

**AMENDED AND RESTATED AGREEMENT FOR THE  
COLLECTION, PROCESSING, AND DISPOSAL OF  
MUNICIPAL SOLID WASTE, RECYCLABLES,  
AND ORGANICS**

**Between**

**THE CITY OF FREMONT, CALIFORNIA**

**and**

**ALLIED WASTE SERVICES OF NORTH AMERICA, LLC, A SUBSIDIARY OF  
REPUBLIC SERVICES, INC.**

**Effective January 1, 2003 through June 30, 2019**

**TABLE OF CONTENTS**

**RECITALS** .....15

**ARTICLE 1.00 – DEFINITIONS**..... 18

**1.1 Definitions**..... 18

**1.1.1 AB 939 or Act** ..... 18

**1.1.2 Accept, Accepted, Acceptance (or other variations thereof)**..... 18

**1.1.3 Affiliate**..... 18

**1.1.4 Alternate Disposal Facility; Alternative Transfer Facility; Alternate Processing Facility** ..... 18

**1.1.5 Alternative Daily Cover (ADC)** ..... 18

**1.1.6 Alternative Fuels** ..... 18

**1.1.7 Applicable Law**..... 18

**1.1.8 Approved Diversion** ..... 19

**1.1.9 Back Yard Service**..... 19

**1.1.10 Bin**..... 19

**1.1.11 Bulky Goods** ..... 19

**1.1.12 CalRecycle** ..... 19

**1.1.13 Cart**..... 19

**1.1.14 Change in Law**..... 19

**1.1.15 Change in Scope** ..... 20

**1.1.16 City** ..... 20

**1.1.17 City Council**..... 20

**1.1.18 City Designated Facility(ies)** ..... 20

**1.1.19 City Facility(ies)** ..... 20

**1.1.20 City Legislation** ..... 20

**1.1.21 City Manager**..... 20

**1.1.22 City Representative**..... 20

**1.1.23 City Street Receptacles** ..... 20

**1.1.24 Collect/Collection(or other variations thereof)** ..... 20

**1.1.25 Collection Services** ..... 21

**1.1.26 Commencement Date**..... 21

**1.1.27 Compost** ..... 21

**1.1.28 Composting**..... 21

**1.1.29 Commercial Facility(ies)** ..... 21

<b>1.1.30</b>	<b>Commercial Food Waste .....</b>	<b>21</b>
<b>1.1.31</b>	<b>Commercial Generator.....</b>	<b>21</b>
<b>1.1.32</b>	<b>Commercial Organics.....</b>	<b>21</b>
<b>1.1.33</b>	<b>Commercial Recyclables .....</b>	<b>21</b>
<b>1.1.34</b>	<b>Construction and Demolition Debris .....</b>	<b>22</b>
<b>1.1.35</b>	<b>Container .....</b>	<b>22</b>
<b>1.1.36</b>	<b>Contractor .....</b>	<b>22</b>
<b>1.1.37</b>	<b>Contractor Representative .....</b>	<b>22</b>
<b>1.1.38</b>	<b>Control .....</b>	<b>22</b>
<b>1.1.39</b>	<b>CPI (Consumer Price Index).....</b>	<b>22</b>
<b>1.1.40</b>	<b>Customer.....</b>	<b>22</b>
<b>1.1.41</b>	<b>Disposal .....</b>	<b>22</b>
<b>1.1.42</b>	<b>Disposal Differential .....</b>	<b>22</b>
<b>1.1.43</b>	<b>Disposal Facility .....</b>	<b>22</b>
<b>1.1.44</b>	<b>Disposal Fee .....</b>	<b>22</b>
<b>1.1.45</b>	<b>Dry Mixed Recyclables .....</b>	<b>23</b>
<b>1.1.46</b>	<b>E-Waste.....</b>	<b>23</b>
<b>1.1.47</b>	<b>Extraordinary Rate Review .....</b>	<b>23</b>
<b>1.1.48</b>	<b>Force Majeure .....</b>	<b>23</b>
<b>1.1.49</b>	<b>Generator.....</b>	<b>23</b>
<b>1.1.50</b>	<b>Hazardous Waste .....</b>	<b>23</b>
<b>1.1.51</b>	<b>Health Insurance Index .....</b>	<b>23</b>
<b>1.1.52</b>	<b>Holidays .....</b>	<b>24</b>
<b>1.1.53</b>	<b>In the City or within the City.....</b>	<b>24</b>
<b>1.1.54</b>	<b>Labor Action.....</b>	<b>24</b>
<b>1.1.55</b>	<b>Land Application .....</b>	<b>24</b>
<b>1.1.56</b>	<b>Municipal Solid Waste or MSW .....</b>	<b>24</b>
<b>1.1.57</b>	<b>Multi-Family Dwelling or MFD.....</b>	<b>24</b>
<b>1.1.58</b>	<b>OPIS (Oil Price Information Service) Diesel Fuel Index .....</b>	<b>24</b>
<b>1.1.59</b>	<b>Organics .....</b>	<b>24</b>
<b>1.1.60</b>	<b>Organics Processing Facility .....</b>	<b>24</b>
<b>1.1.61</b>	<b>Other Commercial Organics.....</b>	<b>24</b>
<b>1.1.62</b>	<b>Outreach and Technical Assistance Plan ("Plan").....</b>	<b>25</b>
<b>1.1.63</b>	<b>Overage .....</b>	<b>25</b>
<b>1.1.64</b>	<b>Overage Bag(s) .....</b>	<b>25</b>

1.1.65	Overage Bag Account .....	25
1.1.66	Party; Parties.....	25
1.1.67	Pass Through Costs.....	25
1.1.68	Performance Bond .....	25
1.1.69	Person.....	25
1.1.70	Permitted Waste or Permitted Materials .....	25
1.1.71	Pilot Program .....	25
1.1.72	Prior Agreements .....	25
1.1.73	Processing .....	25
1.1.74	Processing Facility. ....	25
1.1.75	Processing Residues or Residue.....	25
1.1.76	Rates; Collection Rates.....	25
1.1.77	Reasonable Business Efforts .....	26
1.1.78	Recyclable(s).....	26
1.1.79	Recyclables Processing Facility .....	26
1.1.80	Recycle or Recycling.....	26
1.1.81	Residential .....	26
1.1.82	Residential Organics.....	26
1.1.83	Responsible Party.....	26
1.1.84	Roll-Off Box.....	26
1.1.85	Self Haul, Self Hauling (or other variations thereof).....	26
1.1.86	Significant Change.....	26
1.1.87	Single Commodity Soil, Asphalt and Concrete .....	26
1.1.88	Single-Family Dwelling or SFD .....	27
1.1.89	Source Separated Commercial Recyclables, "High Value Commercial Recyclables" .....	27
1.1.90	Standard Industry Practice(s) .....	27
1.1.91	Transfer, Transport (or other variations thereof).....	27
1.1.92	Transfer Facility.....	27
1.1.93	Two-Tiered Recycling System .....	27
1.1.94	Unpermitted Waste.....	27
1.1.95	White Goods .....	28
1.1.96	Working Days.....	28
1.1.97	Work Stoppage Contingency Plan .....	28
1.1.98	Yard Waste .....	28

