, at any time, a Rate adjustment determined to be appropriate by both City (which  
912 determination shall not be unreasonably withheld) and Contractor to compensate Contractor  
913 for increases in costs as described in this Agreement cannot be implemented for any reason,  
914 Contractor shall be granted the option to negotiate with City, in good faith, a reduction of  
915 services equal to the value of the Rate adjustment that cannot be implemented. If City and  
916 Contractor are unable to reach agreement about such a reduction in services, then Contractor  
917 may terminate this Agreement upon one hundred eighty (180) calendar days prior written  
918 notice to City, in which case the Contractor and City shall each be entitled to payment of  
919 amounts due for contract performance through the date of termination but otherwise will have  
920 no further obligation to one another pursuant to this Agreement after the date of such  
921 termination. Should a court of competent jurisdiction determine that the Contractor cannot  
922 charge and/or increase its Rates for charges related to Franchise Fees and governmental fees  
923 and charges, Contractor shall reduce the Rates it charges Customers a corresponding amount,  
924 providing said fees, Rates and/or charges disallowed by the court are not related to the cost of

925 providing service hereunder and had been incorporated in the Rates charged by Contractor to  
926 its Customers.

927 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to  
928 the Rates established for services provided under this Agreement; rather this Section is provided  
929 merely to allocate risk of an adverse judicial interpretation between the Parties.

930 This provision (i.e., Section 9.1) will survive the expiration or earlier termination of this  
931 Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity  
932 from third parties.

## 933 **9.2 INSURANCE**

934 **A. General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all  
935 times during the Term of this Agreement not less than the following coverage and limits of insurance:

936 **B. Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times  
937 maintain, at its expense, the following coverages and requirements. The comprehensive general  
938 liability insurance shall include broad form property damage insurance.

939 1. Minimum Coverages. Insurance coverage shall be with limits not less than the  
940 following:

941 **Comprehensive General Liability** – \$10,000,000 combined single limit per occurrence  
942 for bodily injury, personal injury, and property damage.

943 **Automobile Liability** – \$10,000,000 combined single limit per accident for bodily injury  
944 and property damage (include coverage for Hired and Non-owned vehicles).

945 **Workers' Compensation – Statutory Limits/Employers' Liability** - \$2,000,000/accident  
946 for bodily injury or disease.

947 **Employee Blanket Fidelity Bond** – \$500,000 per employee loss covering dishonesty,  
948 forgery, alteration, theft, disappearance, and destruction (inside or outside).

949 2. Additional Insured. City, its officers, agents, employees, and volunteers shall be named  
950 as additional insured on all but the workers' compensation and professional liability  
951 coverages.

952 3. Said policies shall remain in force through the life of this Agreement and, with the  
953 exception of professional liability coverage, shall be payable on a "per occurrence" basis  
954 unless City's Risk Manager specifically consents in writing to a "claims made" basis. For  
955 all "claims made" coverage, in the event that the Contractor changes insurance carriers  
956 Contractor shall purchase "tail" coverage or otherwise provide for continuous coverage  
957 covering the Term of this Agreement and not less than three (3) years thereafter. Proof  
958 of such "tail" or other continuous coverage shall be required at any time that the  
959 Contractor changes to a new carrier prior to receipt of any payments due.

960 4. The Contractor shall declare all aggregate limits on the coverage before commencing

961 performance of this Agreement, and City's Risk Manager reserves the right to require  
962 higher aggregate limits to ensure that the coverage limits required for this Agreement as  
963 set forth above are available throughout the performance of this Agreement.

964 5. The deductibles or self-insured retentions are for the account of Contractor and shall be  
965 the sole responsibility of the Contractor.

966 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be  
967 suspended, voided, canceled by either Party, reduced in coverage or in limits except  
968 after thirty (30) calendar days prior written notice by certified mail, return receipt  
969 requested, has been given to City Contract Manager ten (10) Business Days for  
970 delinquent insurance premium payments).

971 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than  
972 A-VII, unless otherwise approved by City Risk Manager.

973 8. The policies shall cover all activities of Contractor, its officers, employees, agents and  
974 volunteers arising out of or in connection with this Agreement.

975 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be  
976 primary, including as respects City, its officers, agents, employees, and volunteers. Any  
977 insurance maintained by City shall apply in excess of, and not contribute with, insurance  
978 provided by Contractor's liability insurance policy.

979 10. The Contractor shall waive all rights of subrogation against City, its officers, employees,  
980 agents, and volunteers.

981 **B. Endorsements.** Prior to the Effective Date pursuant to this Agreement, Contractor shall furnish  
982 City Contract Manager with certificates or original endorsements reflecting coverage required  
983 by this Agreement. The certificates or endorsements are to be signed by a Person authorized by  
984 that insurer to bind coverage on its behalf. All certificates or endorsements are to be received  
985 by, and are subject to the approval of, City Risk Manager before work commences.

986 **C. Renewals.** During the Term of this Agreement, Contractor shall furnish City Contract Manager  
987 with certificates or original endorsements reflecting renewals, changes in insurance companies,  
988 and any other documents reflecting the maintenance of the required coverage throughout the  
989 entire Term of this Agreement. The certificates or endorsements are to be signed by a Person  
990 authorized by that insurer to bind coverage on its behalf.

991 **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required by State  
992 law, and prior to the Effective Date pursuant to this Agreement, Contractor shall file the following  
993 statement with City.

994 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer  
995 to be insured against liability for workers' compensation or to undertake self-insurance in  
996 accordance with the provisions of that code, and I will comply with such provisions before  
997 commencing any services required by this Agreement.

998 The Person executing this Certificate on behalf of Contractor affirmatively represents that

999 she/he has the requisite legal authority to do so on behalf of Contractor, and both the Person  
1000 executing this Agreement on behalf of Contractor and Contractor understand that City is relying  
1001 on this representation in entering into this Agreement.”

### 1002 **9.3 PERFORMANCE BOND**

1003 Within seven (7) calendar days of the City’s notification to Contractor that the City has executed this  
1004 Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's  
1005 performance of its obligations under this Agreement and such bond shall be renewed annually if  
1006 necessary so that the performance bond is maintained at all times during the Term. The principal sum of  
1007 the bond shall be Eight Hundred Seventeen Thousand Dollars (\$817,000) and shall be adjusted every  
1008 three (3) years, commencing with Rate Period Three, to equal three (3) months of the prior Rate  
1009 Period’s annual Gross Receipts. The bond shall be executed as surety by a corporation authorized to  
1010 issue surety bonds in the State of California that has a rating of A or better in the most recent edition of  
1011 Best’s Key Rating Guide, and that has a record of service and financial condition satisfactory to the City.  
1012 The bond shall be in the form attached as Exhibit H.

## 1013 **ARTICLE 10.** 1014 **DEFAULT AND REMEDIES**

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### 1015 **10.1 EVENTS OF DEFAULT**

1016 All provisions of the Agreement are considered material. Each of the following shall constitute an event  
1017 of default.

1018 **A. Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the  
1019 City.

1020 **B. Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts,  
1021 or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

1022 **C. Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the  
1023 Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

1024 **D. Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having  
1025 authority over Contractor relative to this Agreement, provided that Contractor may contest any  
1026 such orders or filings by appropriate proceedings conducted in good faith, in which case no  
1027 breach or default of this Agreement shall be deemed to have occurred.

1028 **E. Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement.

1029 **F. Failure to Perform Direct Services.** Contractor ceases to provide Collection, Transportation, or  
1030 Processing services as required under this Agreement for a period of two (2) consecutive  
1031 calendar days or more, for any reason within the control of Contractor.

1032 **G. Failure to Pay or Report.** Contractor fails to make any payments to City required under this  
1033 Agreement including payment of City fees or Liquidated Damages and/or refuses to provide City  
1034 with required information, reports, and/or records in a timely manner as provided for in the

1035 Agreement.

1036 **H. Acts or Omissions.** Any other act or omission by Contractor which violates the terms,  
1037 conditions, or requirements of this Agreement, the Act, as it may be amended from time to  
1038 time, or any law, statute, ordinance, order, directive, rule, or regulation issued there under and  
1039 which is not corrected or remedied within the time set in the written notice of the violation or, if  
1040 Contractor cannot reasonably correct or remedy the breach within the time set forth in such  
1041 notice, if Contractor should fail to commence to correct or remedy such violation within the  
1042 time set forth in such notice and diligently effect such correction or remedy thereafter.

1043 **I. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City  
1044 by Contractor in connection with or as an inducement to entering into this Agreement, or any  
1045 future amendment to this Agreement, which proves to be false or misleading in any material  
1046 respect as of the time such representation or disclosure is made, whether or not any such  
1047 representation or disclosure appears as part of this Agreement; and, any Contractor-provided  
1048 report containing a misstatement, misrepresentation, data manipulation, or an omission of fact  
1049 or content explicitly defined by the Agreement, excepting non-numerical typographical and  
1050 grammatical errors.

1051 **J. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of  
1052 Contractor's operating equipment, including without limits its equipment, maintenance or office  
1053 facilities, Approved Facility(ies), or any part thereof.

1054 **K. Suspension or Termination of Service.** There is any termination or suspension of the  
1055 transaction of business by Contractor related to this Agreement, including without limit, due to  
1056 labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other  
1057 concerted job action lasting more than two (2) calendar days.

1058 **L. Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal  
1059 activity related directly or indirectly to performance of this Agreement or any other agreement  
1060 held with the City.

1061 **M. Assignment without Approval.** Contractor transfers or assigns this Agreement without the  
1062 expressed written approval of the City unless the assignment is permitted without City approval  
1063 pursuant to Section 12.6.

1064 **N. Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a  
1065 proposal for new services or changes to services or fails to implement a change in service as  
1066 requested by the City as specified in Section 3.5.

