

AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT
FOR SOLID WASTE MANAGEMENT SERVICES

THIS AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES (“Agreement”) is dated as of August 12, 2020, for reference purposes only, and is entered into by and between the City of Santee, a California municipal corporation and charter city (the “City”) and USA Waste of California, Inc., a Delaware corporation, a Waste Management Company, (the “Contractor”), with reference to the following recited facts (each a “Recital”):

RECITALS

A. Through the enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code section 40000 *et seq.*) (“AB 939”), the Legislature of the State of California has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Management Services within their jurisdictions to meet the goals and requirements of AB 939.

B. Pursuant to California Public Resources Code section 40059(a)(2), the City has determined that, in order to protect the health, safety and welfare of the residents and businesses within the City of Santee, it is appropriate to provide for Solid Waste Management Services by a private hauler as an alternative to providing such services through public resources, and that an exclusive franchise with a qualified company is the best means to provide for the handling of Solid Waste and Recyclables and other services to meet the goals and requirements of AB 939.

C. Pursuant to California Public Resources Code section 40059, the City may impose terms and conditions on the award of a Solid Waste franchise if, in the opinion of the City’s governing body, the public health, safety and welfare require the imposition of those terms and conditions.

D. Contractor has represented and warranted to the City that it has the experience, responsibility and qualifications to provide Solid Waste Management Services as stated in this Agreement.

E. The City Council of the City has determined that Contractor, by demonstrated experience, reputation and capacity, is qualified to continue to exclusively provide for the collection of Solid Waste within the corporate limits of the City and to transport such Solid Waste to places of processing and disposal, which may be designated in accordance with this Agreement, and City and Contractor desire that Contractor be engaged to perform such services on the terms and conditions set forth in this Agreement.

F. Contractor, or its predecessor in interest, has provided exclusive Solid Waste Management Services within the City continuously since 1996 pursuant to a franchise agreement and its various amendments. To accurately reflect the rights and obligations of the City and Contractor, on the Effective Date, this Agreement will amend, restate and supersede all prior agreements and understandings of the City and Contractor regarding Solid Waste Management Services within the City of Santee.

G. The City Council of the City has determined that the public health, safety and welfare require that Solid Waste Management Services, including, but not limited to, the frequency of collection, the means of collection and the transportation, scope of services, charges and fees, location and extent of such service be governed by and provided under the terms of this Agreement.

H. The Parties desire to enter into this Agreement to set forth their rights and obligations related to Solid Waste Management Services within the City of Santee.

NOW, THEREFORE, IN CONSIDERATION OF THE RESPECTIVE COVENANTS AND PROMISES CONTAINED IN THIS AGREEMENT, AND FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS.

1.1 Affiliated Company. Any business which is directly or indirectly related to Contractor by virtue of direct or indirect ownership interests or common management or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor.

1.2 Agreement. This Amended and Restated Exclusive Franchise Agreement for Solid Waste Management Services.

1.3 Applicable Law. All laws, statutes, rules, regulations, published guidelines, permits, actions, determinations, orders or requirements of the United States, the State of California, the County of San Diego, City, regional or government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, that have the force of law and that from time to time apply to or govern the services provided pursuant to this Agreement or the performance of the Parties' respective obligations hereunder, including, but not limited to, any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation, monitoring, building codes, zoning and non-discrimination. All references herein to Applicable Law include subsequent amendments thereto, unless otherwise limited. Applicable Law expressly includes AB 341 (2011), AB 1594 (2014), AB 1826 (2014), and SB 1383 (2016).

1.4 Automated Service. The collection of Organics, Solid Waste and/or Recyclables utilizing Carts that eliminate the need for any manual handling of containers by the collector.

1.5 Bins. Metal Containers for Organics, Solid Waste and/or Recyclables having a one (1) to six (6) cubic yard capacity that are designed or intended to be mechanically dumped into a loader packer type garbage truck.

1.6 Biohazardous or Biomedical Wastes. Any waste as defined by Section 8.38.010 (A), (B), (C), (D), and (J) of the Santee Municipal Code. Biohazardous or Biomedical Wastes include, but are not limited to, wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms, including, but not limited to, waste resulting from the operation of medical clinics, hospitals and other facilities producing wastes that may consists of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, Sharps, contaminated clothing and surgical gloves. Biohazardous or Biomedical

Waste shall not include Hazardous Waste or HHW.

1.7 Bulky Items. Discarded furniture (including chairs, sofas, mattresses, and rugs), and appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, small household appliances, and other similar items, commonly known as “white goods”), stereos, televisions, computers, VCRs, and other items comprising E-Waste as defined herein. Bulky Items do not include demolition and construction wastes, Universal Waste other than E-Waste, or any item such as car bodies, Jacuzzi tubs or spas, or any other item (whether or not specifically identified herein) that cannot reasonably be handled by two individuals. In addition, Bulky Items do not include waste tires, Hazardous Waste or HHW.

1.8 CalRecycle. The California Department of Resources Recycling and Recovery (CalRecycle), or its successor.

1.9 Cart. A plastic or similar Container with a capacity of no less than thirty (30) and no greater than ninety-six (96) gallons, having a hinged lid and wheels, collected using Automated Service.

1.10 City. The City of Santee, California.

1.11 City Council. The City Council of the City of Santee, California.

1.12 City Manager. The City Manager of City or designee. Unless otherwise provided in this Agreement, the City Manager or designee is the authorized agent of City for enforcement of this Agreement.

1.13 Collect or Collection. The operation of taking physical possession of and/or transporting by means of a motor vehicle or other means, any Organics, Solid Waste or Recyclables to a transfer, disposal or processing facility, and subsequently disposed of or processed.

1.14 Commercial Business Occupant. Any person, firm, corporation or other enterprise or organization holding or occupying, singly or with others, Commercial Premises, whether or not the holder of the title of the commercial premises.

1.15 Commercial Premises. All occupied real property in the City except those exempted from the franchise by law and who do not consent to their inclusion, and except residential premises which receive Solid Waste collection services using Single Family Residential Solid Waste Containers, and shall include without limitation, Multi-Family Residential Premises, wholesale or retail establishments, restaurants, other food establishments, bars, stores, shops, offices, manufacturing, repair, research and development, professional services, sports or recreational facilities, and construction and demolition sites, factories, refineries, and other industrial facilities.

1.16 Commercial Solid Waste Container. A Bin or Roll-off Box, except that Customers may receive Cart service for Recyclables or Organics if sufficient space is not available at the Commercial Premises as approved by the City.

1.17 Container. Any vessel, tank, receptacle, Roll-off Box or Bin used or intended to be used for the purpose of holding Organics, Solid Waste, or Recyclables for storage or collection.

1.18 Contract Service Fee. The payment described in paragraph 3.2 of this Agreement.

1.19 Contractor. USA Waste of California, Inc., the entity granted the Franchise pursuant to this Agreement.

1.20 Curbside. The collection of Organics, Solid Waste or Recyclables at the curb or alleyway.

1.21 Customer. Any Residential Householder or Commercial Business Occupant receiving services from Contractor for services pursuant to this Agreement.

1.22 Director. The Director of Community Services of the City of Santee or designee.

1.23 Effective Date. January 1, 2021.

1.24 E-Waste. Waste containing or consisting of electronic devices and components, such as computers, monitors, terminals, computer cards and components, computer peripheral devices, main frame computers, keyboards, mice, printers and scanners, mini-systems, power supply units, servers, connectors/cables, storage discs, consumer electronics, printed circuit boards, televisions, chips and components, cellular and other phones, telecommunications equipment, and fax machines and copiers, but not including Exempt Waste.

1.25 Exempt Waste. Biohazardous radioactive, or Biomedical Waste, Hazardous Waste, Universal Waste (except for E-Waste), Sharps, Sludge, stable matter, tires, automobiles, boats, boat trailers, or any parts thereof, internal combustion engines, lead-acid batteries, and those wastes under the control of the Nuclear Regulatory Commission. Exempt Waste also includes any material being collected under the terms of this Agreement at such time as that material is prohibited from being collected, transported, processed by Contractor or disposed of in Class III landfills by a change in law.

1.26 Food Waste. Food Waste means those discarded materials that will readily 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) fruit waste, grain waste, dairy waste, meat, and fish waste; (iv) vegetable trimmings and other compostable organic waste common to the occupancy of Residential Premises. Food Waste is a subset of Organics. Food Waste does not include Exempt Waste.

1.27 Franchise. The right to provide exclusive Solid Waste Management Services within the City, granted by the City Council pursuant to this Agreement.

1.28 Franchise Fee. The fee provided in paragraph 3.1 of this Agreement.

1.29 Green Waste. Leaves, grass, weeds, houseplant trimmings, and wood materials from trees and shrubs, and similar materials generated at any premises that fit within a Cart.

Green Waste does not include palm fronds, or tree trunks or limbs more than two (2) feet in diameter. Green Waste does not include Exempt Waste.

1.30 Gross Revenue. All monetary amounts actually received by Contractor for the collection of Organics, Solid Waste, and Recyclables pursuant to this Agreement, including the Franchise Fee and other fees paid to the City and other federal, state and local agencies. The term Gross Revenue, for purposes of this Agreement, shall not include revenues generated from the sale of Recyclables (including Department of Conservation rebates) and other rebates or grants from state and local government accounts. Unless otherwise expressly excluded, Gross Revenue includes all monetary amounts actually received by Contractor for providing the services authorized by this Agreement.

1.31 Hazardous Waste. Waste defined as hazardous by Health and Safety Code Section 25117, including: (1) a waste or combination of wastes which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may either (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (b) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of, or otherwise managed; (2) a waste which meets any of the criteria for the identification of a hazardous waste adopted by the California Environmental Protection Agency's Division of Toxic Substances Control pursuant to Health and Safety Code Section 25141; (3) any chemical, pollutant, contaminant, hazardous or toxic substance, constituent or material that under Applicable Law is considered to be hazardous or toxic or is or may be required to be remediated, including, without limitation, (a) any petroleum or petroleum products and their derivatives, radioactive materials, asbestos in any form that is or could become friable, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls and processes and certain cooling systems that use chlorofluorocarbons, or (b) any chemicals, materials or substances which are now or hereafter become defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," or any words of similar import pursuant to Applicable Law.

1.32 HHWE. The Household Hazardous Waste Element for the City prepared and updated pursuant to the Public Resources Code.

1.33 Holiday. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and any other day designated as such in a contract between Contractor and the labor union serving as the exclusive representative of Contractor's employees, provided such holiday is approved by the City Manager.

1.34 Host Fees. Charges levied on Solid Waste disposed or processed within a jurisdiction by the jurisdiction in which a Solid Waste facility is located. The fees are separate from the disposal and processing costs charged by the receiving facility itself.

1.35 Household Hazardous Waste. Household Hazardous Waste or HHW shall have the meaning set forth in Title 14, California Code of Regulations, Section 18502 or successor laws and regulations as may be amended from time to time.

1.36 Landfill. A disposal facility that accepts Solid Waste for land disposal as defined in Public Resources Code Section 40195.1.

1.37 Material. An occurrence that results in increased costs or decreased revenues to Contractor in an amount of at least Fifty Thousand Dollars (\$50,000).

1.38 Multi-Family Residential Premises. A structure or structures containing greater than four dwelling units in any vertical or horizontal arrangement on a single lot or building site.

1.39 Municipal Code. The Municipal Code of the City and any amendments thereto.

1.40 Organics. Organics means source-separated Green Waste and Food Waste as defined in Public Resources Code Section 42649.8.

1.41 Organics Facility. An Organics processing facility to be constructed and operated by a third party or Contractor under paragraph 11.4.

1.42 Parties. The City and Contractor, collectively.

1.43 Party. The City or Contractor, individually.

1.44 Person. Any individual, firm, association, co-partnership, political subdivision, government agency, municipality, public or private corporation, or any other entity.