<b><u>ARTICLE 2.00 – REPRESENTATIONS, WARRANTIES, AND COVENANTS</u></b> .....	29
2.1 Representations and Warranties of Contractor.....	29
2.1.1 Duly Organized and Qualified to do Business.....	29
2.1.2 Corporate Authorization.....	29
2.1.3 Agreement Duly Executed.....	29
2.1.4 No Conflict with Applicable Law or Other Documents .....	29
2.1.5 No Litigation.....	29
2.1.6 Financial Ability, Disclosures, No Material Change.....	29
2.1.7 Expertise .....	30
2.1.8 Contractor’s Investigation .....	30
2.1.9 No Improper Consideration.....	30
2.2 Representations and Warranties of City .....	30
2.2.1 Duly Organized .....	30
2.2.2 Execution Authorized .....	30
2.2.3 No Conflict with Applicable Law or Other Documents .....	30
2.2.4 No Litigation.....	30
<b><u>ARTICLE 3.00 – TERM, SCOPE OF AGREEMENT; REPRESENTATIVES</u></b> .....	31
3.1 Term .....	31
3.1.1 Extensions .....	31
3.2 Scope of Exclusive and Nonexclusive Rights.....	31
3.2.1 Scope of Exclusive Rights.....	31
3.2.2 Acceptance of Terms.....	31
3.2.3 Waiver of Right to Challenge.....	32
3.2.4 Exceptions to Exclusive Rights .....	32
3.3 Defense of Exclusive Rights.....	33
3.4 Effect of Termination of Prior Agreements.....	33
3.5 Representatives of the Parties.....	33
3.5.1 Contractor Representative.....	33
3.5.2 City Representative.....	33
<b><u>ARTICLE 4.00 – COLLECTION SERVICES</u></b> .....	34
4.1 General.....	34
4.2 Alternative Fuel.....	34

<b>4.3</b>	<b>Single-Family Dwellings-Collection of MSW, Recyclables, and Organics .....</b>	<b>34</b>
4.3.1	Municipal Solid Waste.....	34
4.3.2	Recyclables.....	34
4.3.3	Residential Organics .....	35
4.3.4	Bulky Goods .....	35
4.3.5	Special Services .....	35
4.3.6	Back Yard Service.....	36
4.3.7	Electronic Waste Recycling.....	36
<b>4.4</b>	<b>Multi-Family Dwellings Collection of MSW, Recyclables, and Organics .....</b>	<b>37</b>
4.4.1	Municipal Solid Waste.....	37
4.4.2	Recyclables.....	37
4.4.3	MFD Residential Organics.....	37
4.4.4	MFD Back Yard Service Fee .....	37
<b>4.5</b>	<b>Commercial Facilities-Collection of MSW, Recyclables and Organics .....</b>	<b>37</b>
4.5.1	Municipal Solid Waste.....	37
4.5.2	Commercial Recyclables .....	38
4.5.3	Roll-Off Service Frequency.....	39
4.5.4	Commercial Food Waste .....	39
4.5.5	Other Commercial Organics.....	40
<b>4.6</b>	<b>City Facilities and City Street Receptacles .....</b>	<b>40</b>
4.6.1	City Sites and Facilities .....	40
4.6.2	City Street Receptacles .....	40
<b>4.7</b>	<b>Special Services .....</b>	<b>41</b>
4.7.1	Holiday Tree Collection.....	41
4.7.2	Miscellaneous Special Services .....	41
	<b><u>ARTICLE 5.00 – TRANSFER, DISPOSAL, PROCESSING, MARKETING .....</u></b>	<b>42</b>
<b>5.1</b>	<b>General.....</b>	<b>42</b>
<b>5.2</b>	<b>No Commingling .....</b>	<b>42</b>
<b>5.3</b>	<b>Collection Schedule and Hours.....</b>	<b>42</b>
<b>5.4</b>	<b>Holidays .....</b>	<b>42</b>
<b>5.5</b>	<b>Care of City and Private Property .....</b>	<b>42</b>
<b>5.6</b>	<b>Noise .....</b>	<b>43</b>
<b>5.7</b>	<b>Record of Non-Collection .....</b>	<b>43</b>

<b>5.8</b>	<b>Minimization of Litter and Spills .....</b>	<b>43</b>
<b>5.9</b>	<b>Clean-Up .....</b>	<b>43</b>
<b>5.10</b>	<b>Covering of Loads .....</b>	<b>43</b>
<b>5.11</b>	<b>Oil or Other Vehicle Fluid Spills .....</b>	<b>44</b>
<b>5.12</b>	<b>Vehicles and Equipment.....</b>	<b>44</b>
<b>5.13</b>	<b>Specifications .....</b>	<b>45</b>
<b>5.14</b>	<b>Vehicle Identification.....</b>	<b>45</b>
<b>5.15</b>	<b>On-board Computer .....</b>	<b>45</b>
<b>5.16</b>	<b>Cleaning and Maintenance.....</b>	<b>45</b>
<b>5.17</b>	<b>Operation .....</b>	<b>45</b>
<b>5.18</b>	<b>Collection Containers .....</b>	<b>46</b>
	<b>5.18.1 Cleaning, Painting, Maintenance.....</b>	<b>46</b>
	<b>5.18.2 Repair and Replacement .....</b>	<b>46</b>
	<b>5.18.3 Container Signage – Hot Stamps, Labelling .....</b>	<b>46</b>
	<b>5.18.4 SFD Containers .....</b>	<b>46</b>
	<b>5.18.5 MFD Containers.....</b>	<b>46</b>
	<b>5.18.6 Residential Cart Replacement and Color .....</b>	<b>46</b>
	<b>5.18.7 Commercial Facility Containers.....</b>	<b>47</b>
<b>5.19</b>	<b>Personnel.....</b>	<b>47</b>
<b>5.20</b>	<b>Driver Qualifications .....</b>	<b>47</b>
<b>5.21</b>	<b>Safety Training.....</b>	<b>47</b>
<b>5.22</b>	<b>Employee Appearance and Conduct.....</b>	<b>47</b>
<b>5.23</b>	<b>Provision of Field Supervision .....</b>	<b>48</b>
<b>5.24</b>	<b>Service Complaints .....</b>	<b>48</b>
<b>5.25</b>	<b>Report Accumulation of MSW: Unauthorized Dumping .....</b>	<b>48</b>
<b>5.26</b>	<b>Overflowing MSW Containers .....</b>	<b>48</b>
<b>5.27</b>	<b>Report Unsafe Conditions .....</b>	<b>48</b>
<b>5.28</b>	<b>Schedule; Coordination with City Services .....</b>	<b>48</b>
<b>5.29</b>	<b>Community Relations Program.....</b>	<b>48</b>
<b>5.30</b>	<b>Certain Required Employees .....</b>	<b>48</b>
<b>5.31</b>	<b>Coordination of Recyclables Methodologies .....</b>	<b>49</b>
<b>5.32</b>	<b>Audit of MFD Collection Routes .....</b>	<b>49</b>
<b>5.33</b>	<b>Zero Generator Status.....</b>	<b>49</b>
<b>5.34</b>	<b>Public Education .....</b>	<b>49</b>
<b>5.35</b>	<b>Press Releases .....</b>	<b>50</b>