1067 **O. Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under  
1068 this Agreement.

1069 City shall provide Contractor written notice of default within seven (7) calendar days of the City's first  
1070 knowledge of the Contractor's default.

## 1071 **10.2 RIGHT TO TERMINATE UPON EVENT OF DEFAULT**

1072 Contractor shall immediately address any default that, in the Agency Contract Manager's sole opinion,

1073 creates a potential public health and safety threat, and shall resolve such default as quickly as  
1074 reasonably feasible.

1075 Contractor shall be given ten (10) Business Days from written notification by City to cure any default  
1076 arising under subsections C, E, F, I, J, and K in Section 10.1 provided, however, that the City shall not be  
1077 obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the  
1078 same or similar breach/default within a twenty-four (24) month period.

1079 Contractor shall be given thirty (30) calendar days from written notification by City to cure any other  
1080 default (which is not required to be cured within ten (10) Business Days); however, that the City shall  
1081 not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has  
1082 committed the same or similar breach/default within a twenty-four (24) month period.

### 1083 **10.3 CITY'S REMEDIES IN THE EVENT OF DEFAULT**

1084 Upon Contractor's default, City has the following remedies in the event of Contractor default:

1085 **A. Waiver of Default.** City may waive any event of default or may waive Contractor's requirement  
1086 to cure a default event if City determines that such waiver would be in the best interest of the  
1087 City. City's waiver of an event of default is not a waiver of future events of default that may have  
1088 the same or similar conditions.

1089 **B. Suspension of Contractor's Obligation.** City may suspend Contractor's performance of its  
1090 obligations if Contractor fails to cure default in the time frame specified in Section 10.2 until  
1091 such time the Contractor can provide assurance of performance in accordance with Section  
1092 10.8.

1093 **C. Liquidated Damages.** City may assess Liquidated Damages for Contractor's failure to meet  
1094 specific performance standards pursuant to Section 10.6 and Exhibit F.

1095 **D. Termination.** In the event that Contractor should default and subject to the right of the  
1096 Contractor to cure, in the performance of any provisions of this contract, and the default is not  
1097 cured for any default within in ten (10) calendar days if the default creates a potential public  
1098 health and safety threat or arises under Section 10.1.C., E, F, I, J, or K, or otherwise thirty (30)  
1099 calendar days after receipt of written notice of default from the City, then the City may, at its  
1100 option, terminate this Agreement and/or hold a hearing at its City Council meeting to determine  
1101 whether this Agreement should be terminated. In the event City decides to terminate this  
1102 Agreement, the City shall serve twenty (20) calendar days written notice of its intention to  
1103 terminate upon Contractor. In the event City exercises its right to terminate this Agreement, the  
1104 City may, at its option, upon such termination, either directly undertake performance of the  
1105 services or arrange with other Persons to perform the services with or without a written  
1106 agreement. This right of termination is in addition to any other rights of City upon a failure of  
1107 Contractor to perform its obligations under this Agreement.

1108 Contractor shall not be entitled to any further revenues from Collection operations authorized  
1109 hereunder from and after the date of termination.

1110 **E. Other Available Remedies.** City's election of one (1) or remedies described herein shall not limit  
1111 the City from any and all other remedies at law and in equity including injunctive relief, etc.



1112 **10.4 POSSESSION OF RECORDS UPON TERMINATION**

1113 In the event of termination for an event of default, the Contractor shall furnish City Contract Manager  
1114 with immediate access to all of its business records, including without limitation, proprietary Contractor  
1115 computer systems, related to its Customers, Collection routes, and billing of accounts for Collection  
1116 services.

1117 **10.5 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

1118 City's rights to terminate the Agreement under Section 10.2 and to take possession of the Contractor's  
1119 records under Section 10.4 are not exclusive, and City's termination of the Agreement and/or the  
1120 imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall  
1121 be in addition to any and all other legal and equitable rights and remedies which City may have.

1122 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high quality service;  
1123 the lead time required to effect alternative service; and, the rights granted by City to the Contractor, the  
1124 remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to  
1125 injunctive relief (including but not limited to specific performance).

1126 **10.6 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES**

1127 **A. General.** The Parties find that as of the time of the execution of this Agreement, it is  
1128 impractical, if not impossible, to reasonably ascertain the extent of damages which shall be  
1129 incurred by City as a result of a breach by Contractor of its obligations under this Agreement.  
1130 The factors relating to the impracticability of ascertaining damages include, but are not limited  
1131 to, the fact that: (i) substantial damage results to members of the public who are denied  
1132 services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety,  
1133 frustration, and deprivation of the benefits of the Agreement to individual members of the  
1134 general public for whose benefit this Agreement exists, in subjective ways and in varying  
1135 degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that  
1136 exclusive services might be available at substantially lower costs than alternative services and  
1137 the monetary loss resulting from denial of services or denial of quality or reliable services is  
1138 impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement  
1139 for such breaches, and other remedies are, at best, a means of future correction and not  
1140 remedies which make the public whole for past breaches.

1141 **B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The  
1142 Parties further acknowledge that consistent, reliable Collection services are of utmost  
1143 importance to City and that City has considered and relied on Contractor's representations as to  
1144 its quality of service commitment in awarding the Agreement to it. The Parties recognize that  
1145 some quantified standards of performance are necessary and appropriate to ensure consistent  
1146 and reliable service and performance. The Parties further recognize that if Contractor fails to  
1147 achieve the performance standards, or fails to submit required documents in a timely manner,  
1148 City and its residents and businesses will suffer damages, and that it is, and will be, impractical  
1149 and extremely difficult to ascertain and determine the exact amount of damages which City will  
1150 suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of  
1151 default under this Section, the Parties agree that the Liquidated Damages amounts established  
1152 in Exhibit F of this Agreement and the Liquidated Damage amounts therein represent a

1153 reasonable estimate of the amount of such damages considering all of the circumstances  
1154 existing on the Effective Date of this Agreement, including the relationship of the sums to the  
1155 range of harm to City that reasonably could be anticipated and the anticipation that proof of  
1156 actual damages would be costly or impractical.

1157 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in  
1158 the Performance Standards and Liquidated Damages, Exhibit F.

1159 Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so.  
1160 The notice will include a brief description of the incident(s) and non-performance. City may  
1161 review (and make copies at its own expense) all information in the possession of Contractor  
1162 relating to incident(s) and/or non-performance. City may, within ten (10) Business Days after  
1163 issuing the notice, request a meeting with Contractor. City may present evidence of non-  
1164 performance in writing and through testimony of its employees and others relevant to the  
1165 incident(s) and non-performance. City Contract Manager will provide Contractor with a written  
1166 explanation of their determination on each incident(s) and non-performance prior to  
1167 authorizing the assessment of Liquidated Damages under this Section 10.6. The decision of City  
1168 Contract Manager shall be final and Contractor shall not be subject to, or required to exhaust,  
1169 any further administrative remedies.

1170 **C. Two-Phase Performance Management.** The Parties desire to minimize the time and cost  
1171 involved in monitoring Contractor's performance under this Agreement, particularly with regard  
1172 to the assessment of Liquidated Damages. Exhibit F to this Agreement identifies each  
1173 "Performance Area" for which the City desires to establish performance standards for this  
1174 Agreement. Contractor's performance within each "Performance Area" shall be primarily  
1175 monitored using the "Performance Indicator" described for each. The City shall not assess  
1176 Liquidated Damages for the "Specific Performance Measures" identified in Exhibit F unless  
1177 Contractor fails to meet the minimum standard for the "Performance Indicator" within the same  
1178 "Performance Area".

1179 **D. Amount.** City may assess Liquidated Damages for each calendar day or event, as appropriate,  
1180 that Contractor is determined to be liable in accordance with this Agreement in the amounts  
1181 specified in Exhibit F subject to annual adjustment described below.

1182 **E. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within ten  
1183 (10) Business Days of the date the Liquidated Damages are assessed. If they are not paid within  
1184 the ten (10) Business Day period, City may proceed against the performance bond required by  
1185 the Agreement, order the termination of the rights or "franchise" granted by this Agreement, or  
1186 all of the above.

## 1187 **10.7 EXCUSE FROM PERFORMANCE**

1188 The Parties shall be excused from performing their respective obligations hereunder and from any  
1189 obligation to pay Liquidated Damages if they are prevented from so performing by reason of floods,  
1190 earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial  
1191 action), and other similar catastrophic events which are beyond the control of and not the fault of the  
1192 Party claiming excuse from performance hereunder. In the case of labor unrest or job action directed at  
1193 a third party over whom Contractor has no control, the inability of Contractor to provide services in

1194 accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide  
1195 reasonable assurance of the safety of Contractor's employees while providing such services; or, (ii) make  
1196 reasonable accommodations with respect to Container placement and point of Delivery, time of  
1197 Collection, or other operating circumstances to minimize any confrontation with pickets or the number  
1198 of Persons necessary to make Collections shall, to that limited extent, excuse performance. The  
1199 foregoing excuse shall be conditioned on Contractor's cooperation in performing Collection services at  
1200 different times and in different locations. Further, in the event of labor unrest, including but not limited  
1201 to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by  
1202 the Contractor's employees or directed at the Contractor, or a subsidiary, the Contractor shall not be  
1203 excused from performance. In such case, Contractor shall continue to provide a reasonably satisfactory  
1204 level of performance during the pendency thereof, but the Contractor shall not be required to adhere  
1205 strictly to the specific requirements of this Agreement regarding routes, Collection times or similar  
1206 matters; provided, however, that in no event shall more than seven (7) calendar days elapse between  
1207 pickups for Residential and Commercial Customers.