1.45 Organics Processing Facility. Any facility designed, operated and legally permitted for the purpose of receiving, and processing Organics.

1.46 Public Agency. Any governmental agency or department thereof.

1.47 Public Education. Any and all efforts to enhance, increase or improve the knowledge of customers of Contractor or residents of the City regarding Solid Waste, recycling, source reduction or any other aspect of Solid Waste Management Services.

1.48 Public Resources Code. The state of California Public Resources Code and in particular, commencing with Sections 40000 et seq.

1.49 Recyclables. Recyclables means materials that have been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace which 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, paper grocery bags, colored paper, construction paper, envelopes, shoe boxes, cereal, and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic coating, paper contaminated with food, wax paper, foil-lined paper and cartons, 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); steel, tin or bi-metal cans; mixed plastics such as plastic containers (no. 1 to 7), except expanded Polystyrene (EPS); bottles including containers made of HDPE, or PET; and, those materials added by the Contractor from time to time. Recyclables do not include Exempt Waste.

1.50 Recycling. The process of collecting, sorting, cleansing, treating, and reconstituting Recyclables that would otherwise become refuse, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include transformation as defined in Public Resources Code Section 40201.

1.51 Residential Householder. Any person holding and/or occupying a residential premises, whether or not the owner, singly or with his or her family, in the City.

1.52 Residential Premises. Any residential property within the City receiving Solid Waste collection services using Single-family Residential Solid Waste Containers utilizing Solid Waste containers of ninety-six gallons or less capacity for the provision of Waste Management Services.

1.53 Roll-Off Box. An open-top metal container or closed compactor box with a capacity of ten (10) to forty (40) cubic yards that is serviced by a roll-off truck.

1.54 Self-hauling. The act of a Residential Householder or Commercial Business Occupant collecting and legally disposing of Organics, Solid Waste, or Recyclables generated in or on their premises pursuant to paragraph 2.4.

1.55 Sharps. Medical devices that have needles or other sharp implements as component parts, including, but not limited to sharps and sharps used in animal or human patient care, medical research, or clinical or pharmaceutical laboratories, hypodermic, intravenous syringes to which a needle or other sharp is still attached, Pasteur pipettes, scalpel blades, blood vials, other types of broken or unbroken glass (including slides and cover slips) that have been in contact with infectious agents. "Sharps" shall not include those parts of syringes from which sharps are specifically designed to be easily removed and from which sharps have actually been removed, and which are intended for recycling or other disposal, so long as such syringes have not come in contact with infectious agents.

1.56 Single-family Residential Solid Waste Container. A container made of metal, hard rubber or plastic not exceeding ninety-six gallons in capacity.

1.57 Solid Waste. All putrescible and nonputrescible solid and semisolid wastes, generated in or upon, related to the occupancy of, remaining in or emanating from residential premises or commercial premises, including garbage, rubbish, trash, refuse, ashes, industrial wastes, demolition and construction wastes, manure, vegetable or animal solid or semisolid wastes, and other solid and semisolid wastes. This excludes Recyclables, source-separated Organics, liquid wastes, abandoned vehicles, and Exempt, Hazardous, Biohazardous and Biomedical Wastes, Sharps, or any item excluded from the definition of Bulky Items.

1.58 Solid Waste Management Services. The collection, transportation, storage, transfer, disposal, or processing of Organics, Solid Waste or Recyclables from Residential Premises and Commercial Premises located in the City.

1.59 SRRE. The Source Reduction and Recycling Element for the City prepared and updated pursuant to the Public Resources Code.

1.60 State. The State of California.

1.61 Term. Shall have the meaning set forth in paragraphs 4.1 and 4.2 of this Agreement.

1.62 Transfer or Processing Station. As defined in Public Resources Code Section 40200, this means those facilities utilized to receive Solid Wastes, temporarily store, separate, convert, or otherwise process the materials in the Solid Wastes, or to transfer the Solid Wastes directly from smaller to larger vehicles for transport, and those facilities used for transformation.

1.63 Universal Waste. Any waste matter which the State of California classifies as "Universal Waste," including, but not limited to, items and materials listed in 22 CCR 66261.9, as it may be amended, as well as the following: E-waste (as defined herein), batteries (other than automobile batteries), thermostats, lamps with fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and other lamps with hazardous waste characteristics, cathode ray tubes, aerosol cans, mercury-containing items, prescription and non-prescription drugs, not including controlled substances.

2. **GRANT OF FRANCHISE**

2.1 Grant of Franchise. The City grants to Contractor during the Term the exclusive right and Franchise to provide Solid Waste Management Services in the City in accordance with the terms of this Agreement and Chapter 9.02 of the Santee Municipal Code.

2.2 Exclusive. City agrees not to award any contract to, or enter into any contract with, any person other than the Contractor for the provision of residential, commercial and industrial Solid Waste Management Services including Recycling except, in the event Contractor fails, refuses or neglects for any reason to perform said Solid Waste Management Services as herein provided at the time and in the manner herein required, City may perform said Solid Waste Management Services or cause said services to be performed, and Contractor shall be liable for any reasonable expenses incurred therefor.

2.3 Incorporation of Chapter 9.02 of the Santee Municipal Code. Except as modified by a more restrictive provision of this Agreement, the City's grant of this exclusive Franchise to Contractor pursuant to this Agreement incorporates all terms and conditions of Chapter 9.02 of the Santee Municipal Code, as it currently exists or as may be amended from time to time. Contractor acknowledges and agrees that the provisions of Chapter 9.02 of the Santee Municipal Code establish the minimum standards to be observed by Contractor, and that those minimum standards may be modified by any higher standards and stricter regulations set forth in this Agreement.

2.4 Exclusions from the Franchise. The Franchise granted by this Agreement does not include:

2.4.1 **Gardeners.** Gardeners, tree trimmers, roofers, carpenters, masons or similar contract enterprises who haul or dispose of grass clippings, prunings, wood or other materials collected in the course of their business using their own equipment; and

2.4.2 **Commercial and Industrial.** Commercial and industrial generators of Solid Waste, Recyclables or Organics who haul, sell or otherwise dispose of material generated on their own property during the course of their normal business using their own equipment and employees; and

2.4.3 **Residential Self-Haul.** Residential Householder who hauls Organics, Recyclables and Solid Waste, generated from his/her Residential Premises directly to a Solid Waste disposal facility, and who elects not to subscribe to Organics, Recyclables and Solid Waste collection services from Contractor. Such residents must, upon request of Contractor or City, show evidence of weekly Solid Waste disposal, along with Recyclables and Organics disposition to the City and the Contractor who shall have the authority to confirm an exception from curbside collection; and

2.4.4 **Sale or Donation of Recyclables or Organics.** The sale or donation of Recyclables or Organics by the persons or businesses generating such Recyclables or Organics. Organics or Recyclables that are donated by the generator, and/or Organics or Recyclables that the generator sells to, or otherwise receives compensation for from, other persons in a manner resulting in a net payment to the generator after consideration of collection, handling, processing costs and other costs.

2.5 Responsibility to Enforce. It shall be the Contractor's responsibility to enforce this Franchise, except as to violations of the Municipal Code. Contractor may require Residential and Commercial Premises utilizing one of the franchise exclusions above to provide Contractor with information sufficient to verify compliance with the claimed exception. The City will provide reasonable support to Contractor in these efforts, including enforcement of applicable Municipal Code provisions.

3. **FRANCHISE FEE AND OTHER CONSIDERATION**

3.1 Franchise Fee, Report and Late Payments. In consideration of the exclusive Franchise provided by this Agreement, Contractor shall pay to the City a Franchise Fee equal to fifteen percent (15%) of the Gross Revenue derived by Contractor under this Agreement. Contractor and City agree the Franchise Fee is a negotiated amount that is reasonably related to the value of the rights granted to Contractor under this Agreement. Contractor shall pay the Franchise Fee to the City not later than twenty (20) calendar days after the end of each quarter of Contractor's fiscal year. This obligation shall remain in effect for the final quarter during the Term, notwithstanding that the payment will be due following the expiration of this Agreement. Contractor shall, along with the payment of the Franchise Fee, provide the City with a report setting forth the Gross Revenues and calculation of the Franchise Fee. Late payment of the Franchise Fee, will be subject to a charge assessed by the City as an amount equal to ten percent

(10%) of the amount owed plus twelve percent (12%) interest per annum prorated to each day of delinquency. The late payment shall be documented and processed by the City's Finance Director and shall be due immediately upon notice to Contractor.

3.2 Contract Service Fee. In addition to the Franchise Fee, Contractor shall pay to the City an annual Contract Service Fee in the amount of the greater of: (i) a flat-rate of Three Hundred Seven Thousand Four Hundred Sixty-Eight Dollars (\$307,468); or (ii) 3.8% of the Gross Revenue derived by Contractor under this Agreement. The Contract Service Fee shall be due and payable to the City in four quarterly installments, not later than twenty (20) calendar days after the end of each quarter of Contractor's fiscal year. Each installment shall be in the amount of the greater of Seventy-Six Thousand Eight Hundred Sixty-Seven Dollars (\$76,867.00) or 3.8% of the Gross Revenue derived by Contractor under this Agreement during the preceding quarter. The Contract Service Fee shall be adjusted pro rata for any quarter in which Contractor is providing services under this Agreement for only part of the quarter. Commencing on January 1, 2022, and thereafter on January 1 of each succeeding year, the possible flat-rate Contract Service Fee shall be increased by the greater of: (i) the change in the Consumer Price Index for San Diego County, California, for all urban consumers, multiplied by 1.0; or (ii) three percent (3%). This obligation shall remain in effect for the final quarter of this Agreement, notwithstanding that the payment will be due following the expiration of this Agreement.

3.3 Reimbursement of City's Costs for Franchise Agreement. In addition to the Franchise Fee and the Contract Service Fee, Contractor shall reimburse the City for its reasonable attorney's fees related to evaluating the Solid Waste service currently being provided to City by Contractor, negotiating this Agreement and drafting this Agreement. After the Effective Date of this Agreement, the City shall provide Contractor with an invoice for these costs. Contractor shall pay the invoice within thirty (30) days of the receiving the invoice.

3.4 Contract Signing Fee. In addition to all other payments due from Contractor under this Agreement, within thirty (30) days of the Effective Date of this Agreement, Contractor shall pay City the sum of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000). This contract signing fee is a negotiated amount that is reasonably related to the value of the rights granted to Contractor under this Agreement.

3.5 Special Event Sponsorship. Contractor shall provide City with Forty Thousand Dollars (\$40,000) per calendar year, or such lesser amount as City may request, to sponsor special events such as 4th of July celebrations, Santee Fest, and holiday lighting events. Without limiting the foregoing, Contractor shall provide City with Five Thousand Dollars (\$5,000) in sponsorship for its 40th Anniversary in 2020 and Ten Thousand Dollars (\$10,000) in sponsorship for its 50th Anniversary in 2030.

3.6 Landfill Disposal Credit. Concurrently with each Franchise Fee payment, Contractor shall tender payment to City representing the value of the landfill disposal credit granted to City pursuant to the "Landfill Settlement Agreement" dated September 14, 2011 to which City, San Diego Landfill System, LLC, Allied Waste Industries, Inc, and Republic Services, Inc., are parties. Each quarterly payment shall be in an amount equal to the cost of disposing of two hundred fifty (250) tons of solid waste at the Sycamore Canyon Landfill. Contractor shall provide documentation of the calculation of the credit payment.

3.7 Recycling Initiative Fee. In order to offset the financial impact to City of reductions in landfill Host Fee revenue caused by successful efforts to recycle and otherwise divert waste from landfills, Contractor shall pay to City the sum of Five Dollars (\$5) per ton of Recyclables collected in Santee by Contractor. The Recycling Initiative Fee shall be paid quarterly within twenty (20) days of the end of each quarter of Contractor's fiscal year and shall be submitted with supporting documentation. This obligation shall remain in effect for the Recyclables tonnage collected by Contractor during the final quarter of this Agreement, notwithstanding that the payment will be due following the expiration of this Agreement.