<b>5.36</b>	<b>Public Access to Contractor .....</b>	<b>50</b>
	<b>5.36.1 Office .....</b>	<b>50</b>
	<b>5.36.2 Telephone System.....</b>	<b>50</b>
	<b>5.36.3 Service Complaints and Response.....</b>	<b>51</b>
	<b>5.36.4 Customer Privacy.....</b>	<b>51</b>
<b>5.37</b>	<b>Change in Operations, Administration or Schedule.....</b>	<b>51</b>
<b>5.38</b>	<b>Performance Reviews .....</b>	<b>52</b>
<b>5.39</b>	<b>Emergency Services and Transportation.....</b>	<b>52</b>
	<b>5.39.1 Contingency Planning.....</b>	<b>52</b>
<b>5.40</b>	<b>Changes in Scope of Work .....</b>	<b>53</b>
	<b>5.40.1 Required Changes.....</b>	<b>53</b>
	<b>5.40.2 Negotiable Changes.....</b>	<b>53</b>
<b><u>ARTICLE 6.00. – TRANSFER, DISPOSAL, PROCESSING, MARKETING .....</u></b>		<b>54</b>
<b>6.1</b>	<b>Use of City Designated Facilities .....</b>	<b>54</b>
	<b>6.1.1 City Designated Facilities .....</b>	<b>54</b>
	<b>6.1.2 City's Exclusive Right To Designate Facilities .....</b>	<b>54</b>
	<b>6.1.3 Denial of Access To The City Designated Facility .....</b>	<b>54</b>
<b>6.2</b>	<b>Transfer and Dispositions of MSW .....</b>	<b>54</b>
	<b>6.2.1 Contractor to Transport MSW to Designated Facilities.....</b>	<b>54</b>
<b>6.3</b>	<b>Transfer and Disposition of Recyclables.....</b>	<b>55</b>
<b>6.4</b>	<b>Transfer and Disposition of Commercial Food Waste and Residential Organics. ....</b>	<b>55</b>
	<b>6.4.1 Designated Organics Processing Facility .....</b>	<b>55</b>
	<b>6.4.2 Organics Processing Obligations.....</b>	<b>55</b>
	<b>6.4.3 Permits .....</b>	<b>56</b>
	<b>6.4.4 Turnaround Time .....</b>	<b>57</b>
	<b>6.4.5 Weighing .....</b>	<b>57</b>
	<b>6.4.6 Substitute Scales.....</b>	<b>57</b>
	<b>6.4.7 Estimates.....</b>	<b>57</b>
	<b>6.4.8 Maintenance Standards.....</b>	<b>57</b>
	<b>6.4.9 Personnel.....</b>	<b>57</b>
	<b>6.4.10 Recovery Standards .....</b>	<b>57</b>
	<b>6.4.11 Right to Enter and Inspect Facility .....</b>	<b>58</b>
	<b>6.4.12 Tours of Facility .....</b>	<b>58</b>



6.4.13	Transportation of Residue .....	58
6.4.14	Inability to Process Organics .....	58
6.4.15	City Not Responsible for Markets, End-Use .....	58
6.4.16	Contractor Responsible for Disposition of Processing Residues, Disposal Costs.....	58
6.4.17	City Access to Compost .....	59
6.5	Transfer and Disposition of Other Commercial Organics.....	59

**ARTICLE 7.00 – HAZARDOUS AND UNPERMITTED WASTE..... 60**

7.1	General.....	60
7.2	Collection of Hazardous and Unpermitted Waste .....	60
	7.2.1 Contractor to Reject .....	60
	7.2.2 Contractor to Segregate .....	60
	7.2.3 Contractor to Arrange for Disposition .....	60
	7.2.4 Contractor Solely Responsible.....	60
	7.2.5 Waste Screening Program.....	60
	7.2.6 Contractor to Establish Operating Procedures .....	60
7.3	Employee Training.....	61
7.4	Remediation of Spills .....	61
	7.4.1 Contamination.....	61
	7.4.2 Removal and Remediation .....	61
7.5	City Has No Control .....	61
7.6	Record Keeping.....	61
7.7	Inspection by City .....	61

**ARTICLE 8.00 – PLANNING AND IMPLEMENTATION..... 62**

8.1	Required Plans and Schedules.....	62
8.2	Work Stoppage Contingency Plan .....	62
8.3	Outreach and Technical Plan .....	62

**ARTICLE 9.00 – RECORD KEEPING, INSPECTIONS, AND REPORTING ..... 63**

9.1	Record Keeping.....	63
	9.1.1 Databases. ....	63
	9.1.2 Records.....	63

9.2	Inspection.....	64
9.3	Reporting .....	64
9.3.1	General.....	64
9.3.2	Monthly Reports .....	64
9.3.3	Monthly Meeting.....	64

**ARTICLE 10.00 – COMPLIANCE WITH AGREEMENT, LAW,  
PERMITS/INDEMNITY, INSURANCE, PERFORMANCE SECURITY .....** 65

10.1	Compliance with Law .....	65
10.2	Permits, Authorization, Licenses.....	65
10.3	Facility Operating Rules.....	65
10.4	Contractor's Duty to Indemnify City .....	65
10.5	Insurance .....	66
10.6	Commercial General Liability Insurance.....	66
10.7	Automobile Liability Insurance.....	67
10.8	Worker's Compensation Insurance.....	67
10.9	Deductibles and Self-Insured Retentions.....	67
10.10	Non-Renewal of Cancellation.....	67
10.11	Failure to Comply .....	68
10.12	Reporting Damage .....	68
10.13	Performance Bond or Alternative Security .....	68
10.14	City's Right to Draw Against, Contractor Obligation to Replenish .....	68
10.15	Termination of Performance Bond or Alternative Performance Security Obligation .....	69
10.16	Parent Guaranty .....	69