1208 The Party claiming excuse from performance shall, within two (2) calendar days after such Party has  
1209 notice of such cause, give the other Party notice of the facts constituting such cause and asserting its  
1210 claim to excuse under this Section.

1211 If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against  
1212 each other for any damages sustained thereby.

1213 The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or  
1214 more of the events described in this Article shall not constitute a default by Contractor under this  
1215 Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its  
1216 obligations hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days  
1217 or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by  
1218 giving ten (10) Business Days' notice to Contractor, in which case the provisions of Section 10.4 shall  
1219 apply.

## 1220 **10.8 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

1221 The Parties acknowledge that it is of the utmost importance to City and the health and safety of all those  
1222 members of the public residing or doing business within Pacific Grove who will be adversely affected by  
1223 interrupted waste management service, that there be no material interruption in services provided  
1224 under this Agreement.

1225 If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out,  
1226 picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to  
1227 regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order  
1228 entered by a Federal, State, regional or local agency for violation of an Applicable Law, and City believes  
1229 in good faith that Contractor's ability to perform under the Agreement has thereby been placed in  
1230 substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have,  
1231 demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in  
1232 such form and substance as City believes in good faith is reasonably necessary in the circumstances to  
1233 evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide  
1234 satisfactory assurances of timely and proper performance in the form and by the date required by City,  
1235 such failure or refusal shall be an event of default for purposes of Section 10.1.

1236 **ARTICLE 11.**  
1237 **REPRESENTATIONS AND WARRANTIES OF**  
1238 **THE PARTIES**

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1239 The Parties, by acceptance of this Agreement, represents and warrants the conditions presented in this  
1240 Article.

1241 **11.1 CONTRACTOR'S CORPORATE STATUS**

1242 Contractor is a corporation duly organized, validly existing and in good standing under the laws of the  
1243 State. It is qualified to transact business in the State and has the power to own its properties and to  
1244 carry on its business as now owned and operated and as required by this Agreement.

1245 **11.2 CONTRACTOR'S CORPORATE AUTHORIZATION**

1246 Contractor has the authority to enter this Agreement and perform its obligations under this Agreement.  
1247 The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by  
1248 law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.  
1249 The Person signing this Agreement on behalf of Contractor represents and warrants that they have  
1250 authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

1251 **11.3 AGREEMENT WILL NOT CAUSE BREACH**

1252 To the best of Contractor's and City's knowledge after reasonable investigation, the execution or  
1253 delivery of this Agreement or the performance by either Party of their obligations hereunder does not  
1254 conflict with, violate, or result in a breach: (i) of any Applicable Law; or, (ii) any term or condition of any  
1255 judgment, order, or decree of any court, administrative agency or other governmental authority, or any  
1256 agreement or instrument to which Contractor or City is a party or by which Contractor or any of its  
1257 properties or assets are bound, or constitutes a default hereunder.

1258 **11.4 NO LITIGATION**

1259 To the best of Contractor's and City's knowledge after reasonable investigation, there is no action, suit,  
1260 proceeding or investigation, at law or in equity, before or by any court or governmental authority,  
1261 commission, board, agency or instrumentality decided, pending or threatened against either Party  
1262 wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

- 1263 A. Materially adversely affect the performance by Party of its obligations hereunder;
- 1264 B. Adversely affect the validity or enforceability of this Agreement; or,
- 1265 C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity  
1266 guaranteeing Contractor's performance under this Agreement.

1267 **11.5 NO ADVERSE JUDICIAL DECISIONS**

1268 To the best of Contractor's and City's knowledge after reasonable investigation, there is no judicial  
1269 decision that would prohibit this Agreement or subject this Agreement to legal challenge.

1270 **11.6 NO LEGAL PROHIBITION**

1271 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in  
1272 effect on the date that Party signed this Agreement that would prohibit the performance of either their  
1273 obligations under this Agreement and the transactions contemplated hereby.

1274 **11.7 CONTRACTOR'S ABILITY TO PERFORM**

1275 Contractor possesses the business, professional, and technical expertise to perform all services,  
1276 obligations, and duties as described in and required by this Agreement including all Exhibits thereto.  
1277 Contractor possesses the ability to secure equipment, facility, and employee resources required to  
1278 perform its obligations under this Agreement.

1279 **ARTICLE 12.**  
1280 **OTHER AGREEMENTS OF THE PARTIES**

---

1281 **12.1 RELATIONSHIP OF PARTIES**

1282 The Parties intend that Contractor shall perform the services required by this Agreement as an  
1283 independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner  
1284 or agent of, or joint venturer with, City. No employee or agent of Contractor shall be, or shall be deemed  
1285 to be, an employee or agent of City. Contractor shall have the exclusive control over the manner and  
1286 means of performing services under this Agreement, except as expressly provided herein. Contractor  
1287 shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors and  
1288 agents. Neither Contractor nor its officers, employees, Subcontractors, and/or agents shall obtain any  
1289 rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City  
1290 employees by virtue of their employment with City.

1291 **12.2 COMPLIANCE WITH LAW**

1292 Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the  
1293 United States, the State, County of Monterey, and City and with all applicable regulations promulgated  
1294 by Federal, State, regional or local administrative and regulatory agencies, now in force and as they may  
1295 be enacted, issued or amended during the Term.

1296 **12.3 GOVERNING LAW**

1297 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of  
1298 California.

1299 **12.4 JURISDICTION**

1300 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the  
1301 courts of Monterey County in the State of California, which shall have exclusive jurisdiction over such  
1302 lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed  
1303 in Monterey County.

1304 **12.5 BINDING ON SUCCESSORS**

1305 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and  
1306 permitted assigns of the Parties.

1307 **12.6 ASSIGNMENT**

1308 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this  
1309 Agreement to any other Person without the prior written consent of the other Party. Any such  
1310 assignment made without the consent of the other Party shall be void and the attempted assignment  
1311 shall constitute a material breach of this Agreement.

1312 For purposes of this Section, "assignment" shall include, but not be limited to: (i) a sale, exchange or  
1313 other transfer of substantially all of Contractor's local, regional, and/or corporate assets dedicated to  
1314 service under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten (10) percent  
1315 or more of the local, regional, and/or corporate assets, stock, or ownership of Contractor to a Person  
1316 (other than a transfer of shares in Contractor by the owner of such shares to a revocable trust for the  
1317 benefit of his family or to another owner of shares in Contractor) except that no cumulative sale,  
1318 exchange, or transfer of shares may exceed twenty (20) percent during the Term of the Agreement  
1319 (other than a transfer of shares in Contractor by the owner of such shares to a revocable trust for the  
1320 benefit of his family or to another owner of shares in Contractor); (iii) any reorganization, consolidation,  
1321 merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow  
1322 arrangement, liquidation or other transaction to which Contractor or any of its shareholders is a party  
1323 which results in a change of ownership or control of ten (10) percent or more of the value or voting  
1324 rights in the local, regional, and/or corporate stock of Contractor; (iv) divestiture of an Affiliate (e.g.,  
1325 trucking company, materials recovery facility, transfer station, etc.) used by Contractor to fulfill its  
1326 obligations under this Agreement; and, (v) any combination of the foregoing (whether or not in related  
1327 or contemporaneous transactions) which has the effect of any such transfer or change of local, regional,  
1328 and/or corporate ownership and/or control of Contractor. For purposes of this Section, the term  
1329 "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant  
1330 to the assignment.

1331 Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and  
1332 businesses, and that City has selected Contractor to perform the services specified herein based on: (i)  
1333 Contractor's experience, skill, and reputation for conducting its Solid Waste, Recyclables, and Organics  
1334 management operations in a safe, effective, and responsible fashion, at all times in keeping with  
1335 applicable waste management laws, regulations, and good waste management practices; and, (ii)  
1336 Contractor's financial resources on a local, regional, and/or corporate level to maintain the required  
1337 equipment and to support its indemnity obligations to City under this Agreement. City has relied on  
1338 each of these factors, among others, in choosing Contractor to perform the services to be rendered by  
1339 Contractor under this Agreement.

1340 If Contractor requests City's consideration of and consent to an assignment, City may deny or approve  
1341 such request in its complete discretion. No request by Contractor for consent to an assignment need be  
1342 considered by City unless and until Contractor has met the following requirements. The City may, in its  
1343 sole discretion, waive one (1) or more of these requirements.

1344 A. On the date the Contractor submits a written request for the City's written consent of an

1345 assignment, Contractor shall pay the City a transfer fee in the amount of one (1) percent of the  
1346 Gross Receipts for the most-recently completed Rate Period.

1347 B. Contractor shall undertake to pay City its reasonable expenses for attorneys', consultants',  
1348 accountants' fees, staff time, and investigation costs necessary to investigate the suitability of  
1349 any proposed assignee, and to review and finalize any documentation required as a condition  
1350 for approving any such assignment.

1351 C. Contractor shall furnish City with audited financial statements of the proposed assignee's  
1352 operations for the immediately preceding three (3) operating years.

1353 D. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least  
1354 ten (10) years of Solid Waste, Recyclable Materials, and Organic Materials management  
1355 experience on a scale equal to or exceeding the scale of operations conducted by Contractor  
1356 under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered  
1357 any citations or other censure from any Federal, State or local contractor having jurisdiction  
1358 over its waste management operations due to any significant failure to comply with State,  
1359 Federal or local waste management laws and that the assignee has provided the City with a  
1360 complete list of such citations and censures; (iii) that the proposed assignee has at all times  
1361 conducted its operations in an environmentally safe and conscientious fashion; (iv) that the  
1362 proposed assignee conducts its operations and management practices in accordance with sound  
1363 waste management practices in full compliance with all Federal, State, and local laws regulating  
1364 the Collection, Transportation, Processing and Disposal of Solid Waste, Recyclable Materials, and  
1365 Organic Materials, including Hazardous Waste; and, (v) that any other information required by  
1366 City demonstrates that the proposed assignee can fulfill the terms of this Agreement in a timely,  
1367 safe and effective manner.