3.8 San Diego River Clean Up Contribution / Highway 52 Coalition. Concurrently with the Recycling Initiative Fee, Contractor shall contribute the sum of Twelve Thousand Dollars (\$12,000) to the City to be used for San Diego River clean-up and mitigation efforts and contribute the sum of Eighteen Thousand Dollars (\$18,000) to the City to be used for the Highway 52 Coalition. These payments shall be made for calendar year 2019 and all future calendar years during the Term.

4. **TERM.**

4.1 Initial Term. The term of this Agreement shall commence on the Effective Date and continue until 11:59 p.m. on December 31, 2030.

4.2 Renewal or Amendment. Upon mutual written agreement between the City and the Contractor, in their respective sole and absolute discretion, this Agreement may be renewed upon all the same terms and conditions, or as may be amended by the Parties, for an additional mutually agreed upon term commencing at the expiration of the Initial Term. In addition, City and Contractor may mutually agree to extend this Agreement for up to two (2) one-year terms as follows. Contractor shall provide written notice to the City not later than one hundred eighty (180) days in advance of the expiration of the then-current term of this Agreement of its desire to extend the Agreement for a one-year term. City shall respond in writing within sixty (60) days stating whether or not it agrees to the one-year extension. Should City agree to the one-year extension, then this Agreement shall be extended for an additional one-year term upon all the same terms and conditions. If City does not agree, then the Agreement shall terminate at the end of the then-current term unless the Parties agree otherwise in writing.

4.3 Prior Agreements/Covenants. Any prior agreements between the Parties are terminated and superseded in their entirety, and of no further force and effect, as of the Effective Date, except for any existing indemnification obligations or other covenants that are expressly provided to survive the termination of the prior agreements.

5. **CONTRACTOR RESPONSIBILITY**

5.1 Agreement to Perform. Contractor agrees to perform all of its obligations under this Agreement for the Term. Contractor shall furnish all of the labor and equipment necessary for the collection, processing and disposal of all Solid Waste subject to the terms and conditions of this Agreement and in compliance with all Applicable Laws.

5.2 Contractor's Representations and Warranties. Contractor represents and warrants to the City that it has all applicable local, regional, state and federal permits and licenses to

perform the services under this Agreement, including, but not limited to, local land use approvals, County of San Diego collector permits, truck operating permits and a City of Santee business license. Contractor further represents and warrants to the City that it has the professional and technical personnel required to perform the services in conformance with this Agreement and the Applicable Laws, and that it shall perform the services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of Contractor's knowledge, threatened, against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of Contractor's obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to enforce this Agreement or any other agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby. The Contractor shall hold or possess a right to use all proprietary property including patents, rights to patents, trademarks, copyrights, and licenses, as the case may be of any equipment or software necessary for the performance by the Contractor of its obligations and the transactions contemplated by this Agreement. Contractor represents that it does not know any material conflict with the rights of other parties regarding proprietary property.

5.3 Contractor shall have an affirmative duty to select for disposal of City's Solid Waste only those landfill facilities which comply with state and federal law.

6. SCOPE OF SOLID WASTE MANAGEMENT SERVICES

6.1 Services. Contractor undertakes, and agrees, in accordance with the terms and conditions of this Agreement, to provide comprehensive Solid Waste Management Services, as set forth in Exhibit "A" to this Agreement, which is incorporated into this Agreement by this reference.

6.2 Source Reduction and Recycling Element. The California Public Resources Code requires the City to prepare and implement a Source Reduction and Recycling Element (SRRE) and a Household Hazardous Waste Element (HHWE). Contractor shall be responsible for implementing all provisions of these plans applicable to the Solid Waste Management Services specified in this Agreement.

6.3 City Regulations. Contractor's Solid Waste Management Services described in this Agreement and in Exhibit "A" to this Agreement shall be performed in accordance with the specifications contained within the Santee Municipal Code as they now exist or may from time to time be amended. City shall have the authority to issue regulations, orders, directions and instructions to Contractor from time to time regarding the collection, transportation, removal, disposal and processing of Organics, Solid Waste and Recyclables, the performance of Contractor's services hereunder, and Contractor's compliance with the Municipal Code. Contractor agrees to comply therewith. Unless otherwise noted in this Agreement, or if changed by the City Council or City Manager, the Director or his designee shall be responsible for implementing all City actions necessary under this Agreement, including direction of Contractor.

Contractor shall be entitled to rate adjustments pursuant to paragraph 8.3.38.3.3 in the event City exercises any of its rights described in this paragraph 6.3 which result in Material increases in costs to Contractor.

6.4 Performance. Contractor undertakes and agrees to perform the obligations of this Agreement in a prompt, thorough, lawful, professional and sanitary manner and in accordance with the Applicable Laws.

7. **OTHER SERVICES OF CONTRACTOR**

7.1 City Facilities, Events and Services. Unless otherwise requested by City, Contractor shall provide collection, transportation and disposal services to all City operated facilities, as they currently exist or may exist during the term of this Agreement, at no charge to City, including City parks, playgrounds, buildings, and City street trash cans. In addition, Contractor shall provide collection, transportation and disposal services, at no charge, for City-sponsored or City-organized special events, provided that City has provided Contractor with seven (7) days' advance written notice of the event.

7.2 Curbside Bulky Item, Battery, and Cell Phone Collection. Contractor shall provide Single-family Residential Premises and Multi-Family Residential Premises with curbside pick-up service upon request for Bulky Items, E-waste, household batteries, and cell phones. Contractor shall collect up to six (6) Bulky Items, household batteries, cell phones and/or e-waste items per collection event to be scheduled at the request of the Customer, at no charge. Customers must request these collections at least two (2) weekdays prior to their regular collection day to receive this service on the next regularly scheduled collection day. To the extent possible, Contractor shall divert the collected items away from the Landfill to another facility where they can be either recycled or refurbished for reuse. Single-family Residential Premises shall be limited to four (4) free pick-ups per calendar year. Multi-Family Residential Premises shall be limited to two (2) free pick-ups per calendar year per Multi-Family Residential Premise. Additional pick-ups may be provided by Contractor for a fee.

7.3 Universal Waste Collection. Contractor shall accept Universal Waste at no charge to Residential Householders at the Buy-back/Drop-off Center. Contractor shall recycle, reuse or dispose of all Universal Waste in compliance with the Applicable Laws.

7.4 Holiday Tree Collection and Recycling. Contractor shall collect and recycle natural, undecorated trees, free of tree stands, placed at the curbside, for two weeks following the holiday season beginning December 26 of each year. The pickups shall occur on the Customer's regular collection day and shall be at no additional charge to the Customer.

7.5 Illegal Dumping. Contractor shall collect, transport and dispose of all spilled or illegally dumped Solid Waste within one business day of notice from the City. In the event that City requests Contractor to collect illegally dumped Solid Waste that appears to be on private property, City and Contractor shall cooperate to obtain permission from the property owner for Contractor's access to the property, and Contractor's obligation to collect the Solid Waste shall not occur until permission is obtained.

7.6 Sharps. Contractor shall provide, at a reasonable cost, a separate program for the collection of Sharps. This program shall not be exclusive, but Contractor agrees to maintain this program during the term of this Agreement.

7.7 Twice-Annual Citywide Collection Event. Twice each calendar year, Contractor shall organize a community cleanup event, during which Contractor shall collect at a central location paper to be securely shredded and recycled.

8. BILLING AND PAYMENTS

8.1 Rates for Services. Contractor shall perform the responsibilities and duties described in this Agreement in consideration of the right to charge and collect from Customers for Solid Waste Management Services rendered, at rates not exceeding those approved by the City Council from time to time. Unless and until the maximum rates approved by the City Council are modified by the City Council, Contractor shall provide the services required by this Agreement at no more than the rates and/or fees authorized by the City Council. Services for which maximum rates have not been approved by the City Council may be agreed upon in separate contracts between Contractor and each Customer requesting such special services. Contractor agrees and acknowledges that the City is not responsible for and does not guarantee or warrant, in any fashion, payment from the Customers to Contractor for services rendered.

8.2 Initial Rates for Services. Upon the Effective Date of this Agreement, Contractor's rates shall not exceed the maximum rates set forth in Exhibit "B" to this Agreement, which is incorporated into this Agreement by this reference. The maximum rates set forth in Exhibit "B" include reduced rates for residential customers who use 96-gallon recycling carts and reduced senior citizen and mobile home rates for customers who recycle.

8.3 Annual Permissive CPI Adjustment.

8.3.1 Adjustment Calculation. Effective on July 1 of each year, an annual permissive Consumer Price Index ("CPI") adjustment to the rates approved by the City Council may be made by the Contractor. The annual permissive CPI adjustment for the portion of each rate representing Contractor's costs of collecting Organics, Solid Waste, and Recyclables shall be the quotient of the Consumer Price Index for San Diego-Carlsbad, California for all urban consumers from the current March divided by the Consumer Price Index for San Diego-Carlsbad, California for all urban consumers for the previous March, subtracted by one and expressed as a percentage. If the CPI adjustment calculations exceed a positive four percent (4%), the portion of the calculated adjustment over a positive four percent (4%) shall be multiplied by .70. The product of this calculation shall be added to four percent (4%). This sum shall be the annual permissive CPI adjustment for the collection portion of the rates.

The annual permissive CPI adjustment for the portion of each rate representing Contractor's costs of processing and disposal costs shall be calculated in the same manner as the collection portion of the rates. Below is illustrative example of the adjustment process:

IF: CPI index in Year 1 is 100 and CPI index in Year 2 is 105. Rate in Year 1 is 10 (7 for collection and 3 for processing/disposal).

Collection Component $(105/100)=1.05-1=>5\%$; $5\%-4\%=1\%$; $(1*.7)=.7$; $.7+4=4.7\%$

Processing/Disposal Component $(105/100)=1.05=>5\%$; $5\%-4\%=1\%$; $(1*.7)=.7$; $.7+4=4.7\%$

$7*1.047 + 3*1.047=\$10.47$

Notwithstanding the above, the minimum annual permissive CPI adjustment shall never be less than one (1%) percent. In the event that the index used to calculate the permissive CPI adjustment is amended or modified, the Parties shall use its successor. If no successor is available, the Parties shall meet and confer on a reasonable replacement.

8.3.2 City Manager Approval. The calculation for the annual permissive CPI adjustment shall be subject to review and verification by the City Manager prior to implementation by the Contractor. Not less than thirty (30) days prior to implementation of an annual permissive CPI adjustment, Contractor shall provide the City Manager with notice of its intent to implement an annual permissive CPI adjustment, along with a calculation of the increased rates and data to support the calculation. If the City Manager objects to the calculation and data provided to support the calculation, the City Manager shall notify Contractor in writing and the Parties shall meet and confer regarding the issue. Contractor shall not implement the annual permissive adjustment until the City Manager reviews and verifies the adjustment, in the City Manager's reasonable judgment; provided, however, that the verified annual permissive adjustment shall be effective as of July 1 of the applicable year subject to Section 8.4. If the City Manager does not object to the calculation and supporting data provided by Contractor within thirty (30) days of receipt of the notice and information from Contractor, the adjustment shall be deemed reviewed and verified.

8.3.3 Extraordinary Rate Adjustments. In addition to the annual permissive CPI adjustment in Section 8.3.1, the City and Contractor may each, from time to time but not more than one (1) time each calendar year request, an extraordinary adjustment to the rates to reflect unanticipated Material increased or decreased costs of providing services, which may include but are not limited to:

(a) An event or circumstance occurs which could not reasonably be foreseen, and is extraordinary and not a usual business risk of Contractor; or

(b) An event or circumstance occurs which is beyond the control of City or Contractor; or

(c) It is necessary for Contractor to make a substantial change in its operation, or substantial capital investment in order to perform its obligations under this Franchise Agreement; or

(d) Changes to operations mandated by Applicable Law, including any new or changed fee or charge imposed by any governmental entity (excluding state or federal income taxes); or

(e) Increases in fees for disposal or processing of Solid Waste, Recyclables or Organics if such material is being disposed of or processed at a third party facility not owned or operated by Contractor (e.g., Sycamore Landfill).