**ARTICLE 11.00 – BILLING, PAYMENT, AND PAYMENT COLLECTION  
SERVICES.....** 70

11.1	General.....	70
11.2	Senior Discounts.....	70
11.3	Deposits .....	70
11.4	Customer Billing and Billing Inserts.....	70
11.5	Billing Records .....	71
11.5.1	Records.....	71
11.5.2	City Computer Access to Billing Information.....	71

11.6	Franchise Fee; Regulatory Fees.....	71
11.6.1	Remittance of Franchise and other Fees.....	72
11.7	Contractor Audit of Routes.....	72
11.8	Financial Auditing .....	72
<b><u>ARTICLE 12.00 – RATE MAKING</u></b> .....		<b>73</b>
12.1	General.....	73
12.2	Biennial Rate Adjustment. ....	73
12.2.1	Biennial Adjustment Methodolgy.....	73
12.2.2	Biennial Adjustment Formula .....	74
12.2.3	CPI Adjustment .....	74
12.2.4	Application of Biennial Adjustment Formula to Rates .....	74
12.3	Pass Through and Disposal Fees .....	76
12.4	Extraordinary Rate Review .....	76
12.4.1	General.....	76
12.4.2	Definition .....	76
12.4.3	Conditions for an Extraordinary Rate Review .....	76
12.4.4	Items Ineligible for an Extraordinary Rate Review .....	77
12.4.5	Extraordinary Rate Review Process .....	77
12.4.6	Contractor's Implementation of Change in Scope.....	79
12.4.7	Change in Rates.....	79
12.4.8	Insurance and Other Third Party Payments.....	80
12.4.9	Limitations to Change in Compensation .....	80
<b><u>ARTICLE 13.00 – DEFAULTS AND REMEDIES</u></b> .....		<b>81</b>
13.1	Events of Default.....	81
13.2	Remedies .....	82
13.2.1	Termination.....	82
13.2.2	Possession of Property Upon Default .....	82
13.2.3	Direct and Consequential Damages. ....	82
13.2.4	Liquidated Damages .....	82
13.2.5	City Right to Set Off .....	83
13.2.6	Cure.....	83
13.2.7	Specific Performance .....	83

	13.2.8	City’s Remedies Cumulative.....	83
13.3		Criminal Activity of Contractor .....	83
13.4		Liquidated Damages .....	84
	13.4.1	General.....	84
	13.4.2	Adjustment of Schedule of Liquidated Damages.....	85
	13.4.3	Payment of Liquidated Damages.....	85
13.5		Excuse from Performance.....	85
	13.5.1	Force Majeure .....	85
	13.5.2	Obligation to Mitigate Damages .....	85
	13.5.3	Recovery of Cost .....	85
	13.5.4	Notice Requirement .....	85
	13.5.5	City’s Right in the Event of Force Majeure .....	86
	13.5.6	Right to Demand Assurances of Performance .....	86
	13.5.7	Claimed Inadequacy in Rates Not Excuse for Performance.....	86
13.6		Mediation.....	86
	13.6.1	Meet and Confer .....	86
	13.6.2	Mediation.....	86
	13.6.3	Limitation .....	86
13.7		Arbitration.....	86
	13.7.1	Arbitration of Certain Disputes; Limitation .....	87
	13.7.2	Notice Requirements; Establishment of Arbitration Panel .....	87
	13.7.3	Conduct of the Arbitration .....	87
	13.7.4	Schedule for the Arbitration .....	87
	13.7.5	Decisions; Burden of Proof .....	87
	13.7.6	Award.....	87
	13.7.7	Attorneys' Fees and Costs of Arbitration .....	87
		<b><u>ARTICLE 14.00 – ASSIGNMENT; SUBCONTRACTING.....</u></b>	<b>88</b>
14.1		Assignment of Agreement .....	88
	14.1.1	General.....	88
	14.1.2	Transfer of Stock or Interest .....	88
	14.1.3	Assignment Request.....	88
	14.1.4	Application and Transfer Fee .....	89
	14.1.5	Transition.....	89

<b>14.2</b>	<b>Subcontractors .....</b>	<b>89</b>
	<b>14.2.1 General.....</b>	<b>89</b>
	<b>14.2.2 Approval .....</b>	<b>89</b>
	<b>14.2.3 Subcontractor's Representations and Warranties.....</b>	<b>89</b>
	<b>14.2.4 Subcontractor's Duty to Comply with this Agreement and Other Laws .....</b>	<b>90</b>
	<b>14.2.5 Assignment of Subcontracts.....</b>	<b>90</b>
<b>14.3</b>	<b>Assignment.....</b>	<b>90</b>
<b>14.4</b>	<b>Successors and Assigns .....</b>	<b>90</b>
 <b><u>ARTICLE 15.00 – MISCELLANEOUS .....</u></b>		<b>91</b>
<b>15.1</b>	<b>Notices .....</b>	<b>91</b>
<b>15.2</b>	<b>Contractor Is An Independent Contractor.....</b>	<b>92</b>
	<b>15.2.1 Independent Contractor .....</b>	<b>92</b>
	<b>15.2.2 Contractor Solely Responsible for its Acts and Omissions .....</b>	<b>92</b>
	<b>15.2.3 No Partnership or Joint Venture Created .....</b>	<b>92</b>
	<b>15.2.4 No Entitlement to Benefits .....</b>	<b>92</b>
<b>15.3</b>	<b>Transition to Next Contractor .....</b>	<b>92</b>
<b>15.4</b>	<b>Amendment or Rescission .....</b>	<b>92</b>
<b>15.5</b>	<b>Nondiscrimination.....</b>	<b>92</b>
	<b>15.5.1 Employment.....</b>	<b>92</b>
	<b>15.5.2 Treatment during Employment.....</b>	<b>93</b>
	<b>15.5.3 Treatment of Customers.....</b>	<b>93</b>
	<b>15.5.4 Access to Records.....</b>	<b>93</b>
<b>15.6</b>	<b>Fees and Gratuities .....</b>	<b>93</b>
<b>15.7</b>	<b>Governing Law, Jurisdiction .....</b>	<b>93</b>
<b>15.8</b>	<b>Attorney's Fees.....</b>	<b>93</b>
<b>15.9</b>	<b>Interpretation; Context and Construction .....</b>	<b>94</b>
	<b>15.9.1 No Presumption Against Drafter.....</b>	<b>94</b>
	<b>15.9.2 Context and Construction .....</b>	<b>94</b>
	<b>15.9.3 Headings.....</b>	<b>94</b>
	<b>15.9.4 References to Days .....</b>	<b>94</b>
	<b>15.9.5 References to Laws .....</b>	<b>94</b>
<b>15.10</b>	<b>Agreement as Collateral.....</b>	<b>94</b>
<b>15.11</b>	<b>Parties in Interest.....</b>	<b>94</b>