1368 E. Contractor shall provide the City with any and all additional records or documentation which, in  
1369 the City Contract Manager's sole determination, would facilitate the review of the proposed  
1370 assignment.

1371 Under no circumstances shall any proposed assignment be considered by City if Contractor is in default  
1372 at any time during the period of consideration. If, in the City's sole determination, there is any doubt  
1373 regarding the compliance of the Contractor with the Agreement, City may require an audit of the  
1374 Contractor's compliance and the costs of such audit shall be paid by Contractor in advance of the  
1375 performance of said audit.

## 1376 **12.7 NO THIRD PARTY BENEFICIARIES**

1377 This Agreement is not intended to, and will not be construed to, create any right on the part of any third  
1378 party to bring an action to enforce any of its terms.

## 1379 **12.8 WAIVER**

1380 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be  
1381 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach  
1382 of violation of the same or any other provision. The subsequent acceptance by either Party of any  
1383 monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or  
1384 concurrent breach or violation by the other Party of any provision of this Agreement.

1385 **12.9 NOTICE PROCEDURES**

1386 All notices, demands, requests, proposals, approvals, consents, and other communications, which this  
1387 Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally  
1388 delivered to a representative of the Parties at the address below or deposited in the United States mail,  
1389 first class postage prepaid, addressed as follows:

1390 If to City:

1391 City Manager  
1392 City of Pacific Grove  
1393 300 Forest Avenue  
1394 Pacific Grove, CA 93950

1395 If to Contractor:

1396 \_\_\_\_\_  
1397 \_\_\_\_\_  
1398 \_\_\_\_\_  
1399 \_\_\_\_\_

1400 The address to which communications may be delivered may be changed from time to time by a notice  
1401 given in accordance with this Section. Notice shall be deemed given on the day it is personally delivered  
1402 or, if mailed, three (3) calendar days from the date it is deposited in the mail.

1403 **12.10 REPRESENTATIVES OF THE PARTIES**

1404 References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken  
1405 by City except as provided below. The City may delegate, in writing, authority to the City Contract  
1406 Manager and/or to other City officials and may permit such officials, in turn, to delegate in writing some  
1407 or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such  
1408 delegates if they are within the scope of the authority properly delegated to them.

1409 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as  
1410 the representative of the Contractor in all matters related to the Agreement and shall inform City in  
1411 writing of such designation and of any limitations upon his or her authority to bind the Contractor. City  
1412 may rely upon action taken by such designated representative as actions of the Contractor unless they  
1413 are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

1414 **ARTICLE 13.**  
1415 **MISCELLANEOUS AGREEMENTS**

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1416 **13.1 ENTIRE AGREEMENT**

1417 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof  
1418 and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party  
1419 has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be  
1420 construed against any Party on the basis of drafting. This Agreement may be amended only by an



1421 agreement in writing, signed by each of the Parties hereto.

1422 **13.2 SECTION HEADINGS**

1423 The article headings and section headings in this Agreement are for convenience of reference only and  
1424 are not intended to be used in the construction of this Agreement nor to alter or affect any of its  
1425 provisions.

1426 **13.3 REFERENCES TO LAWS**

1427 All references in this Agreement to laws and regulations shall be understood to include such laws as  
1428 they may be subsequently amended or recodified, unless otherwise specifically provided herein.

1429 **13.4 AMENDMENTS**

1430 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

1431 **13.5 SEVERABILITY**

1432 If any non-material provision of this Agreement is for any reason deemed to be invalid and  
1433 unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining  
1434 provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had  
1435 not been contained herein.

1436 **13.6 COUNTERPARTS**

1437 This Agreement may be executed in counterparts, each of which shall be considered an original.

1438 **13.7 EXHIBITS**

1439 Each of the Exhibits identified as Exhibit "A" through "I" is attached hereto and incorporated herein and  
1440 made a part hereof by this reference. In the event of a conflict between the terms of this Agreement  
1441 and the terms of an Exhibit, the terms of this Agreement shall control. In the event of a conflict between  
1442 Exhibit G1 and any other Exhibit(s), such other Exhibit(s) shall control.

1443

1444 IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto in Pacific Grove, California  
1445 on the day and year first above written.

1446 CITY OF PACIFIC GROVE

GREENWASTE RECOVERY, INC.

1447 BY: \_\_\_\_\_

BY: \_\_\_\_\_

1448 ITS:City Manager

ITS: Chief Operating Officer

1449 DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

1450

1451 APPROVED AS TO FORM

1452 BY: \_\_\_\_\_

1453 City Attorney

## **EXHIBIT A: DEFINITIONS**

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## EXHIBIT A DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Exhibit and shall be capitalized throughout this Agreement:

**“Abandoned Solid Waste”** means Solid Waste, Recyclable Materials, Organic Materials, C&D, Excluded Waste, Bulky Items, or other materials which have been abandoned, littered, or illegally dumped in the public right of way or on public or City property.

**“AB 341 Eligible Customer”** means Commercial Customers and/or Multi-Family Customers who are required by AB 341 to participate in a recycling program.

**“Act”** means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

**“Agreement”** means this Agreement between City and Contractor, including all exhibits, and any future amendments hereto.

**“Applicable Law”** means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, and Processing of Solid Waste, Recyclable Materials, Organic Materials, and C&D that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement.

**“Approved C&D Processing Facility”** means the Monterey Regional Waste Management District MRF at 14201 Del Monte Blvd, Marina, CA 93933, which is owned and operated by the MRWMD.

**“Approved Disposal Facility”** means the Monterey Regional Waste Management District Landfill at 14201 Del Monte Blvd, Marina, CA 93933, which is owned and operated by the MRWMD. The Approved Disposal Facility shall serve as the Disposal site for all Solid Waste Collected by Contractor.

**“Approved Facility(ies)”** means any one of or any combination of the: Approved C&D Processing Facility; Approved Disposal Facility; Approved Organic Materials Processing Facility; Approved Recyclable Materials Processing Facility; and/or, Approved Reusable Materials Processing Facility.

**“Approved Mixed Waste Processing Facility”** means the Monterey Regional Waste Management District Material Recovery Facility at 14201 Del Monte Blvd, Marina, CA 93933, which is owned and operated by the MRWMD. The Approved Mixed Waste Processing Facility shall serve as the Mixed Waste Processing site for all Solid Waste Collected by Contractor.

**“Approved Organic Materials Processing Facility”** means the Monterey Regional Waste Management District Compost Facility at 14201 Del Monte Blvd, Marina, CA 93933, which is owned by the MRWMD.

## EXHIBIT A DEFINITIONS

**“Approved Recyclable Materials Processing Facility”** means the GreenWaste Recovery Materials Recovery Facility located at 625 Charles Street, San Jose, CA, which is owned and operated by Contractor.

**“Approved Reusable Materials Processing Facility”** means the Monterey Regional Waste Management District Last Chance Mercantile, at 14201 Del Monte Blvd, Marina, CA 93933, which is owned and operated by the MRWMD.

**“Bin”** means a Container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection vehicle.

**“Bulky Item”** means discarded Appliances, furniture, tires, carpets, mattresses, and similar large items that require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned automobiles, large auto parts, or trees.

**“Business Days”** mean days during which the City offices are open to do business with the public.

**“C&D”** means Construction and Demolition Debris.

**“Cart”** means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 32, 64 or 96 gallons (or similar volumes).

**“Change in Law”** means any of the following events or conditions that has a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or,
- b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

**“City”** means the City of Pacific Grove, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the Term.

## EXHIBIT A DEFINITIONS

**“City Contract Manager”** means the City’s Public Works Director who is responsible for the administrative management of this Agreement.

**“Collect or Collection (or any variation thereof)”** means the act of collecting Solid Waste, Recyclable Materials, Organic Materials, C&D, Bulky Items, and other material at the place of generation in City.

**“Commencement Date”** means the date specified in Section 2.1 when Collection, Transportation, Processing, and Composting services required by this Agreement shall be provided.

**“Commercial”** shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

**“Compactor”** means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ten (10) to fifty (50) cubic yard Drop Box Compactors serviced by roll-off Collection vehicles.

**“Composting or Compost (or any variation thereof)”** includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free compost product.

**“Construction and Demolition Debris (C&D)”** includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Waste.

**“Container(s)”** mean Bins, Carts, Compactors, and Drop Boxes.

**“Contractor”** means Contractor organized and operating under the laws of the State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and Subcontractors.

**“Contractor’s Compensation”** means the monetary compensation received by Contractor in return for providing services in accordance with this Agreement as described in Article 8.

**“Contractor’s Proposal”** means the proposal submitted to City by Contractor on September 13, 2013 for provision of Solid Waste, Recyclables, and Compostable Materials services and certain supplemental written materials, which are included as Exhibit G to this Agreement and are incorporated by reference.

**“Curb or Curbside (or any variation thereof)”** means the location of a Collection Container for pick-up, where such Container is placed on the street or alley against the face of the Curb, or where no Curb

## EXHIBIT A DEFINITIONS

exists, the Container is placed not more than five (5) feet from the outside edge of the street or alley nearest the property's entrance.

**"Customer"** means the Person whom Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises.

**"Customer Type"** means the Customer's sector category including, but not limited to, Single-Family, Multi-Family, Commercial, C&D, Drop Box, and City.

**"Designated Waste"** means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

**"Discarded Materials"** means Solid Waste, Recyclable Materials, Organic Materials, and C&D placed by a Generator in a receptacle and/or at a location for the purposes of Collection by Contractor, excluding Excluded Waste.