The party requesting the extraordinary rate adjustment shall submit information in support of the requested adjustment for review within ten (10) days of submitting its request. The City Council shall approve or deny the request within ninety (90) days of submittal, in its reasonable judgment. Contractor may appeal determinations by the City Council under this paragraph to a hearing officer, as provided in Article 15 of this Agreement.

8.4 Limitations on Rate Adjustments. Contractor understands and agrees that City may elect to or be required to comply with California Constitution Article XIII D (Proposition 218) or other applicable law before approving any new or increased maximum rates. City shall not be in breach of this Agreement if its residents lawfully delay or prevent City from raising or imposing the rates through the California Constitution Article XIII D or other applicable process. In such event, City and Contractor shall meet in good faith to consider alternatives and options, which may include permitting Contractor to terminate the Agreement without cause. All costs incurred in providing notices required under California Constitution Article XIII D or other applicable law in connection with a rate adjustment shall be paid by the Contractor.

8.5 Financial Records. Contractor shall maintain complete and accurate financial records with respect to billings, gross revenue, costs, expenses and other such information reasonably required to verify performance of Contractor's obligations under this Agreement, or to support a requested rate adjustment. All such records shall be maintained in accordance with generally accepted accounting principles.

8.6 Other Records. In addition to financial records, Contractor shall maintain complete and accurate records to verify performance of all aspects of Contractor's obligations under this Agreement including, but not limited to, collection route maps, customer lists and payment records, landfill disposal records by truck, local enforcement agency records of inspection, truck inspection records, SRRE and HHWE compliance records, customer complaints and other like materials; provided, however, that Contractor shall not be required to maintain records in contravention of the California Consumer Privacy Act or any of its implementing regulations, as may be amended.

8.7 Manner of Record Keeping. All records required to be kept by Contractor shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or their agent during all normal business hours to such books or records required to be maintained in paragraphs 8.5 and 8.6, and give the City the right to examine and audit same, and to make transcripts therefrom or copies as necessary and City shall maintain the confidentiality of records that contain business confidential, proprietary and/or trade secret information to the extent permitted by Applicable Law, including the California Public Records Act. All records will be maintained for five (5) years after the completion of the year in which they were prepared, except as required under the California Consumer Privacy Act or any of its implementing regulations, as may be amended.

8.8 Billing. Contractor shall prepare, mail and collect bills (or shall issue written receipts for cash payments) for Solid Waste Management Services provided by Contractor under this Agreement. Bills for services shall at a minimum be mailed to customers quarterly in advance of the provision of services.

8.9 Detail. Billings shall be of sufficient detail as to clearly delineate charges for each type of Solid Waste Management Service delivered and must at a minimum be individually line listed. City shall retain the right to revise the billing format at Contractor's expense if, in City's opinion, additional billing information is deemed necessary.

8.10 Copies. Contractor shall maintain copies of billings and receipts in chronological order for a period of three (3) years after the date of service for inspection by City. Contractor may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

8.11 Inserts. City from time to time may also direct Contractor to insert mailers with the Contractor billings. City will provide not less than sixty (60) days' notice to Contractor prior to the date of any mailing of billings to permit Contractor to make appropriate arrangements for the inclusion of these materials.

8.12 Indemnification. In addition to Contractor's obligations under Article 12 herein, Contractor agrees to indemnify City against all fines or penalties imposed by CalRecycle in the event that SRRE and HHWE objectives for Solid Waste Management Services for which Contractor is responsible are not met for any reason by City, and to reimburse City for all costs of defense, including attorney's fees.

8.13 Cooperation. Contractor shall cooperate with and provide all information within its possession sought by any consultant employed by City or the County of San Diego necessary for the preparation and implementation of a waste composition study, field survey, or update to City's SRRE or HHWE.

9. **COLLECTION EQUIPMENT AND PRACTICES**

9.1 Number, Age and Identification of Vehicles. Contractor shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which Contractor is responsible under this Agreement. Contractor shall have available on all collection days at least one extra vehicle to respond to any and all complaints and emergencies. Contractor shall ensure that the average age of the collection vehicles regularly used in the provision of services under this Agreement does not exceed twelve (12) years, and that no support vehicle used in the provision of services under this Agreement shall be older than fifteen (15) years, except as may be authorized by the Director in his reasonable judgment based on the condition, maintenance history, usage and appearance of the vehicle. For purposes of this Agreement, the "age" of a vehicle shall consist of the age of the older of its chassis and body, rather than the age of the engine. Contractor's name, telephone number and unique vehicle number selected by Contractor shall be prominently displayed on its collection vehicles in letters and figures no less than three (3) inches high. All vehicles used by Contractor to provide services under this Agreement shall be registered with the Department of Motor Vehicles of the State of California.

9.2 Maintenance, Inspection and Cleaning of Vehicles. All vehicles used by Contractor to provide services under this Agreement shall be kept clean, safe, and in good repair,

shall be sufficient to keep all collected materials covered during transportation, and shall be regularly inspected and certified by applicable regulatory agencies as required by law. Solid waste collection vehicles shall be washed at least once every seven (7) days. All vehicles used by Contractor to provide services under this Agreement shall be kept and maintained free from any leaks, including, without limitation, leaks of hydraulic oil, brake fluid, engine oil, fuel, or transmission fluid. Contractor shall inspect each service vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such conditions as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. Contractor shall maintain accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation), and shall make those records available to the City upon reasonable request. The City shall also have the right, but not the obligation, to inspect Contractor's vehicles for compliance with these requirements upon reasonable advance notice to Contractor.

9.3 Alternative-Fuel Vehicles Required. All vehicles used by Contractor to provide services under this Agreement shall comply with all rules and regulations of the San Diego Air Pollution Control District, the California Air Resources Control Board and other Applicable Laws. All service vehicles used by Contractor to provide regular Solid Waste Management Services, as opposed to limited, emergency or ancillary services, under this Agreement shall be fueled by clean air alternative fuel rather than diesel fuel. All of Contractor's collection vehicles used in the performance of services under this Agreement shall be fueled by liquid natural gas or compressed natural gas, unless City approves a different fuel type for collection vehicles.

9.4 Clean Collection Practices and Vehicle Operations. Contractor shall not cause or permit the private property or City streets or property to be littered with trash or other debris because of Contractor's activities under this Agreement. Contractor shall clean up any such trash or debris in the immediate vicinity of any waste container or storage area that results from collection services under this Agreement. Contractor shall operate its vehicles in compliance with the California Vehicle Code and all Applicable Laws. Contractor shall not intentionally load vehicles in excess of limitations on vehicles imposed by federal, state or local law. Solid waste must be covered at all times, except when it is being loaded or unloaded.

10. PUBLIC ACCESS TO CONTRACTOR AND COMPLAINT RESOLUTION

10.1 Local Office and Regular Hours. Contractor's office hours shall be, at a minimum, from 8 a.m. to 5 p.m. Monday through Friday, and 8 a.m. to 12:00 p.m. on Saturday, except federal holidays. A representative of Contractor shall be available during office hours for communication with the public at Contractor's principal office. The representative shall, at a minimum, provide route maps and service information to the public. Contractor shall also maintain an emergency telephone number for use during other than normal business hours. Contractor shall have a representative or answering service available at said emergency telephone number during all hours other than normal office hours.

10.2 Service Complaints and Dispute Resolution. Contractor shall be responsible for the prompt, courteous and reasonable resolution of all customer complaints.

10.2.1 **Record of Complaints.** Contractor shall record in a separate log all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint and nature and date of resolution. This complaint log shall be retained indefinitely by Contractor. City shall reserve the right to examine and make copies of any portion of the complaint log at any time.

10.2.2 **Response to Complaints.** Contractor shall respond to all customer complaints within twenty-four (24) hours, weekends and holidays excluded. In particular, if a complaint involves a failure to collect Solid Waste within the normal collection schedule, Contractor shall collect the Solid Waste in question within twenty-four (24) hours of being notified of the failure to collect the Solid Waste, provided that the Solid Waste has been properly presented for collection in accordance with the City's Municipal Code.

10.2.3 **City Review.** In the event that any customer reports to City that a complaint has not been resolved to the customer's satisfaction, City may require Contractor to present a detailed report outlining the nature of the complaint and the proposed resolution or actions taken to resolve the complaint. If, in City's opinion, the proposed resolution or actions taken are insufficient to satisfactorily resolve the claim, City at its reasonable discretion may require Contractor to carry out a process to satisfactorily resolve the complaint. The cost of this process will be born entirely by Contractor.

10.3 Customer Information. Contractor shall not market, sell, convey, donate or disclose to any person or entity any list with the names or addresses of Customers or information regarding the composition or content of Customers' waste unless required by Applicable Law, the City or a court of competent jurisdiction.

11. **OWNERSHIP OF SOLID WASTE**

11.1 Transfer of Ownership. Except as provided otherwise in state law (Public Resources Code Section 41950), title and ownership of Organics, Recyclables and Solid Waste shall pass directly from the Customer to Contractor at the time of collection, and shall not vest in the City at any time except upon the City's exercise of its ownership option under paragraph 11.5. If Contractor delivers Solid Waste or Organics to a third party (e.g., Sycamore Landfill), title and ownership of such material will transfer to such third party upon delivery.

11.2 Ownership by Contractor. Contractor is granted the right to collect, transport, process, recover, recycle, retain, market, dispose of or otherwise use any such Solid Waste, Recyclables and Organics, or any part thereof, in any legal fashion, and retain all benefits or profits resulting from such use; provided, however, that Contractor must at all times comply with the Applicable Law. Contractor shall divert source-separated Recyclables and Organics meeting the specifications under this Agreement from landfills to the extent commercially practicable and provide information reasonably necessary for the City to receive appropriate credit from CalRecycle or other regulatory authorities. Contractor shall not landfill any source separated Recyclables or Organics without the City's prior written permission, except that Contractor may landfill Recyclables or Organics exceeding the contamination threshold set forth in Exhibit A and residual remaining after processing.

11.3 City's Right to Direct Disposal Location. The City has the right to direct that any Solid Waste or Organics collected by Contractor be delivered to a fully permitted facility designated by the City. This direction by the City shall be made with at least thirty (30) days written notice to Contractor. In the event that modifications to Contractor's operations are necessary to comply with the terms and conditions of this Section, and to the extent the required modifications affect Contractor's costs of doing business resulting from the collection, processing or marketing of Organics, the rates for service shall be adjusted, as provided in this Agreement, to reflect any increases or decreases in the costs or revenues arising from such modifications. Contractor agrees and acknowledges that the City's previous designation of the Sycamore Canyon Landfill as the location for Solid Waste deliveries does not entitle Contractor to any adjustment in rates pursuant to this paragraph.

11.4 Organics Processing Facility. Without limiting the City's rights under paragraph 11.3 or 11.5, the Parties understand and agree that Organics collected by Contractor shall be processed at an Organics Processing Facility. Such facility or facilities shall have sufficient capacity during the Term to process all City Organics and be properly licensed and operated pursuant to Applicable Law. Without limitation, the Organics Processing Facilities shall process Organics in a manner to ensure maximum diversion credits under Applicable Law. Contractor shall not be entitled to a maximum rate adjustment when Organics begin being delivered to the Organics Processing Facilities but the portion of the maximum rates currently attributable to disposal shall be adjusted in the future as set forth in paragraph 8.3. Moreover, while the Parties agree that the processing of Organics at the Organics Processing Facilities does not impair the City's current flow control commitment, the Parties shall meet and confer in the event that any third party asserts that this paragraph does so. The Parties shall determine whether to (1) maintain current flow control, or (2) object or defend against any claim or (3) have Contractor provide compensation to City to replace any payments made by the third party. If the Parties cannot reach an agreement, the City may terminate this Agreement with written notice to Contractor.