<b>15.12</b>	<b>Condemnation .....</b>	<b>94</b>
<b>15.13</b>	<b>Waiver .....</b>	<b>94</b>
<b>15.14</b>	<b>Entire Agreement.....</b>	<b>95</b>
<b>15.15</b>	<b>Severability .....</b>	<b>95</b>
<b>15.16</b>	<b>Signatures .....</b>	<b>95</b>

## **LIST OF EXHIBITS**

- A.** Municipal Solid Waste, Recyclables and Organics Collection Rates (2016/2017)
- B.** Unit Price Breakdown
- C.** Intentionally left Blank (formerly Performance Standards)
- D.** Guaranty of Parent Corporation
- E.** Waste Screening Program
- F.** Reporting Requirements
- G.** List of City Street Receptacles
- H.** Schedule of Liquidated Damages
- I.** Service Center Drop Off Operations
- J.** Proposal from Republic Services –Terms and Conditions for 10 year extension option

All Exhibits are herein incorporated by reference into this Restated Agreement.

## RESTATED AGREEMENT

This Agreement for the Collection, Processing, and Disposal of Municipal Solid Waste, Recyclables and Organics (“Agreement”) is made and entered into as of this \_\_\_\_\_ day of April, 2017 (“**Effective Date**”) by and between the **CITY OF FREMONT**, a California municipal corporation (the “**City**”), and **ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**, (“**Contractor**”), a subsidiary of Republic Services, Inc. City and Contractor may collectively be referred to herein as the “Parties”.

### RECITALS

This Agreement is entered into on the basis of the followings facts, understandings, and intentions of the parties:

**A.** The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (Public Resources Code Section 49100, et seq.; hereinafter the “Act”) established a solid waste management process which requires cities and other local jurisdictions to implement source reduction, reuse, and recycling as integrated waste management practices.

**B.** The Act authorizes and requires local agencies to make adequate provisions for solid waste handling within their jurisdictions, and the City Council has enacted and amended Chapter 8.40 of the Fremont Municipal Code, which establishes standards for the Collection and removal of Municipal Solid Waste, Organics and Recyclables, the Disposal of Municipal Solid Waste, and the recycling of Organics and Recyclables.

**C.** Pursuant to Sections 49300 and 49500-49523 of the Act, and Chapter 8.40 of the Fremont Municipal Code, City is authorized to enter into an exclusive agreement for the Collection and removal of Municipal Solid Waste, Organics and Recyclables, the Disposal of Municipal Solid Waste, and the Recycling of Recyclables and Organics.

**D.** Contractor and City have previously entered into the following agreements and amendments:

1. That certain Franchise Agreement for Municipal Solid Waste Collection Services between the City of Fremont and Browning-Ferris Industries of California, Inc. dated April 20, 1994, as amended by that certain First Amendment to the Franchise Agreement for Municipal Solid Waste Collection Services dated May 1, 1999, and that certain Second Amendment to Franchise Agreement for Municipal Solid Waste Collection Services Between the City of Fremont and Browning-Ferris Industries of California, Inc. dated April 20, 2001 (as amended, the “1994 MSW Agreement”).
2. That certain Franchise Agreement for Municipal Recyclables Collection, Processing and Marketing Services between the City of Fremont and Browning Ferris Industries of California, Inc. dated April 20, 1994, as amended by that certain Second Amendment to Franchise Agreement for Municipal Recyclables Collection, Processing, and Marketing Services between the City of Fremont and Browning-Ferris Industries of California, Inc. dated April 30, 2001.



3. That certain Franchise Agreement for Municipal Yard Waste Collection Processing and Marketing Services between the City of Fremont and Browning Ferris Industries of California, Inc., dated April 5, 1994, as amended by that certain Second Amendment to Franchise Agreement for Municipal Yard Waste Collection, Processing, and Marketing Services between the City of Fremont and Browning-Ferris Industries of California, Inc. dated April 30, 2001.
4. That Amended and Restated Agreement for the Collection, Processing, and Disposal of Municipal Solid Waste, Recyclables and Organics between the City of Fremont and BFI Waste Systems of North America, Inc., dated December 10, 2002.
5. The First Amendment between the City of Fremont and BFI Waste Systems of North America, Inc., a wholly owned subsidiary of Allied Waste Inc., dated July 1, 2003 and the Second Amendment between the City of Fremont, and BFI Waste Systems of North America, Inc., a wholly owned subsidiary of Allied Waste Inc., dated June 22, 2004. In Amendments One and Two, the parties agreed to an extension of the senior discount on the waste management services for qualifying residents living in mobile home parks; allowed the incorporation of new Integrated Waste Management fees into solid waste rates adopted by resolutions of the City Council; negotiated a settlement of an Extraordinary Rate Review application, expanded the agreement to include certain materials in the electronic waste recycling, revised the requirement to use Alternative Fuels, added requirements for Organic, used oil and Bulky Goods, revised senior discounts, and made adjustments for unusual workers compensation costs.
6. In the Third Amendment between the City of Fremont and Allied Waste Services of North America, LLC (the permitted assignee of BFI Waste Systems of North America, Inc.) dated February 13, 2007, the City and Contractor addressed fuel costs by incorporating certain fuel adjustments and adding a Fuel Index to the rate calculations; implemented a verification process for senior discounts; revised Multi-Family Dwelling Service Fees; agreed to guaranteed Organics Processing Capacity; established Customer service telephone performance standards; agreed to special event free Collections; and established emergency service rates for Disposal and Transportation.
7. In the Fourth Amendment between the City of Fremont and Allied Waste Systems of North America, LLC dated February 26, 2008, the parties incorporated Commercial Food Waste Collection services into the agreement; including rates and performance standards, and added certain damage reporting responsibilities.
8. In the Fifth Amendment between Allied Waste Services of North America, LLC dated May 12, 2009, the Parties agreed to assign the Agreement to Allied's parent company Republic Services; addressed administrative and performance standards; settled a dispute regarding Composting service obligations, and increased reporting requirements.
9. In the Sixth Amendment between the City of Fremont and Allied Waste Services of North America, LLC dated July 27, 2010, the Parties agreed to implement a revised front end loader Commercial materials Collection program by routing Customers by waste type (Wet/Dry routing); initiated the process for incorporating Commercial Recycling into both the Collection franchise and the transfer station processing agreements; and implemented certain

Collection service enhancements.