**"Disposal or Dispose (or any variation thereof)"** means the final disposition of Solid Waste at a Disposal site. Disposal does not include the use of Organic Materials as ADC so long as County and State regulations consider ADC use of Organic Materials as Diversion under the Act.

**"Disposal Facility"** means a facility for ultimate Disposal of Solid Waste.

**"Diversion (or any variation thereof)"** means activities which reduce or eliminate the amount of Solid Waste to be Disposed including, but not limited to, Recycling, and Composting.

**"Drop Box"** means an open-top Container with a capacity of ten (10) to forty (40) cubic yards that is serviced by a roll-off Collection vehicle.

**"Effective Date"** means the date on which the latter of the two Parties signs this Agreement.

**"Excluded Waste"** means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for



## EXHIBIT A DEFINITIONS

the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

**“Exclusive Right”** is the right and privilege granted by City to Contractor to be the only Franchisee that Collects, Transports, and Processes Solid Waste, Recyclable Materials, Organic Materials, and Construction & Demolition Debris (C&D) in a specified geographic area.

**“E-Waste”** means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous Substances and thus require special handling, Processing, or Disposal.

**“Federal”** means belonging to or pertaining to the Federal government of the United States.

**“Food Scraps”** means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) discarded paper that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v) non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

**“Franchise Fee”** means the fee paid by Contractor to City for the privilege to hold the rights granted by this Agreement.

**“Generator”** means any Person whose act or process produces Solid Waste, Recyclable Materials, Organic Materials, or C&D as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

**“Gross Receipts”** shall mean total cash receipts collected from Customers by the Contractor for the provision of services pursuant to this Agreement, without any deductions. Gross Receipts do not include revenues from the sale of Recyclable Materials.

**“Hazardous Substance”** means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" 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 (CERCLA) 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, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous

## EXHIBIT A DEFINITIONS

or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

**"Hazardous Waste"** means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State 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 U.S. 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.

**"Holidays"** are defined as New Year's Day, Independence Day, Thanksgiving Day, and Christmas Day.

**"Household Hazardous Waste" or "HHW"** means Hazardous Waste generated at Residential Premises within the City. HHW includes: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, Used Motor Oil, Used Oil Filter, batteries, household batteries, fluorescent bulbs , tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

**"Infectious Waste"** means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

**"Liquidated Damages"** means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 10.6 and Exhibit F.

**"Mixed C&D"** means C&D materials which have not been Source Separated into homogeneous material streams of like materials and which require sorting and Processing prior to Recycling.

**"Mixed Waste Processing"** means the Processing of Solid Waste Collected by Contractor and delivered to the Approved Mixed Waste Processing Facility for the purpose of recovering Recyclable Materials, Reusable Materials, and/or Organic Materials prior to Disposal.

**"MRWMD"** shall mean the Monterey Regional Waste Management District, its Board of Directors, staff, and/or agents.

**"Multi-Family"** means any Residential Premises, other than a Single-Family Premises, with five (5) or more dwelling units used for Residential purposes (regardless of whether residence therein is temporary or permanent) that receive centralized Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address.

**"Occupant"** means the Person who occupies a Premises.

## EXHIBIT A DEFINITIONS

**“Organic Materials”** means those Yard Trimmings and Food Scraps which are specifically accepted at the Approved Organic Materials Processing Facility. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Solid Waste and Recyclable Material.

**“Owner”** means the Person(s) holding legal title to real property and/or any improvements thereon, and shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.

**“Party or Parties”** refers to the City and Contractor, individually or together.

**“Person(s)”** means any individual, firm, association, organization, partnership, corporation, trust, joint venture, or public entity.

**“Personal Recycling Bin”** or **“PRB”** refers to a small easily portable Container with a capacity of at least three (3) gallons to be included by Contractor in the Multi-Family Move-in kit to facilitate convenient accumulation of Recyclable Materials within a Multi-Family dwelling unit.

**“Premises”** means any land or building in the City where Solid Waste, Recyclable Materials, Organic Materials, or C&D are generated or accumulated.

**“Processing”** means to prepare, treat, or convert through some special method.

**“Processing Facility”** means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials, Reusable Materials, or C&D for the purpose of making such material available for Recycling or reuse or the facility for the Processing and/or Composting of Organic Materials.

**“Rate”** means the maximum amount, expressed as a dollar unit, approved by the City that the Contractor may bill a Customer for providing services under this Agreement. A Rate has been established for each individual Service Level and the initial Rates for Rate Period One are presented in Exhibit G3. The Rates approved by City are the maximum Rate that Contractor may charge a Customer and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate approved by the City.

**“Rate Period”** means a twelve (12) month period, commencing July 1 and concluding June 30.

**“Recyclable Materials”** means those Discarded Materials that: the Generators set out in Recyclables Containers for Collection for the purpose of Recycling by the Contractor that are at least ninety percent (90%) Recyclable and that exclude Excluded Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Solid Waste, Organic Materials, and C&D. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal, and other

## EXHIBIT A DEFINITIONS

similar food boxes yet excluding paper tissues, paper towels, paper with plastic coating, paper contaminated with food, wax paper, foil-line paper, Tyvex non-tearing paper envelopes); chipboard; corrugated cardboard; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin or bi-metal cans; mixed plastics such as plastic containers (no. 1 to 7); and, bottles including containers made of HDPE, LDPE, or PET.

**“Recycle or Recycling”** means the process of sorting, cleansing, treating, and reconstituting at a Recyclable Materials Processing Facility materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products.

**“Residential”** shall mean of, from, or pertaining to a Single-Family Premises or Multi-Family Premises including Single-Family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

**“Residue”** means those materials which, after Processing, are Disposed rather than Recycled due to either the lack of markets for materials or the inability of the Processing Facility to capture and recover the materials.

**“Reusable Materials”** means items that are capable of being used again after minimal Processing. Reusable Materials may be Collected Source Separated or recovered through a Processing Facility.

**“Service Level”** refers to the size of a Customer’s Container and the frequency of Collection service.

**“Single-Family”** means, notwithstanding any contrary definition in City Code, any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the Owner or Occupant of such independent unit is billed directly for the Collection service. Single-Family includes Residential units of a duplex, tri-plex, or four-plex Residential structure provided that each unit is separately billed for their specific service level.

**“Solid Waste”** means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Solid Waste Container.

## EXHIBIT A DEFINITIONS

**“Source Separated”** means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

**“Specialty Recyclable Material”** means material not specified in this Agreement that can be or will be Collected for purposes of Recycling. Such Specialty Recyclable Material may include, but is not limited to, scrap metal, high-grade paper (including office mixed paper), pallets, and plastic film.

**“State”** means the State of California.

**“Subcontractor”** means a Party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to Contractor shall not be considered Subcontractors.

**“Term”** means the Term of this Agreement, including extension periods if granted, as provided for in Article 2.

**“Ton” or “Tonnage”** means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

**“Transportation”** means the act of transporting or state of being transported.

**“Used Motor Oil and Filter”** means motor oil and the subsequent oil filter that has been used in a vehicle and cannot be reused.

**“Used Oil Recovery Kit”** means a kit containing: one (1) reusable plastic jug of at least one (1) gallon capacity with a watertight screw-on top to contain Used Motor Oil; one (1) plastic disposable resealable bag of sufficient capacity to accommodate one (1) Used Motor Oil Filter; and, a flyer, brochure, or other informational media approved by the City intended to educate Customers about the Used Motor Oil and Filter Collection program and the benefits resulting from the proper handling of Used Motor Oil and Filters. The Used Oil Recovery Kit is to be provided to Customers by Contractor to recover Used Motor Oil and Filters from Single-Family residents.

**“Universal Waste (U-Waste)”** means all wastes as defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and E-Waste.

**“Yard Trimmings”** means those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container.

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**EXHIBIT B:  
DIRECT SERVICES**

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## **EXHIBIT B DIRECT SERVICES**

The following Exhibits (B1 through B5) describe the programs which, in aggregate, represent the direct services to be performed under this Agreement by the Contractor.

Each of the following Exhibits (B1 through B5) present the programs to be provided to each Customer Type by Contractor. Within each program description are specific requirements for the:

- Type and size of Containers or Service Level to be offered by Contractor under each program;
- Frequency of service to be offered by Contractor to Customers;
- Location of service, including an indication of whether or not additional charges may apply if a Customer selects a location that is more costly to serve (e.g. back-yard service);
- Materials that are acceptable or prohibited within the program;
- Provision of additional services to the Customer if the standard Service Levels are inadequate, either on a regular or periodic basis, and an indication of whether or not additional charges may apply; and/or,
- Other requirements and considerations of the program.

Contractor shall provide the services for each program described in accordance with the specific program requirements detailed in Exhibits B1 through B5 and Contractor shall promote such programs using the public education and outreach methods described in Exhibit C.

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**EXHIBIT B1:  
DIRECT SERVICES  
SINGLE-FAMILY RESIDENTIAL SERVICES**

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## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

#### **1. Solid Waste Collection**

Contractor shall Collect Solid Waste in Contractor-provided Carts one (1) time per week from Single-Family Customers and Transport all Solid Waste to the Approved Disposal Facility for Disposal.

- Containers:** Carts
- Container Sizes:** 32-, 64-, and 96-gallons or comparable sizes (as requested by Customer)
- Service Frequency:** One (1) time per week
- Service Location:** Contractor shall provide two (2) direction side/back-yard Solid Waste Collection service to Single-Family Customers upon request for an additional monthly fee.
- Acceptable Materials:** Solid Waste
- Prohibited Materials:** Recyclable Materials, Yard Trimmings, Excluded Waste
- Additional Service:** Contractor shall provide additional Solid Waste Carts to Single-Family Customers upon request and may charge the "Additional Solid Waste Cart" Monthly Service Rate approved by the City.