11.5 City's Ownership Option. The City has the option of assuming title and ownership of Solid Waste or Organics under this Agreement by providing Contractor with thirty (30) days written notice of City's assumption of title and ownership.

12. **INDEMNIFICATION, INSURANCE AND PERFORMANCE BOND**

12.1 Indemnification of City.

12.1.1 **General.** Contractor agrees that it shall indemnify and hold harmless City, its officers, officials, employees, agents, assigns and any successor or successors to City's interest, from and against any and all loss, liability, penalties, claims, demands, actions or suits, of every kind and description, arising or resulting from: (i) the acts or omissions of Contractor, its agents, employees or subcontractors, in exercising the privileges granted to it by this Agreement; and (ii) the failure of Contractor, its agents, employees and/or subcontractors, to comply in all respects with the provisions and requirements of this Agreement. Contractor shall, upon demand of City, at Contractor's sole cost and expense, defend with an attorney chosen by Contractor and approved by the City (unless Contractor makes a reservation of rights with respect to any claim, in which case the City may engage separate counsel with reasonable costs and expenses to be reimbursed by

Contractor) to defend City, its officers and/or employees against any and all claims, actions or suits in any legal proceedings, (whether judicial, quasi-judicial, administrative or legislative in nature) brought against City, its officers and/or employees arising or resulting from those situations described in (i) and (ii) above.

12.1.2 Hazardous Waste. Contractor shall indemnify, defend with an attorney selected by City, protect and hold harmless City, its officers, officials, employees, agents, assigns and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its officers, employees or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where Contractor stores or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is intended to and shall be construed to operate as an agreement pursuant to Section 107(c) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9067(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify City from liability.

The foregoing (i) shall not apply to the extent that any costs and damages arise out of the sole negligence or willful misconduct of City, its agents, employees, officers and contractors; (ii) is for the exclusive benefit of the City and in no event shall such indemnity inure to the benefit of any third party; (iii) shall not apply with respect to: (a) any Hazardous Waste or hazardous substance generated by the City or its agents and delivered by the City or its agents; (b) any materials delivered by Contractor to a disposal facility or processing facility designated by the City that is not owned or operated by Contractor, following such delivery, or (c) the disposal or release of hazardous substances or Hazardous Waste, to the extent such disposal or release has resulted from the negligence or willful misconduct of the City, its agents, employees, officers and contractors or third parties.

12.1.3 Diversion Performance Levels; Indemnification. Subject to the restrictions set forth in Public Resources Code Section 40059.1, Contractor shall protect, defend, indemnify and hold City harmless against all fines or penalties imposed by the CalRecycle, or any other government agency with jurisdiction, in the event that the diversion requirements of AB 939 and/or Applicable Law are not met by City with respect to the waste stream covered by this Agreement to the extent caused by Contractor's failure to comply with this Agreement or Applicable Law. Contractor shall provide the indemnification described herein unless the fines and penalties imposed upon the City for failure to meet the diversion requirements are caused by the City's material breach of its obligations under this Agreement or under Applicable Law. In the event any new or expanded programs are necessary to meet diversion requirements as required by existing Applicable Law, Contractor shall be solely responsible for their implementation. Contractor, at its sole cost, shall prepare and update public information and engagement and diversion plans if requested by City for compliance with existing Applicable Law. If the City is

unable to meet its diversion requirements due to changes in Applicable Law, Contractor shall implement the necessary new programs as directed by City and the parties shall meet and confer regarding any appropriate adjustment in the rates pursuant to Section 8.3.3.

12.1.4 **Franchise Award.** Contractor understands and acknowledges that the award of this Agreement and related decisions may be subject to review and repeal by the City's citizens through a referendum or similar petition, and to various types of legal and environmental challenges (such referenda, similar petition and legal and environmental challenges being referred to collectively as "Legal Challenge and Referendum"). For purposes of this provision, "Legal Challenge and Referendum" expressly excludes any claims arising from or brought under California Constitution Article XIII D. Accordingly, this Agreement shall not become effective until the City reasonably determines that (1) any Legal Challenge and Referendum that had been initiated as of the time of such determination have been resolved in favor of the City's award of this Agreement to Contractor, and (2) the deadline to initiate any additional Legal Challenge and Referendum has expired. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its Mayor, Council, officers, representatives, agents, employees and volunteers, harmless against any and all liability, claims, losses, damages, or expenses including reasonable attorney's fees, arising from any Legal Challenge and Referendum. In the event of any election regarding a Legal Challenge and Referendum, Contractor shall reimburse City within thirty (30) days of receipt of an invoice detailing such costs. With respect to any referendum, City shall meet and confer with Contractor to determine if the City will hold an election on the Referendum. If the City, in its sole discretion, decides to move forward with an election, Contractor shall be responsible for all City costs of doing so.

12.1.5 Notwithstanding the provisions of this paragraph 12.1, Contractor shall not be required to appear or act in any litigation based solely upon the negligent acts or omissions of City.

12.2 Insurance. Contractor shall obtain and shall require its subcontractors to obtain insurance of the types and in the amounts described below and satisfactory to City, provided that City may require increased insurance coverage limits over time to offset the effects of inflation.

12.2.1 **Commercial General Liability Insurance.** Contractor shall maintain time of occurrence based commercial general liability insurance or equivalent form with a combined single limit of not less than five million dollars (\$5,000,000) per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or be no less than five million (\$5,000,000) the occurrence limit. Such insurance shall:

(a) Name City, its officials, officers, employees, agents, and consultants, as additional insureds with respect to performance of Solid Waste Management Services. Such additional insured status shall contain no special limitations on the scope of its protection to the above listed additional insureds.

(b) Be primary with respect to any insurance or self insurance programs covering City, its officials, officers, employees, agents, and consultants.

(c) Contain standard separation of insureds provisions.

12.2.2 Business Automobile Liability Insurance. Contractor shall maintain business automobile liability insurance or equivalent form with a combined single limit of not less than three million dollars (\$3,000,000) per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

12.2.3 Workers' Compensation Insurance. Contractor shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than three million dollars (\$3,000,000) per accident.

12.2.4 Certificates/Insurer Rating/Cancellation Notice.

(a) Contractor shall, prior to commencement of the Solid Waste Management Services, furnish to City properly executed certificates of insurance, and certified copies of endorsements, which shall clearly evidence all insurance required in this paragraph. Insurance policies required by this agreement shall not be suspended, voided, or canceled except after thirty (30) days prior written notice or ten (10) days prior written notice for non-renewal has been given to the City.

(b) Contractor shall maintain such insurance from the time the Solid Waste Management Services commence until the Solid Waste Management Services are completed, except as may be otherwise required by this Section.

(c) Contractor shall place insurance with insurers having an A.M. Best Company rating of no less than A:VIII and licensed to do business in California.

(d) Contractor shall replace certificates, policies and endorsements for any insurance expiring prior to completion of the Solid Waste Management Services.

12.2.5 Performance Bond. Prior to execution of this Agreement, Contractor shall deposit with City either a letter of credit or a performance bond (collectively referred to as the "Performance Bond") in the amount of Five Hundred Thousand Dollars (\$500,000). The Performance Bond shall serve as security for the faithful performance of Contractor of all of the provisions and obligations of this Agreement. The Performance Bond shall contain terms acceptable to City. If Contractor deposits a letter of credit with City, interest, if any, relating to any cash deposits that may exist with regard to that letter of credit shall accrue to Contractor. City may, at any point during the term of this Agreement, require that the amount of the Performance Bond be increased by an amount equal to the cumulative increase in the Consumer Price Index for San Diego-Carlsbad, California, for all urban consumers since the Effective Date or since the last increase in the amount of the bond.

12.2.6 Compliance with Environmental Regulations. Contractor, and all its employees, agents and subcontractors who have a reasonable probability of coming into contact with hazardous materials shall be adequately trained to report the observance of hazardous materials in accordance with all applicable laws and regulations. Contractor shall comply with all applicable laws and regulations relating to the care and protection of the environment in the performance of the Solid Waste Management Services or any portion thereof.

13. TERMINATION AND OTHER REMEDIES

13.1 Termination. If the City determines that Contractor's performance pursuant to this Agreement does not conform with the provisions of this Agreement, the requirements of the Municipal Code, the requirements of CalRecycle, including, but not limited to, requirements for diversion or any other applicable federal, state or local law or regulation, including but not limited to the laws governing transfer, storage or disposal of hazardous waste, City shall advise Contractor in writing of such deficiencies. City may, in such written instrument, set a reasonable time by which to correct all deficiencies. Unless a greater amount of time is otherwise specified, a reasonable time for correction shall be sixty (60) days from the receipt by Contractor of such written notice. The City Manager shall review Contractor's response and refer the matter to the City Council or decide the matter and notify Contractor of that decision to terminate, in writing. A decision or order of the City Manager to terminate this Agreement shall be final and binding on Contractor if Contractor fails to file a "Notice of Appeal" with City within sixty (60) days of receipt of City Manager's notice to terminate. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager shall either refer the appeal to the City Council for proceedings in accordance with this Article, or refer the matter to a hearing officer as provided in Article 15.

13.2 City Council Review. If referred to the City Council, the matter shall be set for hearing by the City Clerk. The City Clerk shall give Contractor, and any other person requesting notice thirty (30) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give Contractor, and any other interested person, a reasonable opportunity to be heard including the opportunity to submit documents, testimony and other information for the City Council's review and consideration.

13.3 City Council Determination. Based on the evidence presented at the public hearing, the City Council shall determine by resolution whether this Agreement should be terminated. If, based upon the record, the City Council determines that the performance of Contractor is in breach of any material term of this Agreement or any material provision of any applicable federal, state or local statute or regulation, the City Council, in the exercise of its sole discretion, may terminate forthwith this Agreement. The decision of the City Council shall be final and conclusive, subject to review pursuant to Article 15. Contractor's performance under this Agreement is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

13.4 Rights Cumulative and Not Exclusive. This right of termination or to impose liquidated damages is in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

13.5 Other Grounds for Termination. City further reserves the right to terminate Contractor's franchise or impose liquidated damages in the event of any of the following:

13.5.1 Fraud or Deceit. If Contractor practices, or attempts to practice, any fraud or deceit upon City.

13.5.2 Insolvency. If Contractor becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

13.5.3 Insurance. If Contractor fails for any period of time to provide or maintain in full force and effect, the Workers' Compensation, liability and indemnification insurance coverages or performance bond as required by this Agreement, and/or fails to provide timely notice that any required bond or policy of insurance has expired, been terminated or been reduced or policy of insurance has expired or been terminated. Notwithstanding any provisions of this Agreement to the contrary, including provisions pertaining to the cure of breaches, any such failure shall be an incurable breach of this Agreement unless the parties agree otherwise.

13.5.4 Willful Violations. If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.

13.5.5 Cessation of Services. If Contractor ceases to provide Solid Waste Management Services as required under this Agreement over all or a substantial portion of its service area for a period of three (3) days or more, for any reason within the control of Contractor, except as provided in Section 17.2.

13.5.6 Failure to Make Payment. If Contractor willfully fails to make any payments required under this Agreement and/or refuses to provide City with required information, reports and/or test results in a timely manner as provided in this Agreement.

13.5.7 Crimes. If Contractor, one of its officers or managers, or a business controlled by Contractor is found guilty of any criminal law relating to Solid Waste Management Services, or is found liable for violation of a law relating to antitrust, unfair trade practices, or dumping of refuse or hazardous waste.

13.5.8 Other Acts or Omissions. If any other act or omission by Contractor materially violates the terms, conditions or requirements of this Agreement, City Ordinances, Municipal Code, or Applicable Laws related to Solid Waste Management Services and is not corrected or remedied within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

13.6 Hearing Officer Review. Contractor may appeal determinations by the City Council under this Section to a hearing officer, as provided in Article 15.