10. In the Seventh Amendment between the City of Fremont and Allied Waste Services North America, LLC whose parent company is Republic Services, Inc. dated January 2012, the City incorporated Commercial Recycling and Commercial Organics into the Collection franchise for the Wet/Dry Recyclables System and executed a waiver from Contractor on all accrued and increased costs as consideration for the Seventh Amendment; adjusted the fixed cost element of the rate by 19% on a one time basis to address capital needs such as trucks, Containers and equipment; confirmed service enhancements and Customer outreach; confirmed biennial adjustment formulas; agreed to a five (5) year extension from July 1, 2013 to July 1, 2018; a City option for an additional three (3) year term to July 1, 2021, and agreed to a minimum CPI level of 5% per biennial rate period and added a Health Insurance Index to the Rate calculations.
11. In the Eighth Amendment between the City of Fremont and Allied Waste Services of North America, LLC whose parent company is Republic Services, Inc. dated June, 2013, the Parties revised the Wet/Dry routing to a Two-Tiered Recycling system with Source Separated Commercial Recyclables (High Value Commercial Recyclables) and Dry Mixed Recyclables; settled Contractor's claim for loss of internalized revenue and increased costs as a result of the Commercial Recyclables changes and the Wet/Dry system; agreed upon City's discretion to make additional operational changes such as Collection routes and Customer education and outreach with no additional compensation to Contractor.
12. In the Ninth Amendment between the City of Fremont and Allied Waste Services of North America, LLC whose parent company is Republic Services, Inc. dated March 15, 2016, Republic Services proposed a ten (10) year extension to the agreement, including adjustment to the rates, services and other terms and conditions for consideration by the City.

**E.** City wishes to consolidate the Amended and Restated Agreement for the Collection, Processing, and Disposal of Municipal Solid Waste, Recyclables and Organics between the City of Fremont and BFI Waste Systems of North America, Inc., dated December 10, 2002, as revised by Amendments One through Nine into one integrated Restated Agreement for ease of administration and to comply with certain revisions to state law and the City's Municipal Code and City and Contractor intend that this Restated Agreement consolidate, update and restate the prior Agreement and all nine amendments and to supersede all previous agreements and amendments. Certain obligations from the 2002 Restated Agreement and Amendments One through Nine were specifically identified as surviving the termination and such provisions will survive the change to this new Restated Agreement.

**F.** Pursuant to this Restated Agreement, City will continue to engage Contractor as an independent contractor to exclusively provide automated Municipal Solid Waste, Organics and Recyclables Collection services in the City. Contractor shall furnish all personnel, equipment, and supplies necessary to Collect, or otherwise remove and dispose of all Municipal Solid Waste, Organics and Recyclables, as defined herein, generated or accumulated at all Residential, Commercial (including industrial) premises within the City, except as otherwise specifically provided herein.

**G.** City and Contractor are mindful of the provisions of the laws governing the safe Collection, Transport, Recycling, and Disposal of Municipal Solid Waste, Recyclables and Organics including

the Act, RCRA, and CERCLA and desire to make it clear that by entering into this Agreement, City is not thereby becoming a “generator” or “arranger” as those terms are used in the context of CERCLA Section 107 (a) (3), and that it is Contractor, not City, which is “arranging for” the Collection of MSW, Organics and Recyclables from Commercial and Residential Facilities in the City, and Transporting of same for Disposal, Recycling of Recyclables, and Processing of Organics.

**H.** City and Contractor have agreed to extend the term of this Collection agreement until June 30, 2019, and Contractor has agreed to maintain the proposed business terms described in Exhibit J as an option, which the City may unilaterally exercise at any time until June 30, 2017.

**NOW, THEREFORE,** for the reasons stated above and in consideration of the provisions and mutual covenants contained herein, City and Contractor agree as follows:

### **ARTICLE 1.00 – DEFINITIONS**

**1.1 Definitions.** Whenever any term used in this Agreement has been defined by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in Division 30, Part 1, Chapter 2 shall apply, unless the term is otherwise defined in Chapter 8 of the Fremont Municipal Code. Whenever any term used in this Agreement has been defined by Chapter 8 of the Fremont Municipal Code, the definitions in Chapter 8 shall apply, unless the term is otherwise defined in this Agreement. The words and phrases listed below are defined as follows for the purposes of this Agreement.

**1.1.1 AB 939 or Act.** The California Integrated Waste Management Act (California Public Resources Code Sections 40000 et seq.), as amended.

**1.1.2 Accept, Accepted, Acceptance (or other variations thereof).** The Transfer of ownership of materials to Contractor from the party delivering the materials. Materials will be deemed Accepted unless the receiving entity rejects the materials within the same calendar day of receipt.

**1.1.3 Affiliate.** Any Person under the same ownership and/or Control as Contractor.

**1.1.4 Alternate Disposal Facility; Alternate Transfer Facility; Alternate Processing Facility.** The facilities designated by City for the receipt, Disposal, Transfer, or Processing of some or all of the MSW, Recyclables, and Organics Collected by Contractor pursuant to this Agreement, in place of the current corresponding City Designated Facility.

**1.1.5 Alternative Daily Cover (ADC).** Cover material other than earthen material placed on the surface of the active face of a Municipal Solid Waste landfill at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging.

**1.1.6 Alternative Fuels.** Nonstandard fuels engineered to reduce particulate and other polluting emissions created while operating vehicles used in the delivery of this Agreement (e.g. bio-fuel, compressed natural gas, liquefied natural gas, fuel cells, etc.).

**1.1.7 Applicable Law.** All laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the subject

matter of this Agreement that are in force or promulgated on or after the Commencement Date and as they may be enacted, issued or amended during the Term.

**1.1.8 Approved Diversion.** The beneficial reuse of Organics through means other than Composting, including the use of Organics for other beneficial reuses that are Permitted for Organics in Alameda County and those beneficial uses which are hereafter expressly approved by the City in writing and which are consistent with county and state regulations and qualify for diversion credit under the statutes and regulations of CalRecycle. However, the use of Organics as Alternative Daily Cover (ADC) or Land Application is prohibited and shall not be deemed “Approved Diversion.”

**1.1.9 Back Yard Service.** The act of retrieving the MSW, Recyclables, and Organics Carts from the rear or side of Single-Family Dwellings, moving them to the curb for Collection, and returning them to their original location.

**1.1.10 Bin.** Containers owned by Contractor and used for Collection of MSW, Recyclables, or Organics, with a capacity from 1 to 8 cubic yards.