Contractor shall provide for Collection of up to ten (10) additional bags of Solid Waste from each Customer annually at no additional charge. Solid Waste must be placed in black or grey bags and placed next to their Solid Waste container for Collection. Single-family Customers will not be required to contact Customer Service for pick-up. During the first year and on an annual basis thereafter, Contractor shall distribute to each Single-Family Customer ten (10) Solid Waste Collection stickers. Single-Family Customers may purchase additional Solid Waste Collection stickers in multiples of 10 by contacting Customer Service. Each additional Solid Waste Collection sticker will be charged at a rate equal to the weekly collection rate of a single 32-gallon container (monthly rate divided by four). Customers may also place a standing order on their account for collection of additional Solid Waste each bag collected will charged at a rate equal to the weekly collection rate of a single 32-gallon container (monthly rate divided by four).

**Other Requirements:** None

#### **2. Recyclable Materials Collection**

Contractor shall Collect Recyclable Materials in Contractor-provided Containers one (1) time per week from Single-Family Customers and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

- Containers:** Carts
- Container Sizes:** 64- and 96-gallons or comparable sizes. Standard container size is 64-gallon Carts. 96-gallon carts will be made available, upon request by Customer.
- Service Frequency:** One (1) time per week on the same day Solid Waste is collected.

## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

- Service Location:** Contractor shall provide two (2) direction side/back-yard Solid Waste Collection service to Single-Family Customers upon request for an additional monthly fee.
- Acceptable Materials:** Recyclable Materials
- Prohibited Materials:** Solid Waste, Organic Materials, Excluded Waste
- Additional Service:** Single-Family Customers shall receive one (1) Recyclable Materials Cart as standard. Contractor shall provide additional Recyclable Materials Carts to Single-Family Customers upon request and may charge the “Additional Recycling Cart” Monthly Rental Rate approved by the City.
- Contractor shall establish an “overages” program that allows Single-Family Customers to place additional mixed Recyclable Materials Curbside (in Customer-provided clear plastic bags) or cardboard (tied and bundled no larger than 3’ x 3’) adjacent to the Recyclable Materials Cart on their regularly-scheduled Collection day at no additional charge to the Customer.
- Other Requirements:** Contractor shall accept household batteries in the Recyclable Materials program, provided that those batteries have been separately packaged in a sealed, clear plastic bag.
- Contractor may assess a “contamination fee” per event for Customers who have repeatedly (no less than three times in a calendar year) placed more than ten percent (10%) by volume of prohibited materials in their Recyclable Materials Container. Prior to assessing such contamination fee, Contractor must provide targeted education (e.g. through the use of a tag on the Container) no less than three times to that specific Customer. Such education shall, at a minimum, notify the Customer of the specific materials that have been incorrectly placed and inform the Customer as to which Container the materials should be placed. Upon assessment of the contamination fee, Contractor shall document the presence of prohibited items through photographic record and make such documentation available to the Customer and/or City Contract Manager, upon request.

### **3. Yard Trimming Materials Collection**

Contractor shall Collect Yard Trimming Materials in Contractor-provided Carts one (1) time per week from Single-Family Customers and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing.

- Containers:** Carts
- Container Sizes:** 64-, and 96-gallons or comparable sizes. Standard container size is 96-gallon Carts. 64-gallon carts will be made available, upon request by Customer.
- Service Frequency:** One (1) time per week on the same day Solid Waste is collected.
- Service Location:** Contractor shall provide two (2) direction side/back-yard Solid Waste Collection service to Single-Family Customers upon request for an additional monthly fee.
- Acceptable Materials:** Yard Trimmings
- Prohibited Materials:** Solid Waste, Recyclable Materials, Food Waste, Excluded Waste

## EXHIBIT B1

### SINGLE-FAMILY RESIDENTIAL SERVICES

**Additional Service:** Single-Family Customers shall receive one (1) Yard Trimmings Cart standard. Contractor shall provide additional Yard Trimmings Carts to Single-Family Customers upon request and may charge the “Additional Yard Trimming Cart” Monthly Service Rate equivalent to fifty (50%) of the Solid Waste monthly Service Rate gallon equivalent.

Contractor shall provide for Collection of up to ten (10) additional Customer-provided cans or tied and secured bundles of Yard Trimmings from each Customer annually at no additional charge. Single-family Customers will not be required to contact Customer Service for pick-up. During the first year of this Agreement and on an annual basis thereafter, Contractor shall distribute to each Single-Family Customer 10 Yard Trimming Collection stickers. Single-Family Customers may purchase additional Yard Trimming stickers in multiples of 10 by contacting Customer Service. Each additional Yard Trimming Collection sticker will be charged at a rate equal to fifty percent (50%) of the weekly collection rate of a single 32-gallon Solid Waste Collection container (monthly rate times 50% divided by 4).

Customers may also place a standing order on their account for collection of additional Yard Trimmings and each additional Customer-provided can or bundle collected will be charged at a rate equal to the weekly collection rate of a single 32-gallon container (monthly rate divided by four).

**Other Requirements:** Contractor may assess a “contamination fee” per event for Customers who have repeatedly (no less than three times in a calendar year) placed more than ten percent (10%) by volume of prohibited materials in their Yard Trimmings Container. Prior to assessing such contamination fee, Contractor must provide targeted education (e.g. through the use of a tag on the Container) no less than three times to that specific Customer. Such education shall, at a minimum, notify the Customer of the specific materials that have been incorrectly placed and inform the Customer as to which Container the materials should be placed. Upon assessment of the contamination fee, Contractor shall document the presence of prohibited items through photographic record and make such documentation available to the Customer and/or City Contract Manager, upon request.

#### 4. Used Motor Oil and Filter Collection

Contractor shall Collect Used Motor Oil and Filters in a Contractor-provided Used Oil Recovery Kit from Single-Family Customers and properly Dispose of the Used Motor Oil and Filter.

**Containers:** Used Oil Recovery Kit

**Container Sizes:** One 1-gallon Filter Bag; and,  
Up to two 1-gallon used oil jugs or one 2.5-gallon used oil jug

**Service Frequency:** Up to one (1) time per week on the same day as Solid Waste Collection Service.

**Service Location:** Curbside (adjacent to Recyclable Materials Cart)

## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

- Acceptable Materials:** Used Motor Oil and Filter
- Prohibited Materials:** Solid Waste, Recyclable Materials, Organic Materials, Excluded Waste
- Additional Service:** Not applicable
- Other Requirements:** Contractor shall provide a Used Oil Recovery Kit to a Customer on the next scheduled service day after such request is made by Customer at no additional cost to Customer. Upon Collection of Used Motor Oil and Filter from a Customer, Contractor shall leave a Used Oil Recovery Kit adjacent to the Recyclables Cart. Contractor shall not be required to Collect more than one (1) Used Oil Recovery Kit per individual dwelling unit per week from Single-Family Customers who request it.

#### **5. Curbside Bulky Item/Reusable Materials Collection**

Contractor shall Collect Bulky Items and Reusable Materials from Single-Family Customers and Transport the Bulky Items to the Approved Reusable Materials Processing Facility for Processing.

- Containers:** Not applicable
- Service Level:** Up to two (2) cubic yard of Reusable Materials, up to five (5) E-Waste items, AND up to two (2) Appliances or Bulky Items. Appliances with Freon count as two (2) Bulky Items.
- Service Frequency:** Up to three (3) times per year (as requested by Customer)
- Service Location:** Curbside
- Acceptable Materials:** Reusable Materials, Appliances, Bulky Items, E-Waste, and U-Waste
- Prohibited Materials:** Solid Waste, Organic Materials, Hazardous Materials, Recyclable Materials, abandoned automobiles, trees, Excluded Waste or any single item (e.g. large auto parts, etc.) that exceeds two hundred (200) lbs. in weight
- Additional Service:** Contractor shall Collect additional eligible items that exceed the required Service Level and may charge the "Additional Bulky Item" Rate approved by the City (as requested by Customer) for each item Collected.
- Contractor shall provide additional Bulky Item/Reusable Materials Collection Events to Single-Family Customers, beyond three (3) per year, and may charge the "Additional Bulky Item Collection Event" Rate approved by the City. Each Bulky Item/Reusable Materials Collection Event shall be subject to the same Service Level as identified above.
- Other Requirements:** Contractor shall provide the service to the Customer within five (5) Business Days of the Customer's requested service date, as mutually agreed upon by the Customer and Contractor.

#### **6. Seasonal Programs**

Contractor shall develop and educate Single-Family Customers about the availability of and participation requirements for programs dealing with seasonal or periodic waste management demands that exceed



## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

regularly scheduled Collection via outreach through the Customer newsletter and the Contractor website. Contractor shall provide the following seasonal program services to Single-Family Customers at no additional charge:

- i) **Holiday Tree Collection.** Contractor shall Collect from Single-Family Customers whole, unflocked, and undecorated holiday trees that are placed curbside during the first two (2) weeks of each year. Holiday trees must be cut into sections no greater than 6’.
- ii) **Halloween Pumpkins.** Contractor shall Collect undecorated raw Holiday Pumpkins from Single-Family Customers that have removed all non-biodegradable debris (candle wax, glue, and paint) and placed the pumpkins in their Yard Trimming Material Carts.
- iii) **Spring Cleaning.** Contractor shall provide Single-Family Customers with Spring Cleaning Collection opportunities through the Bulky Item and Reusable Materials Collection Events.
- iv) **Leaf Season.** Contractor Collect from Single-Family Customers up to 10 additional bags of Yard Trimming Materials throughout the year as described in the Yard Trimmings Additional Services section above.