14. **LIQUIDATED DAMAGES**

14.1 Liquidated Damages Appropriate. City finds and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which will be incurred by City as a result of a material breach of Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (a) substantial damage results to members of the public who are denied services or denied quality or reliable service; (b) such

breaches cause inconvenience, anxiety, frustration and deprivation of the benefits of this Agreement in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (c) that Contractor's services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (d) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

CITY Initial MSB

CONTRACTOR Initial Here 

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

LIQUIDATED DAMAGES		Amount	
	Item	If Not Cured	If Cured Within 5 Work Days
OPERATIONS:			
1a.	Failure to clean up spillage or litter caused from collection vehicles.	\$200.00 per incident per location.	Cannot be cured.
1b.	Failure to clean up spillage around Containers where spillage or litter is caused by Contractor.	\$200.00 per incident per location.	Cannot be cured.
1c.	Failure to collect a missed collection by close of the next work day.	\$100.00 per incident per day.	\$0
1d.	Failure to maintain equipment (Cart, Bin, Roll-off Box, Container, and other designated containers and collection vehicle) in a clean, safe, and sanitary manner per Agreement.	\$200.00 per incident per day.	\$0
1e.	Failure to complete at least ninety percent (90%) of each route on the regular scheduled collection work day, notwithstanding acts of God or Force Majeure event.	\$700.00 for each route not completed.	Cannot be cured.

LIQUIDATED DAMAGES		Amount	
	Item	If Not Cured	If Cured Within 5 Work Days
1f.	Commingling in collection vehicles recyclables with Solid Waste or Organics; or commingling in collection vehicles Organics with Solid Waste or Recyclables without first notifying the City and receiving approval.	\$1,000.00 per incident.	Cannot be cured.
1g.	Commingling in collection vehicles Solid Waste, Recyclables or Organic Waste collected inside and outside the City.	\$1,000.00 per incident.	Cannot be cured.
1h.	Failure to comply with State and Federal vehicle weight limitations.	\$500.00 per incident after ten (10) occurrences per calendar year.	Cannot be cured.
1i.	Failure to repair damage to private property caused by Contractor or its personnel.	\$300.00 per incident per location.	\$0
1j.	Failure to repair damage to City property or City streets directly caused by Contractor or its personnel (normal wear and tear excepted).	\$300.00 per incident or the actual reasonable cost of repair to City's satisfaction at no cost to City.	\$0
2. CUSTOMER SERVICE:			
2a.	Failure to respond to each complaint within the time set forth in this Agreement.	\$100.00 per incident per Customer.	\$0
2b.	Failure to comply with the collection hours of operation as required by this Agreement.	\$500.00 per incident per day.	Cannot be cured.
2c.	Failure to comply with the office hours of operation as required by this Agreement.	\$200.00 per incident per day.	Cannot be cured.

LIQUIDATED DAMAGES		Amount	
	Item	If Not Cured	If Cured Within 5 Work Days
2d.	Failure to have Contractor personnel operating within City in proper uniform.	\$100.00 per incident per day.	Cannot be cured.
2e.	Failure to repair or replace damaged Containers within the time required by this Agreement.	\$100.00 per account per incident.	\$0
2f.	Failure to deliver or exchange Containers within the time required by this Agreement.	\$100.00 per account per incident.	\$0
3. MANAGEMENT:			
3a.	Failure to maintain or submit to City all documents and reports required under the provisions of this Agreement.	\$100.00 per incident per day.	\$0
3b.	Failure to have a vehicle operator operating within City properly licensed.	\$500.00 per incident per day.	\$0
4. FACILITIES:			
4a.	Disposal of source-separated Recyclables or Organics in the landfill without first notifying the City and receiving approval as set forth in Section 11.2.	\$1,000.00 per load.	Cannot be cured.
4b.	Failure to deliver any collected materials to the landfill or processing facility, except as otherwise expressly provided in this Agreement.	\$5,000.00 per failure	Cannot be cured.
4c.	Failure to meet the minimum annual diversion requirement as set for in this Agreement.	The current disposal cost/ton for each ton under the diversion requirement, or \$10,000.00 whichever is greater.	Cannot be cured.

14.2 Assessment of Liquidated Damages. The City Council may, in its discretion, assess liquidated damages for any violation identified in this Article with written notice to the Contractor. City finds, and Contractor acknowledges and agrees, that the above-described liquidated damages provisions represent a reasonable sum in light of all of the circumstances. Liquidated damages shall be applicable consistent with the table above in Section 14.1. Contractor shall pay any liquidated damages assessed by City Council within ten (10) days after they are assessed. If they are not paid within the ten-day period, City may withdraw them from the security fund established by the Performance Bond required by this Agreement, collect the liquidated damages through the courts or by a reduction in Contractor's rates, order the termination of the Franchise granted by this Agreement in accordance with Article 13, or any combination of these remedies.

14.3 Hearing Officer Review. Contractor may appeal determinations by the City Council under this paragraph to a hearing officer, as provided in Article 15 of this Agreement.

15. ADMINISTRATIVE HEARING PROCEDURES

15.1 Hearing Officer. If either the City Manager refers a matter to a hearing officer, or Contractor appeals a determination of the City Council, City and Contractor shall mutually agree on a hearing officer. If Agreement is not reached within twenty (20) working days of the filing of the notice of appeal, then Contractor shall select the hearing officer from a list of three potential hearing officers who are retired California Superior Court judges or Appellate court justices, none of whom are related to the parties, prepared by the City Attorney.

15.2 Hearing. The hearing shall be conducted according to California Code of Civil Procedure section 1282, et seq. The exclusive venue shall be in the City of Santee, California. A hearing officer to whom a matter is referred shall have the authority to make a determination regarding the dispute including without limitation: (a) order either Party to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; (b) assess damages and/or levy a penalty upon Contractor or City consistent with the terms of this Agreement; or (c) find there has been no breach. The amount of the penalty shall be reasonably related to the seriousness of the breach of this Agreement.

15.3 Fees. The party losing the hearing shall be liable for the hearing officer's fees.

15.4 Failure to Comply Constitutes Breach. Any failure of Contractor to comply with the hearing officer's order shall be deemed a material breach of this Agreement, and may be grounds for termination of this Agreement.

15.5 Timing of Hearing; Procedures. The hearing officer shall commence the hearing within thirty (30) days of selection unless the parties and the hearing officer otherwise agree. Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties, or if agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of

privilege of the parties, and the hearing officer shall adopt procedures to protect such rights. Except as may be otherwise specifically agreed by the parties, no other form of pretrial discovery shall be available to the parties; provided that if either party notifies the hearing officer that a material violation of the Franchise or rights in connection therewith is claimed by either party, the provisions of Code of Civil Procedure section 1283.05 shall apply.

15.6 No Ex Parte Contact. Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.

15.7 Stay. Until final judgment is entered from the hearing officer proceeding under the foregoing provisions and the time for appeal or other post-judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in this Agreement and related to the subject matter of the hearing shall be stayed. The hearing officer may modify or cancel any proposed penalties or sanctions upon a finding that the party subject thereto acted with substantial justification, or if the interests of justice so require.

15.8 Petition. Any party to a hearing may petition the Superior Court in San Diego County, California to confirm, correct or vacate the award on the grounds stated in Title 9 of the Code of Civil Procedure sections 1285, et seq. Any proceedings on appeal shall be in accordance with the Code of Civil Procedure sections 1294 et seq.

16. **REPORTING, ACCOUNTING AND AUDITING**

16.1 Quarterly Reports. Contractor shall, on a quarterly and annual basis (or on such more frequent basis as may be required by CalRecycle), provide reports to City with respect to Contractor's operations as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of City in connection with this Agreement, and/or pursuant to local, state and federal laws, and to enable City to effectively review Contractor's performance and quality of service. All such reports must contain information sufficient for City to report its progress to the State regarding the implementation of City's SRRE and HHWE pursuant to the Public Resources Code. These reports shall be comprised of the following:

16.1.1 Contents of Quarterly Reports. Contractor shall submit quarterly program reports. These reports shall be due within twenty (20) calendar days after the end of each quarter of operations. If the twentieth calendar day falls on a weekend or holiday, the reports shall be due on the next working day. At a minimum, the reports shall include:

(a) Identification of the total tonnage of Solid Waste, Organics and Recyclables collected and the manner in which it was disposed or processed.

(b) Identification of tonnage collected and disposed of due to non-recyclability or contamination in the Recyclables or Organics collection programs.

(c) Residential recycling program monthly participation rates and monthly set-out rates on each collection route.

- (d) Commercial Recycling and Organic monthly participation rates and program information.
- (e) The number of customers receiving services by service type.
- (f) Description of progress in performing Solid Waste Management Services including problems encountered and resolution.
- (g) Discussion of public education activities.
- (h) Changes to or modifications of collection and processing activities.
- (i) Any other information requested by the City or required by CalRecycle.

16.1.2 Contents of Annual Reports. Contractor shall submit annual program reports. These reports shall be submitted to City no later than forty-five (45) calendar days after the end of each year of operation. If the forty-fifth calendar day falls on a weekend or holiday, the reports shall be due on the next working day. At a minimum, these reports shall include:

- (a) All report items required for inclusion in the quarterly reports.
- (b) Upon the City's request, a certified financial statement of Contractor's parent company (Waste Management, Inc.).
- (c) An updated list of all vehicles used for collecting, hauling or disposing of Solid Waste, Recyclables and Organics in City including the make, type, year, license number, identification number and ownership.
- (d) The names, titles and addresses of the owners, officers, directors and major stockholders (holding 5% or more stock) of Contractor.
- (e) The names and titles of all supervisory personnel used in providing Solid Waste Management Services for City.
- (f) Upon the City's request, a description of all cases of public or private property damage and personal injury caused by Contractor that have occurred while providing Solid Waste Management Service.
- (g) Upon the City's request, a description of all traffic citations received.
- (h) Any other information requested by the City or required by CalRecycle.

16.1.3 City Audit. Failure by Contractor to provide quarterly or annual reports required under the terms of this Franchise Agreement, will, at a minimum, allow City to employ an independent certified public accounting firm to prepare such reports, at Contractor's expense. In

addition, Contractor's books and records shall be subject to audit and inspection for the purpose of reviewing billing operations, accounts receivable and customer service, by either party, its auditors or other agents, at any reasonable time upon reasonable notice. Such audit or inspection shall take place at City's City Hall, if reasonably practicable, or at a Contractor facility in San Diego County. City shall initially bear the cost of such audit. If such audit discloses a material breach of this Agreement or an underpayment of the franchise fees or other sums due under this Agreement in excess of five percent (5%) of the amount which should have been paid, Contractor shall promptly tender to City the amount of such underpayment, together with interest at the rate of twelve percent (12%) computed from the date of underpayment, and shall further reimburse City for the entirety of its audit costs, including, without limitation, auditor's costs and expenses, internal costs and expenses, and legal and other third party expenses. If such audit discloses an underpayment of less than five percent (5%), Contractor shall promptly repay such underpayment, together with interest at the rate of twelve percent (12%) computed from the date of underpayment, and City shall bear the costs of the audit. If such audit discloses an overpayment, City shall promptly repay such underpayment without interest and City shall bear the costs of the audit.

16.2 Other Information. Contractor shall provide City with a copy of all reports, or other material adversely affecting Contractor's ability to perform Solid Waste Management Services, including reports related to any landfill used by Contractor during the term of this Agreement, and papers submitted by Contractor to any court or local, state, regional, or federal regulatory agency, or received from such an agency or court. If sent by Contractor, the copy shall be sent simultaneously with submission to the agency. If received from an agency or court, the copy must be mailed to City within five (5) business days.