**1.1.11 Bulky Goods.** Discarded, oversized or overweight household articles that have weights, volumes or dimensions which cannot be accommodated by the Carts provided by Contractor for the Collection of Municipal Solid Waste, Recyclables, or Organics from City or Residential Premises, such as large and small household appliances and electronic equipment, plumbing fixtures resulting from remodeling or repairs, furniture, carpets, mattresses, clothing, tires and oversized Yard Waste, such as tree trunks and large branches, but excluding loose Construction and Demolition Debris.

**1.1.12 CalRecycle** shall mean the California Department of Resources Recycling and Recovery, which is the successor agency to the California Integrated Waste Management Board.

**1.1.13 Cart.** An industry-standard receptacle for MSW, Recyclables, or Organics made of hard rubber or plastic, in a range of sizes of approximately 20, 32, 64 or 96 gallons, with wheels, a handle for ease of movement and a tight-fitting, attached lid, designed to be dumped mechanically into a Collection vehicle.

**1.1.14 Change in Law** means the occurrence of any event or change in Applicable Law after the Commencement Date as follows:

- a) the adoption, promulgation, amendment, modification, rescission, revision or revocation of any Applicable Law or change in judicial or administrative interpretation; or
- b) any order or judgment of any federal, state or local court, administrative agency or governmental body; or
- c) the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any permit; or

- d) the failure of a governmental authority or agency to issue, or the suspension or termination of any permit.
- e) The occurrence of any event as described in paragraphs (b), (c), or (d) shall constitute a Change in Law only if:
  - (i) such event is not the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible: and
  - (ii) the Party relying thereon, unless excused in writing from so doing by the other Party shall make or have made, or shall cause or have caused to be made, Reasonable Business Efforts in good faith to contest such event (it being understood that the contesting in good faith of such event shall not constitute or be construed as a willful misconduct or negligent action of such party).

**1.1.15 Change in Scope.** A Significant Change in the Contractor services from those described in this Agreement.

**1.1.16 City.** The City of Fremont, California, a municipal corporation.

**1.1.17 City Council.** The governing legislative body of City.

**1.1.18 City Designated Facility(ies).** A Facility selected by the City for the Transfer, Processing or Disposal of MSW, Recyclables or Organics.

**1.1.19 City Facility(ies).** Any site or facility owned or operated by City.

**1.1.20 City Legislation.** The Municipal Code of the City of Fremont, as it may be amended or recodified from time to time, as well as any ordinances or resolutions duly promulgated or adopted by the City Council, as such ordinances or resolutions may be amended from time to time.

**1.1.21 City Manager.** The City Manager of City, or his or her designee.

**1.1.22 City Representative.** The City employee or employees whom the City Council shall designate for receipt, review and action upon all reports, plans and other documents to be submitted to City by Contractor hereunder, and to otherwise act as a contact person for Contractor regarding the requirements of this Agreement.

**1.1.23 City Street Receptacles.** Receptacles owned by City with a capacity of 96 gallons or less that are strategically located within the City for use by the general public. These receptacles are for MSW, Recyclables and Organics as determined by the City. The list of City Street Receptacles will be revised administratively, as needed.

**1.1.24 Collect, Collection (or other variations thereof).** The operation of gathering together within the City, and Transporting to the point of Disposal or Processing, all MSW,

Organics, or Recyclables (including used motor oil).

**1.1.25 Collection Services.** The Collection of MSW, Organics, and Recyclables, the delivery of these materials to the corresponding City Designated Facilities for Transfer, Disposal, or Processing and marketing, and the Processing of Recyclables and Organics, all in accordance with and to the extent authorized by this Agreement.

**1.1.26 Commencement Date.** January 1, 2003.

**1.1.27 Compost.** The product resulting from the controlled biological decomposition of Organics for use in fertilizing or soil conditioning.

**1.1.28 Composting.** The controlled biodegradation of Organics into a specific mixture of decayed organic matter used for fertilizing or soil conditioning. Composting does not include using Organics as Alternative Daily Cover (ADC).

**1.1.29 Commercial Facility(ies)** means any facility or business that is not Residential and includes any commercial entity; proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust, corporation which is organized for financial gain or for profit, or non-profit corporation or entity, restaurant, retail facility, office, markets, office buildings, hotels, motels, shopping centers, hospitals, theaters, including commercial and industrial entities, but not including Multi-Family Dwelling Units, located within the boundaries of City.

**1.1.30 Commercial Food Waste** means pre and post consumer Organics consisting primarily of food scraps from a Commercial Generator. Commercial Food Waste may also include food-soiled paper, biodegradable food service products, floral materials and other Organics deemed appropriate by mutual agreement of City and Contractor.

**1.1.31 Commercial Generator** means an owner or Responsible Party for a Commercial Facility(ies), including property which generates Commercial Recyclables as a result of its business, facility(ies) or property activity, including construction sites. Commercial Generator may also include tenants, property managers for facilities with leased space, employees and contractors of Generator, as well as Responsible Parties.

**1.1.32 Commercial Organics** means Organics from Commercial Generators that is segregated in a separate Container prior to Collection and is delivered to a City Designated Facility(ies).

**1.1.33 Commercial Recyclables** means Recyclable Materials from Commercial Generators that have been separated from the solid waste stream prior to Disposal through Source Separation by the Commercial Generator, and having a potential for reuse or reprocessing. Commercial Recyclables include Commercial Organics and Construction and Demolition Debris. Commercial Recyclables includes any materials identified by City's Environmental Services Manager for which a market or Processing potential exists. Commercial Recyclables do not include those Recyclables that a Commercial Generator chooses to sell through a bona fide sale where the Commercial Generator does not incur any cost or charge for the Collection, Transportation, Processing or any other service; or for those Recyclables that a Commercial Generator donates to a nonprofit organization.

**1.1.34 Construction and Demolition Debris** means Permitted Material generated as the result of construction, remodeling, repair or demolition on pavement, houses, commercial buildings and other structures, including without limitation, discarded packaging, Containers and waste construction materials, whether brought on site for fabrication or used in construction or resulting from demolition, excluding liquid waste, Hazardous Waste, and Medical and Infectious Waste. Such materials may include building materials such as brick, mortar, concrete, plaster, scrap wood, scrap metal, sheet rock, packaging or rubble. Construction and Demolition Debris may be either (1) Municipal Solid Waste if a load contains 10% or more by weight or volume of Residue or other nonrecyclable material, or (2) Recyclables if the load contains less than 10% by weight or volume of Residue and nonrecyclable material.

**1.1.35 Container** means any Bin, Cart, Roll-Off Box, City Street Receptacle or other vessel used for the purpose of holding MSW, Recyclables or Organics for Collection.