#### **7. Alternative Service Location for Disabled Single-Family Customers**

Contractor shall allow for Persons that have a disability as defined by the Americans with Disabilities Act (which means Public Law 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 27 U.S.C. 225 and 611, and all Federal rules and regulations relating thereto) that are Occupants of Single-Family Premises to receive Collection services at a location other than Curbside at no extra charge to the Customer. Contractor shall review all applications (which shall include statements from physicians) made by Customers to determine conformance with this exemption provision and shall grant exemptions, if applicable. Contractor shall make reasonable accommodations with regard to provision of and servicing of Containers (e.g., Container size and type, placement of Containers for Collection, etc.) at no additional cost to the Customer.

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**EXHIBIT B2:  
DIRECT SERVICES  
MULTI-FAMILY RESIDENTIAL SERVICES**

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## EXHIBIT B2 MULTI-FAMILY RESIDENTIAL SERVICES

### 1. Solid Waste Collection

Contractor shall Collect Solid Waste in Contractor-provided Containers not less than one (1) time per week from Multi-Family Customers and Transport all Solid Waste to the Approved Disposal Facility for Disposal or, at the direction of the City Contract Manager (if an additional cost is involved), or the MRWMD (if no additional cost is involved) to the Approved Mixed Waste Processing Facility for Processing prior to Disposal.

- Containers:** Carts, Bins, Drop Boxes, Compactors
- Container Sizes:** 64-, and 96-gallon or comparable size Carts; 1-, 2-, 3-, 4-, 6-, and 8- cubic yard Bins; and, 10-, 20-, 30-, and 40- cubic yard Drop Boxes or Compactors (as requested by Customer)
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as requested by Customer
- Service Location:** Curbside or other Customer-selected service location at the Multi-Family Premises (difficult to service charges may apply if service location is not immediately accessible by the Collection vehicle)
- Acceptable Materials:** Solid Waste
- Prohibited Materials:** Recyclable Materials, Yard Trimmings, Excluded Waste
- Additional Service:** Special pickups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Extra picks ups can be scheduled equating to up to six days per week total service.
- Other Requirements:** Contractor shall make contact with Multi-Family Customers in advance of the start of service to determine appropriate Container sizes and service frequency. Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply).

### 2. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials in Contractor-provided Containers not less than one (1) time per week from Multi-Family Customers and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

- Containers:** Carts, Bins, Drop Boxes, Compactors
- Container Sizes:** 64-, and 96-gallon or comparable size Carts; 1-, 2-, 3-, 4-, 6-, and 8- cubic yard Bins; and, 10-, 20-, 30-, and 40- cubic yard Drop Boxes or Compactors (as requested by Customer)

## **EXHIBIT B2**

### **MULTI-FAMILY RESIDENTIAL SERVICES**

- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week (as requested by Customer)
- Service Location:** Curbside or other Customer-selected service location at the Multi-Family Premises (difficult to service charges may apply if service location is not immediately accessible by the Collection vehicle)
- Acceptable Materials:** Recyclable Materials
- Prohibited Materials:** Solid Waste, Organic Materials, Excluded Waste
- Additional Service:** Special pickups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Extra picks ups can be scheduled equating to up to six days per week total service
- Other Requirements:** Contractor shall make contact with Multi-Family Customers in advance of the start of service to determine appropriate Container sizes and service frequency. Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply). Multi-Family Customers with no greater than once per week individual cart service will receive one (1) Recyclable Materials cart free of additional charge. Contractor may assess a “contamination fee” per event for Customers who have repeatedly (no less than three times in a calendar year) placed more than ten percent (10%) by volume of prohibited materials in their Recyclable Materials Container. Prior to assessing such contamination fee, Contractor must provide targeted education (e.g. through the use of a tag on the Container) no less than three times to that specific Customer. Such education shall, at a minimum, notify the Customer of the specific materials that have been incorrectly placed and inform the Customer as to which Container the materials should be placed. Upon assessment of the contamination fee, Contractor shall document the presence of prohibited items through photographic record and make such documentation available to the Customer and/or City Contract Manager, upon request.

### **3. Organic Materials Collection**

Contractor shall Collect Organic Materials in Contractor-provided Carts no less than one (1) time per week from Multi-Family Customers and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing.

- Container Sizes:** Carts
- Container Sizes:** 64-, and 96-gallon or comparable size Carts (as requested by Customer).
- Service Frequency:** Up to three (3) times per week but not less than one (1) time per week, as requested by the Multi-Family Customer.

## **EXHIBIT B2**

### **MULTI-FAMILY RESIDENTIAL SERVICES**

- Service Location:** Curbside or other Customer-selected service location at the Multi-Family Premises. (difficult to service charges may apply if service location is not immediately accessible by the Collection vehicle)
- Acceptable Materials:** Organic Materials
- Prohibited Materials:** Solid Waste, Recyclable Materials, Excluded Waste
- Additional Service:** Special pickups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Extra picks ups can be scheduled equating to up to six days per week total service
- Other Requirements:** Contractor shall make contact with Multi-Family Customers in advance of the start of service to determine appropriate Container sizes and service frequency. If a Customer places Organic Materials Container(s) for Collection and the materials placed in such Container(s) include a sufficient volume or particular type of Prohibited Materials that could reasonably result in the Approved Organic Materials Processing Facility either rejecting the material from Processing or charging Contractor a greater amount for Processing, Contractor may classify that set-out as "Contaminated". Contractor shall document any set-outs classified as Contaminated with photographic evidence of the presence of the Prohibited Material(s) and shall provide such evidence to the City Contract Manager or Customer upon request. In the event of a Contaminated set-out, Contractor shall provide Customer with a written warning of the Contamination and instruct the Customer about how to properly separate and place Organic Materials for Collection and Contractor may, at their sole discretion, refuse to Collect the Container until it is no longer Contaminated. In the event that Contractor classifies more than two (2) set-outs in a consecutive three (3) month period as Contaminated, whether Collected or not, Contractor may assess the "Organics Contamination" Rate approved by the City under this Agreement if Collected. In the event that Contractor has assessed the Organics Contamination Rate more than two (2) times in a consecutive six (6) month period, Contractor may cancel the Customer's subscription to the Organic Materials program and may prohibit such Customer from subscribing to the program until they demonstrate to the satisfaction of the Contractor or City Contract Manager that adequate measures have been implemented to prevent future contamination.

#### **4. Bulky Item/Reusable Materials Collection**

Contractor shall Collect Bulky Items and Reusable Materials from Multi-Family Customers and Transport the Collected materials to the Approved Reusable Materials Processing Facility for Processing.

- Containers:** Not applicable
- Service Level:** Up to two (2) cubic yards of Reusable Materials, up to five (5) E-Waste items, AND up to two (2) Appliance or Bulky Item

## **EXHIBIT B2**

### **MULTI-FAMILY RESIDENTIAL SERVICES**

- Service Frequency:** Up to three (3) times per year (as requested by Multi-Family Customer)
- Service Location:** Curbside or other location approved by Contractor
- Acceptable Materials:** Reusable Materials, Appliances, Bulky Items, E-Waste, and U-Waste
- Prohibited Materials:** Solid Waste, Organic Materials, Recyclable Materials, Excluded Waste or any single item that exceeds two hundred (200) lbs. in weight
- Additional Service:** Upon Multi-Family Customer request, Contractor shall Collect additional items which exceed the required Service Level and may charge the “Additional Bulky Item” Rate approved by the City.
- Contractor shall provide additional Collection events for a Customer beyond three (3) per year and may charge the “Additional Bulky Item Collection” Rate approved by the City.
- Other Requirements:** The Contractor shall provide the service to the Customer within five (5) Business Days of the Customer’s requested service date, as mutually agreed upon by the Customer and Contractor.



**EXHIBIT B3:  
DIRECT SERVICES  
COMMERCIAL SERVICES**

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## EXHIBIT B3 COMMERCIAL SERVICES

### 1. Solid Waste Collection

Contractor shall Collect Solid Waste in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Solid Waste to the Approved Disposal Facility for Disposal or, at the direction of the City Contract Manager (if an additional cost is involved), or the MRWMD (if no additional cost is involved) to the Approved Mixed Waste Processing Facility for Processing prior to Disposal.

- Containers:** Carts, Bins, Drop Boxes, Compactors.
- Container Sizes:** 64-, and 96-gallon or comparable size Carts; 1-, 2-, 3-, 4-, 6-, and 8- cubic yard Bins; and, 10-, 20-, 30-, and 40- cubic yard Drop Boxes or Compactors (as requested by Customer).
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as requested by Customer.
- Service Location:** Curbside; or other Customer-selected service location at the Commercial Premises (difficult to service charges may apply if service location is not immediately accessible by the Collection vehicle)
- Acceptable Materials:** Solid Waste
- Prohibited Materials:** Excluded Waste
- Additional Service:** Special pickups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Extra picks ups can be scheduled equating to up to six days per week total service
- Other Requirements:** Contractor shall make contact with Commercial Customers in advance of the start of service to determine appropriate Container sizes and service frequency. Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply).

### 2. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials and/or Source Separated Recyclable Materials in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing or, at Contractor's discretion, to any Person who will make a net payment to Contractor for the delivery of the Source-Separated Recyclable Materials.