17. GENERAL PROVISIONS

17.1 Force Majeure. Contractor shall not be in default under this Agreement in the event that the collection, transportation, processing and/or disposal services of Contractor are temporarily interrupted or discontinued for any of the following reasons, including threats thereof (to the extent such threats hinder Contractor's ability to perform under this Agreement): riots, wars, civil disturbances, power failures, terrorism, insurrections, epidemics, pandemics, hurricanes, earthquakes, floods, acts of God, government orders and regulations, or other similar catastrophic events which are beyond the reasonable control of Contractor. It is specifically understood that "other catastrophic events" exclude strikes, lockouts and other labor disturbances to the extent beyond three (3) calendar days; as such, Contractor shall not be in default for failing to provide Solid Waste Management Services for the first three calendar days of a labor disturbance. When any of these events interrupt collection, transportation, processing and/or disposal of Solid Waste, Organics, and Recyclables by Contractor as required under this Agreement, City may elect to exercise its rights under Article 13.

17.2 Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor will be considered an excuse from performance to the extent that Contractor meets the terms of Section 17.1. Notwithstanding other remedies to which City may be entitled to under this Agreement due to Contractor's failure to perform, or anticipated failure to perform, arising out of labor unrest, Contractor shall:

17.2.1 Have provided a contingency plan to City within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan shall be subject to City approval and shall set forth a plan to meet City Collection requirements. The plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and a communications plan to keep the City and the public informed.

17.2.2 Notify the City Manager sixty (60) days prior to the expiration of its drivers' labor agreement.

17.2.3 Meet the requirements agreed to in the contingency plan.

17.3 Annexation. In the event that any community, neighborhood or other territory is hereafter annexed to City, Solid Waste Management Services shall, if requested by City, be immediately provided to such area by Contractor pursuant to this Agreement, subject to any rights the existing Solid Waste Franchisee in such territory may have to continue providing services in such territory. City agrees to give all required notice and to do all acts necessary under applicable statutes to accomplish this result as soon as permissible by law.

17.4 Independent Contractor. It is expressly understood and agreed that Contractor shall perform all work and services described as an independent contractor and not as an officer, agent, servant or employee of City; that Contractor shall have the exclusive control over the details of the services and work performed hereunder and all persons performing the same; that Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any; and that nothing shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents or subcontractors shall obtain any rights to retirement benefits, workers' compensation benefits or any other benefits which accrue to City employees.

17.5 Governing Law and Venue. It is understood and agreed by the Parties that the law of the State of California shall govern the interpretation of this Agreement. Any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the courts of and for San Diego County.

17.6 Fees and Gratuities. Contractor shall not, nor shall it permit any agent, employee or subcontractor employed by it to request, solicit, or demand either directly or indirectly, any compensation or gratuity for the collection of Solid Waste, Organics, or Recyclables otherwise required to be collected under this Agreement. Contractor shall not, nor shall it permit any agent, employee or subcontractor employed by it to accept any monetary compensation or gratuity for the collection of Solid Waste otherwise required to be collected under this Agreement.

17.7 Amendment. Except as may otherwise be specifically provided in this Agreement, this Agreement may be amended or modified only by a written agreement duly authorized and executed by both City and Contractor.

17.8 Assignment and Transferability; Subcontracting. Except as provided in Article 17, this Agreement is not assignable or transferable in whole or in part by Contractor, voluntarily, involuntarily, or by operation of law or otherwise except by written amendment to this Agreement signed by both Parties. Any request made to City by Contractor for approval of an assignment or transfer of this Agreement shall be accompanied by a non-refundable deposit in the amount of Fifty Thousand Dollars (\$50,000) to cover City's costs, including attorneys' fees, in evaluating the proposed assignee or transferee and the potential benefit or detriment to City of the proposed assignment or transfer. In addition, the Solid Waste Management Services called for in this Agreement, as opposed to the ancillary services such as oil spill clean-up, shall not be subcontracted for by Contractor without the City's prior written approval.

The sale, transfer, assignment or hypothecation of a majority ownership interest in Contractor to an Affiliated Company shall not be deemed an assignment within the meaning of this paragraph.

However, "assignment" shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's local, regional, and/or corporate assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten percent (10%) or more of the local, regional, and/or corporate assets, stock, or ownership of Contractor to a Person (other than a transfer of shares in Contractor by the owner of such shares to a revocable trust for the benefit of his or her family or to another owner of shares in Contractor); (iii) any reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the value or voting rights in the local, regional, and/or corporate stock of Contractor; (iv) divestiture of an Affiliated Company used by Contractor to fulfill its obligations under this Agreement; and, (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of local, regional, and/or corporate ownership and/or control of Contractor.

Any dispute between the City and the Contractor with respect to a determination of whether a sale, transfer, assignment, subcontracting, or hypothecation of a number of shares or other units of ownership in Contractor has occurred or will occur shall be subject to referee pursuant to Code of Civil Procedure Section 638, et seq. with the presiding judge of the San Diego County Superior Court.

17.9 Compliance with Applicable Law. Contractor agrees that it will comply with all provisions of the Applicable Law, including City's business license ordinance, and will obtain all licenses and permits, and pay all taxes and fees, required under the Applicable Law.

17.10 Notices. All notices, demands, requests, consents or other communications which this Agreement contemplates, authorizes, requires or permits either Party to give to the other, shall be in writing and shall be personally delivered; or sent by overnight mail, delivery service, or registered or certified mail, postage prepaid, return receipt requested; or by facsimile transmission, all addressed to the respective Party as follows:

To City:

City of Santee

10601 North Magnolia Avenue
Santee, CA 92071
Attn: City Manager

Copy to: Best Best & Krieger LLP
655 West Broadway, Suite 1500
San Diego, CA 92101
Attn: Shawn Hagerty

To Contractor: USA Waste of California, Inc.
1001 W. Bradley Ave.
El Cajon, CA 92020-1627
Attn: District Manager

Copy to: USA Waste of California, Inc.
9081 Tujunga Ave.
Sun Valley, CA 91352
Attn: Senior Legal Counsel

or to such other address as either Party may from time to time designate by notice to the other given in accordance with this paragraph. Such notice shall be deemed effective on the date personally served or, if mailed, three (3) days from the date such notice is deposited in the mail.

17.11 Savings Clause and Entirety. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement.

17.12 Attorney's Fees. In the event of any claim or action or proceeding brought by either Party against the other under or in connection with the subject matter of this Agreement, the prevailing Party shall be entitled to recover from the losing Party as part of the judgment in such action all reasonable costs, expenses, and attorneys' fees, including those costs, expenses and attorneys' fees incurred in defending any counterclaim or cross-complaint brought in such action and incurred in any appeals, all in such amount as the court shall judge reasonable.

17.13 Entire Agreement. Commencing on the Effective Date, this Agreement supersedes any previous agreements either oral or written by the Parties and represents the entire understanding between the Parties; provided, however, that this Agreement shall not relieve Contractor of any financial obligations that may have existed under the former franchise agreement.

17.14 Changes in Law. In the event that new or amended local, state or federal laws or regulations are enacted after the date on which this Agreement is executed, or if existing laws or regulations are challenged and overturned, and such has the effect of materially altering the terms of this Agreement or preventing or precluding compliance with one or more provisions of this Agreement, such provisions of this Agreement may be modified or suspended by the mutual

agreement of the Parties as may be necessary to comply with such new or amended local, state or federal laws or regulations. The City and the Contractor shall agree to enter into good faith negotiations regarding such an amendment of this Agreement that reflects the extent to which the provisions hereof have been so modified or suspended. If the City and Contractor cannot agree, despite their good faith efforts, upon an amendment to the Agreement, then the Party who is negatively affected by the change in law shall have the right to terminate this Agreement, upon ninety (90) days' written notice.

17.15 Rights of City to Perform During Emergency. Should Contractor, for any reason whatsoever, including the occurrence or existence of any of the events or conditions set forth in paragraph 17.1, fail, refuse or be unable to collect, transport, process and dispose of any or all of the Solid Waste for which it is obligated under this Agreement to collect, transport and dispose of for a period of more than forty-eight (48) hours, and if as a result thereof Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event City shall have the right, in addition to any other rights under this Agreement or pursuant to law, upon twenty-four (24) hours' prior written notice to Contractor, or without such notice should the City determine that a further delay would endanger the health, safety, and welfare of City residents during the period of such emergency, to take possession of any or all equipment of Contractor to collect, transport, process and dispose of City Solid Waste or which Contractor would otherwise be obligated to collect and transport pursuant to this Agreement. Contractor agrees that in such event it will fully cooperate with City to affect such a transfer of possession for City's use. Contractor agrees that, in such event, City may take possession of and use all of said equipment and facilities without paying Contractor any rental or other charge, provided that City agrees that, in such event, it assumes responsibility for the proper and normal use of such equipment and facilities.

Contractor further agrees that, in such event, it shall reimburse City for any and all costs and expenses, including the cost of City employees and/or third party laborers in the performance of emergency services pursuant to this paragraph, incurred by City in taking over possession of the above mentioned equipment and facilities in such manner and to the extent that would otherwise be required of Contractor under the terms of this Agreement. City shall first subtract such reimbursement costs from compensation otherwise due Contractor under this Agreement, and to the extent such costs exceed those due Contractor, an itemized statement of costs and expenses shall be submitted to Contractor for reimbursement. To facilitate reimbursement of costs and expenses to City, Contractor agrees to assign its right to receive payment from its Customers for services rendered pursuant to this Agreement to the extent that such services have been rendered to said Customers by City and for amounts necessary to reimburse City for its actual costs to perform the emergency services. Contractor further agrees to allow City to collect such payments directly from the Customers. City agrees that it shall relinquish possession of all of the above mentioned property to Contractor upon written notice from Contractor to the effect that it is able to resume its responsibilities under this Agreement. City shall be solely responsible for the safe operation and care of Contractor equipment, as well as safe provision of emergency services pursuant to this paragraph. It is agreed that City's exercise of its rights under this paragraph shall not affect City's rights under Article 13.

17.16 Transition. In the event Contractor is not awarded an agreement to continue to

provide Solid Waste Management Services following the expiration or early termination of this Agreement, Contractor shall cooperate fully with City and any subsequent contractors to assure a smooth transition of services as described in this Agreement. Such cooperation shall include but not be limited to: providing routing information, route maps, vehicle fleet information, and list of Customers; providing a complete inventory of all Containers; providing adequate labor and equipment to complete performance of all Solid Waste Management Services required under this Agreement; and providing other reports and data required by this Agreement.

[Signatures on following page]

**SIGNATURE PAGE
TO
AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT
FOR SOLID WASTE MANAGEMENT SERVICES**

City and Contractor have signed this Exclusive Franchise Agreement for Solid Waste Management Services as of this 12th day of August, 2020.

City:

CITY OF SANTEE, a California municipal corporation

By: Marlene S. Best
Marlene Best
City Manager

Contractor:

USA WASTE OF CALIFORNIA, INC., a Delaware corporation

By: Larry Metter
Larry Metter
Title: President-Southern California Area

ATTEST:

By: [Signature]
City Clerk

APPROVED AS TO FORM:

By: [Signature]
City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

1. Residential Premises

A. General: Contractor shall provide collection, transportation and disposal services to all Residential Premises one time per week. These services shall consist of collecting, transporting and disposing of Organics, Recyclables and Solid Waste. Contractor shall provide each Residential Premises with Carts to contain each type of waste. Carts shall vary in size and established rates shall be based upon Cart size. Carts shall be 38 gallon, 64 gallon and 96 gallon or other sizes permitted by the City Manager. Exhibit B identifies rates for each Cart size. Contractor may assess a Contamination Fee and Extra Pick-up Fee as set forth in Exhibit B for Organics or Recyclables Containers that are contaminated with Solid Waste, Exempt Waste or any material not constituting Organic Waste or Recyclables, as applicable, and dispose of same as Solid Waste. Contractor may assess a Non-Recycling Fee as set forth in Exhibit B for Solid Waste Containers that contain Recyclables or Organics. Contractor may assess a Contamination Fee and Extra Pick-up Fee as set forth in Exhibit B for Solid Waste Containers that are contaminated with Exempt Waste.

B. Food Waste: Beginning January 1, 2022, Contractor shall implement a Food Waste collection program from Residential Premises through the use of Food Waste Carts or Commercial Containers. The program(s) may involve co-collection and processing with Green Waste or a separate collection of all or part of the Food Waste stream. Such program shall comply with SB 1383, any implementing regulations and other Applicable Law. Notwithstanding any provision of this Agreement to the contrary., Contractor shall not request or receive any adjustment in compensation or the maximum rates for implementing such program.

2. Commercial Premises

A. Solid Waste: Contractor shall provide collection, transportation and disposal services to all Commercial Premises a minimum of one time per week. Containers may be Bins or Roll-Off Boxes. Established rates shall be based upon Container size and frequency of pick-up. Exhibit B identifies maximum rates for each Container size and frequency of pick-up. Contractor may assess a Non-Recycling Fee as set forth in Exhibit B for Solid Waste Containers that contain Recyclables or Organics. Contractor may assess a Contamination Fee and Extra Pick-up Fee as set forth in Exhibit B for Solid Waste Containers that are contaminated with Exempt Waste.

B. Recycling: Contractor shall provide collection, transportation and Recycling services to all Commercial Premises a minimum of one time per week. Containers shall vary in size including 1.5 cubic yards, 3 cubic yards and 4 cubic yards. Established rates shall be based upon Container size and frequency of pick-up. Exhibit B identifies rates for Container size and frequency of pick-up. Contractor may assess a Contamination Fee and Extra Pick-up Fee as set forth in Exhibit B for Recyclables Containers that are contaminated with Solid Waste, Organic Waste, Exempt Waste or any material not constituting Recyclables, and dispose of same as Solid Waste.

C. **Organics:** Contractor shall provide, transportation and processing of Organics to all Commercial Premises a minimum of one time per week. Containers shall vary in size including 1.5 cubic yards, 3 cubic yards and 4 cubic yards. Established rates shall be based upon Container size and frequency of pick-up. Exhibit B identifies rates for each Container size and frequency of pick-up. Contractor may assess a Contamination Fee and Extra Pick-up Fee as set forth in Exhibit B for Organic Waste Containers that are contaminated with Solid Waste, Recyclables, Exempt Waste or any material not constituting Organics, and dispose of same as Solid Waste.

3. **Special Services:** Special pickups for unrouted or unscheduled service shall be available for all Customers subscribing to Bin service. Exhibit B identifies rates for special pickups. Collection from City parks, playgrounds, City government buildings, and City street trash cans shall be made without charge as set forth in the Agreement.

4. **Containers:** The Contractor shall be responsible for the purchase and distribution of all Containers required under this Agreement. City shall review and approve the color and design of such Containers. Notwithstanding anything in this Agreement to the contrary, Contractor shall ensure that all Containers comply with Applicable Law. Any costs to modify or replace Containers shall be Contractor's sole responsibility without any adjustment in the maximum rates.

Contractor's employees shall take care to prevent damage to Containers by unnecessary rough treatment. Any Container damaged by the Contractor shall be replaced by the Contractor, at its expense, within five (5) work days at no cost or inconvenience to the Customer.

Upon notification to the Contractor by a Customer that a Container has been stolen or damaged beyond repair, the Contractor shall deliver a replacement to such Customer within five (5) work days. The Contractor shall maintain records documenting all Container replacements occurring on a monthly basis.

Contractor shall be responsible for repair of Containers, including, but not be limited to, hinged lids, wheels and axles. Within five (5) work days of notification by the City or a Customer of the need for such repairs, the Contractor shall repair the Container or if necessary, remove the Container for repairs and deliver a replacement Container to the Customer.

Upon notification to the Contractor by the City or a Customer that a change in the size of a Container is required, the Contractor shall deliver such Container to such Customer within five (5) work days.

5. Contamination and Extra Pick-Up:

Contained materials may not have any more than 10% Non-Recyclables or Non-Organics or any Exempt Waste. Carts or Bins with more than 10% Non-Recyclables or Non-Organics may be delivered to the designated transfer or disposal facility for disposal. Contractor may reject in whole or in part, or may process, in its sole discretion, Recyclables or Organics Containers not meeting the specifications, including wet materials, and Contractor may charge Customer Contamination Fee and Extra Pick Up Fee as set forth in Exhibit "B for additional handling, processing, transporting and/or disposing of contaminated Recyclables or Organics Containers.

Contractor shall document Contamination with still pictures or video, and will notify the Customer of the contamination through applying a cart tag, by electronic communication, or phone call. Contractor may, at its discretion Collect the Container as Recyclable Materials, Organics, or as Solid Waste. Contractor shall immediately charge the Customer the City-approved contamination fee. The Customer will receive, upon request of Customer or the City, one courtesy waiver of the contamination fee. Contractor may increase Customer's Solid Waste service level by one Container size or by one frequency of Collection if Customer has three (3) or more contamination charges in any three (3) month period, or as otherwise determined by City Manager.

6. SB 1383 Regulations: It is the City's intent that the City will take primary responsibility for compliance with the requirements of SB 1383. City anticipates that Contractor will be required to assist the City with specific aspects of compliance with SB 1383, as identified in the Agreement. Below is a summary of specific areas identified in the Agreement in which the City is requiring, or may require Contractor assistance. This section further defines those areas of Contractor responsibility for which services are to be provided within current compensation, and those for which Contractor may be eligible for an adjustment in compensation as set forth in the Agreement. City and Contractor responsibilities identified this section and elsewhere in the Agreement reflect CalRecycle's April 2020 draft regulations. The parties will meet and confer following promulgation of final SB 1383 regulations to identify any necessary changes to the Contractor's SB 1383 assistance responsibilities, and periodically thereafter as necessary. The Parties acknowledge that changes in the final SB 1383 regulations or written Administrative interpretation thereof, relative to the April 2020 draft regulations, will result in an upward or downward adjustment in compensation as provided in the Agreement to the extent Contractor demonstrates the need to incur fifty thousand dollars (\$50,000) or more in added cost or City identifies cost savings of fifty thousand dollars (\$50,000), as necessary to comply with SB 1383 requirements contained in the Agreement.

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility	Within Current Provisions of this Agreement	Scope to be Confirmed Pending Final Regulations
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Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility	Within Current Provisions of this Agreement	Scope to be Confirmed Pending Final Regulations
1.	Commencing January 1, 2022, provide Collection Containers to generators that comply with color requirements when replacing containers or by January 1, 2036, whichever comes first (§18984.7)	City to approve Container colors	Contractor to provide Containers that comply with SB 1383 requirements when replacing Containers or by January 1, 2036. Container colors shall be as such: green lids for Organic Containers; blue lids for Recyclable Containers; grey lids for Solid Waste Containers <i>{*Contractor: To be modified based on proposal response to issue in Addendum 4}</i>	✓ *	
2.	Commencing January 1, 2022, place and maintain SB 1383-compliant labels on all new Containers or lids (§19894.8)	City to approve Container labels	Contractor to place and maintain City-approved labels on all new Containers or lids.	✓	

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility	Within Current Provisions of this Agreement	Scope to be Confirmed Pending Final Regulations
3.	<p>Commencing January 1, 2022, conduct route reviews of randomly selected containers for contaminants or waste evaluations as directed by City (§18984.5)</p> <p>“Route review(s)” means a visual inspection of containers along a hauler route for the purpose of determining contamination, and may include mechanical methods such as the use cameras (§18982)</p>	<p>City staff and/or third party to conduct the waste evaluation or coordinate and conduct route reviews and shall notify noncompliant generators of applicable requirements</p>	<p>Contractor to assist City staff by providing information as requested.</p>	✓	
4.	<p>Commencing January 1, 2022, if contamination is found during route reviews or waste evaluations required under §18984.5, notify generator of recycling requirements (§18984.5.b)</p>	<p>City staff and/or third party shall notify noncompliant generators of applicable requirements</p>	<p>Contractor to assist City staff by providing information as requested.</p>	✓	

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility	Within Current Provisions of this Agreement	Scope to be Confirmed Pending Final Regulations
5.	Commencing January 1, 2022, annually provide edible food generators with information about food recovery program, generator requirements, and food recovery organizations (§18985.2.b)	City to develop Edible Food recovery education content to be distributed by Contractor	Contractor to distribute annually Edible Food recovery education materials approved by City to Commercial Customers that are Edible Food generators, as identified by City	✓	
9.	Commencing January 1, 2022, implement annual inspection and compliance program for organic waste generators, edible food generators, and edible food recovery organizations (§18995.1)	City to take lead on inspection and compliance efforts City staff and/or third party to conduct generator compliance reviews	Contractor to issue and report on issuance of Non-Collection Notices, contamination surcharges, and/or other related compliance notices (should the incident occur after January 1, 2024)	✓	
10.	From January 1, 2022 through January 1, 2024, provide educational materials to regulated entities not in compliance (§18995.1.a.4)	City to approve Non-Collection Notices to be issued by City staff and Contractor City staff and/or third party to conduct generator compliance reviews	Contractor to issue Non-Collection Notices to Customers that have not properly source-separated Organics Material and/or Recyclable Material	✓	

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility	Within Current Provisions of this Agreement	Scope to be Confirmed Pending Final Regulations
11.	Commencing January 1, 2022, investigate and maintain records of all complaints received (§18995.3)	City to investigate SB 1383-related complaints received by Contractor	Contractor to maintain record of complaints and report to City complaints received in quarterly reports	✓	
12.	Commencing January 1, 2024, take enforcement actions, including issuing notices of violations (§18995.4); Impose penalties on non-compliant entities (§18997.2)	City to coordinate enforcement actions	Contractor to issue Non-Collection Notices, contamination surcharges, and/or other related compliance notices (should the incident occur after January 1, 2024), maintain records, and report quarterly to City on Non-Collection Notices and/or other related compliance notices	✓	
13.	By February 1, 2022, and annually thereafter, provide generators with information on properly separating materials, organic waste prevention, on-site recycling, methane reduction benefits, how to recycle organic waste, a list of approved haulers, and information related to food recovery (§18985.1.a)	City to review and approve public outreach materials for Customers	Contractor to distribute annually approved public education materials to all Customers, including Single-Family, Multi-Family, and Commercial Customers Such materials may be distributed through print or electronic media	✓	

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility	Within Current Provisions of this Agreement	Scope to be Confirmed Pending Final Regulations
14.	Commencing January 1, 2022 and consistent with Government Code section 7295, educational materials shall be translated into any non-English language spoken by a substantial number of the public provided services. (§18985.1.f)	City to review and approve public outreach materials to be translated for Customers, if applicable	Contractor to distribute approved public education materials to Customers	✓	
15.	Commencing January 1, 2022, annually provide businesses that generate edible food waste with information regarding the jurisdiction's edible food recovery program, generator requirements, and food recovery organizations (18985.2.b)	City to provide public outreach materials related to Edible Food recovery for Commercial Customers	Contractor to distribute approved Edible Food recovery materials to Commercial Customers	✓	
16.	<p>By April 1, 2022, file an initial compliance report (§18994.1);</p> <p>By October 1, 2022, file a compliance report for January 1, 2022 through June 20, 2022.</p> <p>Commencing August 1, 2023, submit an annual report relative to compliance with SB 1383 (§18994.2)</p>	City to compile and submit relevant documentation for initial compliance report and annual report	Contractor to assist City in compiling relevant documentation for initial compliance report and annual report	✓	

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility	Within Current Provisions of this Agreement	Scope to be Confirmed Pending Final Regulations
17.	Maintain all implementation records in a central location (physical or electronic) that can be made available to or accessed by CalRecycle within ten business days (18995.2)	City to maintain all implementation records	Contractor to allow City access to applicable implementation documentation in less than ten business days <i>(Contractor: Timeline to be finalized based on final CalRecycle regulations)</i>	✓	

EXHIBIT "B"

RATES