- Containers:** Carts, Bins, Drop Boxes, Compactors
- Container Sizes:** 64-, and 96-gallon or comparable size Carts; 1-, 2-, 3-, 4-, 6-, and 8- cubic yard Bins; and,

## **EXHIBIT B3**

### **COMMERCIAL SERVICES**

10-, 20-, 30-, and 40- cubic yard Drop Boxes or Compactors  
(as requested by Customer)

**Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as requested by Customer

**Service Location:** Curbside or other Customer-selected service location at the Commercial Premises (difficult to service charges may apply if service location is not immediately accessible by the Collection vehicle)

**Acceptable Materials:** Recyclable Materials

**Prohibited Materials:** Solid Waste, Organic Materials, Excluded Waste

**Additional Service:** Special pickups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Extra picks ups can be scheduled equating to up to six days per week total service

**Other Requirements:** Contractor shall make contact with Commercial Customers in advance of the start of service to determine appropriate Container sizes and service frequency.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply).

Contractor may assess a "contamination fee" per event for Customers who have repeatedly (no less than three times in a calendar year) placed more than ten percent (10%) by volume of prohibited materials in their Recyclable Materials Container. Prior to assessing such contamination fee, Contractor must provide targeted education (e.g. through the use of a tag on the Container) no less than three times to that specific Customer. Such education shall, at a minimum, notify the Customer of the specific materials that have been incorrectly placed and inform the Customer as to which Container the materials should be placed. Upon assessment of the contamination fee, Contractor shall document the presence of prohibited items through photographic record and make such documentation available to the Customer and/or City Contract Manager, upon request.

Contractor shall document and report to the City Contract Manager and the MRWMD each instance where Contractor delivers Source Separated Recyclable Materials to a Person other than the Approved Recyclable Materials Processing Facility. Such report shall include the Person to whom the materials were delivered, the specific type of materials delivered (e.g., cardboard, metal etc.), the number of Tons, and the amount received in payment for the delivery.

### **3. Organic Materials Collection**

Contractor shall Collect Organic Materials in Contractor-provided Containers one (1) time per week from Commercial Customers and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing.

## EXHIBIT B3 COMMERCIAL SERVICES

- Containers:** Carts, Bins, Drop Boxes, Compactors
- Container Sizes:** 64-, and 96-gallon or comparable size Carts;  
1- and 2- cubic yard Bins; and,  
10-, 20-, 30-, and 40- cubic yard Drop Boxes or Compactors  
(as requested by Customer)
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as requested by Customer
- Service Location:** Curbside or other Customer-selected service location at the Commercial Premises (difficult to Service charges may apply if service location is not immediately accessible by the Collection vehicle)
- Acceptable Materials:** Organic Materials
- Prohibited Materials:** Solid Waste, Recyclable Materials, Excluded Waste
- Additional Service:** Special pickups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Extra picks ups can be scheduled equating to up to six days per week total service
- Other Requirements:** Contractor shall make contact with Commercial Customers in advance of the start of service to determine appropriate Container sizes and service frequency. Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply).
- If a Customer places Organic Materials Container(s) for Collection and the materials placed in such Container(s) include a sufficient volume or particular type of Prohibited Materials that could reasonably result in the Approved Organic Materials Processing Facility either rejecting the material from Processing or charging Contractor a greater amount for Processing, Contractor may classify that set-out as "Contaminated". Contractor shall document any set-outs classified as Contaminated with photographic evidence of the presence of the Prohibited Material(s) and shall provide such evidence to the City Contract Manager or Customer upon request. In the event of a Contaminated set-out, Contractor shall provide Customer with a written warning of the Contamination and instruct the Customer about how to properly separate and place Organic Materials for Collection and Contractor may, at their sole discretion, refuse to Collect the Container until it is no longer Contaminated. In the event that Contractor classifies more than two (2) set-outs in a consecutive three (3) month period as Contaminated, whether Collected or not Contractor may assess the "Organics Contamination" Rate approved by the City under this Agreement if Collected. In the event that Contractor has assessed the Organics Contamination Rate more than two (2) times in a consecutive six (6) month period, Contractor may cancel the Customer's subscription to the Organic Materials program and may prohibit such Customer from subscribing to the program until they demonstrate to the satisfaction of the Contractor or City Contract Manager that adequate measures have been implemented to prevent future contamination.

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**EXHIBIT B4:  
DIRECT SERVICES  
CONSTRUCTION AND DEMOLITION DEBRIS SERVICES**

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## **EXHIBIT B4**

### **CONSTRUCTION & DEMOLITION DEBRIS SERVICES**

#### **1. Source-Separated C&D Collection**

Contractor shall Collect Source-Separated C&D and/or Source Separated Recyclable Materials by homogeneous material types (e.g., all metals, all inert materials, all wood waste, etc.) in Contractor-provided Containers at the frequency requested by C&D Customers and Transport all Source-Separated C&D to the Approved C&D Processing Facility for Processing or, at Contractor's discretion, to any Person who will make a net payment to Contractor for the delivery of the Source-Separated C&D.

- Containers:** Drop Boxes
- Container Sizes:** 10-, 20-, 30-, and 40- cubic yard Drop Boxes  
(as requested by Customer)
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per month, as requested by Customer
- Service Location:** Curbside or other Customer-selected and Contractor approved service location at the construction site or point of generation.
- Acceptable Materials:** Source-Separated C&D, Source-Separated Recyclable Materials
- Prohibited Materials:** Solid Waste, Organic Materials, Excluded Waste
- Other Requirements:** Contractor shall document and report to the City Contract Manager and the MRWMD each instance where Contractor delivers C&D and/or Source Separated Recyclable Materials to a Person other than the Approved C&D Processing Facility. Such report shall include the Person to whom the materials were delivered, the specific type of materials delivered (e.g., metals, wood, etc.), the number of Tons, and the amount received in payment for the delivery.

#### **2. Mixed C&D Collection**

Contractor shall Collect Mixed C&D and/or Recyclable Materials in Contractor-provided Containers at the frequency requested by C&D Customers and Transport all Mixed C&D to the Approved C&D Processing Facility for Processing and all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

- Containers:** Drop Boxes
- Container Sizes:** 10-, 20-, 30-, and 40- cubic yard Drop Boxes  
(as requested by Customer)
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per month, as requested by Customer
- Service Location:** Curbside or other Customer-selected and Contractor approved service location at the construction site or point of generation.
- Acceptable Materials:** Mixed C&D, Recyclable Materials
- Prohibited Materials:** Solid Waste, Organic Materials, Excluded Waste

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**EXHIBIT B5:  
DIRECT SERVICES  
AGENCY SERVICES**

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## **EXHIBIT B5 CITY SERVICES**

### **1. Commercial Customer Services to City Facilities**

Contractor shall Collect Solid Waste, Recyclable Materials, Source Separated Recyclable Materials, Organic Materials, Bulky Items, and Reusable Materials from City facilities in the same manner as those services are provided to Commercial Customers. Contractor shall provide service to all existing City facilities identified in Exhibit B6 as well as any future City facilities established after the commencement of services. Contractor shall provide these services at no cost to the City.

### **2. Green/Sustainable Community Committee**

Contractor will participate in and/or facilitate a community committee in City and shall serve an advisory role to the City Council with regard to environmental issues.

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**EXHIBIT B6:  
DIRECT SERVICES  
AGENCY SERVICE LEVELS AND LOCATIONS**

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**City Facilities and Parks**

Contractor will collect Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and Reusable Materials from City facilities in the same manner as those services are provided to Commercial Customers. Contractor will provide service to all City facilities, present and future, at no cost to City. Listed in the table on the following g page are current facilities and parks receiving Collection services in Pacific Grove.

Notes to table:

Some or all of the Downtown locations may best be addressed as part of the analysis currently under way for centralized services, including possible compactors, of commercial accounts. Similar centralized solutions could be considered for the Civic Center locations.

# EXHIBIT B6

Street	Location Name	Quantity	Bin Size	Frequency
Lighthouse & Fountain	Downtown	2	Can	Mon.- Fri.
Lighthouse & Grand	Downtown	2	Can	Mon.- Fri.
Lighthouse & Forest	Downtown	3	Can	Mon.- Fri.
Lighthouse & 16th	Downtown	2	Can	Mon.- Fri.
Lighthouse & 17th	Downtown	3	Can	Mon.- Fri.
Lighthouse & 19th	Downtown	3	Can	Mon.- Fri.
Lighthouse @ PG Plaza	Downtown	1	Can	Mon.- Fri.
Lighthouse @ Post Office	Downtown	1	Can	Mon.- Fri.
Lighthouse & Congress	Downtown	2	Can	Mon.- Fri.
Lighthouse @ Passionfish	Downtown	1	Can	Mon.- Fri.
Lighthouse @ Toasties	Downtown	1	Can	Mon.- Fri.
Grove Market on Forest	Downtown	1	Can	Mon.-Fri.
Laurel & Forest	Downtown	1	Can	Mon.-Fri.
Library	Downtown	3	Can	2/week
Museum	Downtown	3	Can	3/week
Chautauqua Hall Lot	Downtown	1	2 yd	1/Week
Police Station	Civic Center	1	2 yd	3/Week
Fire Station	Civic Center	1	2 yd	3/Week
City Hall & Youth Center	Civic Center	2	Can	1/Week
Laurel Street Duplex	Civic Center	1	2 yd	1/Week
Lovers Point Park		1	2 yd	2/Week
Lovers Point Park		1	3 yd	6/Week
Golf Course Corp. Yard		1	2 yd	1/Week
Golf Course Club House		1	3 yd	2/Week
Cemetery		1	2 yd	1/Week
Lighthouse Lot		4	2 yd	3/week
Softball Park		1	2 yd	2/Week
George Washington Park		1	2 yd	1/Week
Community Center		1	2 yd	2/Week
Corporation Yard		1	20 yd min.	1/Week +
Oceanview & Sea Palm		1	2 yd	3/week
Oceanview & Beach		1	2 yd	3/week
Oceanview & Acropolis		2	2 yd	3/week
Oceanview & Asilomar		1	2 yd	3/week

**EXHIBIT B7:  
DIRECT SERVICES  
CITY EVENTS**

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