**1.1.36 Contractor.** Allied Waste Services of North America, LLC, a subsidiary of Republic Services, Inc.

**1.1.37 Contractor Representative.** Contractor's employee whom Contractor shall designate as the contact person for receipt, review and action upon all City requests and notifications and other requirements of this Agreement.

**1.1.38 Control.** The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, partnership, joint venture, or other association.

**1.1.39 CPI (Consumer Price Index).** All Urban Consumers San Francisco - Oakland - San Jose Metropolitan Area Index (All Urban Consumers; where 1982-84 = 100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics. If such index is no longer published, such other index published by the Department of Labor, Bureau of Labor Statistics or its successor agency, for the geographic area corresponding to Alameda County generally or City specifically, shall be the CPI subject to City approval.

**1.1.40 Customer** includes all Generators of MSW, Organics, Recyclables who subscribe to one or more services in this Agreement, as amended, including homeowners, Responsible Parties or owners or occupants of rental Single-Family or Multi-Family dwellings, owners or Responsible Parties of business, facilities or properties.

**1.1.41 Disposal.** Shall have the meaning set forth in Section 40192 of the California Public Resources Code.

**1.1.42 Disposal Differential** means the difference between the actual Disposal Fee charged to Collection Contractor and the Disposal Fee incorporated into the Collection Rates.

**1.1.43 Disposal Facility** shall have the meaning set forth in Section 40121 of the California Public Resources Code.

**1.1.44 Disposal Fee.** The per-ton charge levied by the City Designated Disposal or City Designated Transfer Facility for Accepting materials for Disposal.

**1.1.45 Dry Mixed Recyclables** means Permitted Materials from Commercial Facilities within the City that contains more than 60% by weight of the following uncontaminated material: OCC, metal, wood, food and beverage containers, mixed paper, rigid and film plastics, glass and other such materials as mutually agreed by City and Contractor.

**1.1.46 E-Waste** means discarded electronic equipment such as computers, monitors and other peripherals, televisions, and audio equipment. For the purposes of this agreement, fluorescent light tubes and dry cell batteries will be included in the E-Waste recycling program.

**1.1.47 Extraordinary Rate Review.** Rate review requested or conducted in accordance with the provisions of Article 12 of this Agreement.

**1.1.48 Force Majeure** events include and are limited to floods, earthquakes, other extraordinary acts of nature, war or insurrection, riots, or other similar catastrophic events, not caused or maintained by Contractor, which event is not reasonably within the ability of Contractor to intervene in or Control, to the extent that such event has a material adverse effect on the ability of Contractor to perform Contractor's Obligations. No event, the effects of which could have been prevented by reasonable precautions, including compliance with Applicable Laws and Standard Industry Practices, shall be a Force Majeure. No failure of performance by any subcontractor of Contractor shall be a Force Majeure event unless such failure is itself caused by a Force Majeure event as to the subcontractor. No Labor Action shall constitute an event of Force Majeure.

**1.1.49 Generator** shall mean an owner or Responsible Party for a Residential or Commercial Facility, including property which generates MSW, Organics and Recyclables as a result of its Single-Family Dwelling, Multi-Family Dwelling, business, facility or property activity, including construction sites. Generators may also include tenants, property managers with leased space, employees and contractors of Generators, as well as responsible parties.

**1.1.50 Hazardous Waste.** Any material, substance, waste or component thereof which poses an actual or potential risk to public health and safety or the environment by virtue of being actually or potentially toxic, corrosive, bioaccumulative, reactive, ignitable, radioactive, infectious or otherwise harmful to public health and safety or the environment, and which requires special handling under any present or future federal, state or local law, excluding de minimis quantities of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe Collection, Recycling, treatment and Disposal of Household Hazardous Waste in compliance with Sections 41500 and 41802 of the California Public Resources Code. The Parties intend that this definition not be limited to any particular statutory or regulatory regime and that it be construed as broadly as possible so that Contractor bears the responsibility for exercising due diligence as provided in this Agreement in the investigation, monitoring, control, decontamination, removal and remediation of Hazardous Waste as is required in order to protect against actual or potential risk to public health and safety or the environment.

**1.1.51 Health Insurance Index** shall mean the All Urban Consumers-US City Average Index, Health Insurance Item, Series ID CUUR0000SEME compiled and published by the United States Department of Labor, Bureau of Labor Statistics. However, if in the future another regional index becomes available which more closely reflects adjustments to health insurance rates in the San Francisco Bay Area, Contractor and City may in their reasonable discretion mutually agree to use that new index.



**1.1.52 Holidays.** Thanksgiving, Christmas, and New Year's Day are the designated Holidays on which there will be no Collection service. Collection service will be delayed one day for the remainder of the Holiday week and the Friday routes will be Collected on Saturday.

**1.1.53 In the City or within the City.** All of the territory within the corporate boundaries of the City as such boundaries exist on the Effective Date or may thereafter exist by virtue of the annexation of territory to or detachment of territory from the boundaries of the City.

**1.1.54 Labor Action.** Labor unrest, including strike, work stoppage, slowdown, sick-out, picketing and any other concerted job action.

**1.1.55 Land Application** as defined in 14 CCR 17852 as amended means the application of Compostable material, excluding food material or mixed solid waste for the following applications: to forest, agricultural and range land at agronomic rates; in accordance with CDFA requirements for beneficial use as authorized by Food and Agricultural Code section 14501 et seq.; or for beneficial uses that may be otherwise exempt or excluded from regulation by CDFA.

**1.1.56 Municipal Solid Waste or MSW** shall mean, except as provided below, all "solid waste" as defined in Cal. Pub. Res. Code § 40191, as that section may be amended from time to time, which is generated within the City. "MSW" means all putrescible and nonputrescible solid, semisolid and liquid wastes; including garbage, trash, refuse, rubbish, ashes, industrial wastes, discarded Bulky Goods, discarded Brown Goods, dewatered, treated or chemically fixed sewage sludge (which is not Hazardous Waste), manure, vegetable or animal solid and semisolid wastes, Processing Residues from Recycling, Composting and similar processes, and other discarded wastes; but does not include abandoned vehicles, Hazardous Waste, Household Hazardous Waste, Unpermitted Waste or material, Recyclables including Source Separated Recyclables or Organics intended for diversion as part of a Recycling or Organics program.

**1.1.57 Multi-Family Dwelling or MFD.** Any residence, other than a Single-Family Dwelling, including any flat, apartment, or other building used for housing persons including, but not limited to, premises such as apartments, condominiums, and town homes, and including such premises when combined in the same building with Commercial Facilities.

**1.1.58 OPIS (Oil Price Information Service) Diesel Fuel Index (Fuel Index).** The diesel fuel rack pricing index used for Fuel Index adjustment shall be the Oil Price Information Service (OPIS) CARB Diesel Fuel ALL Racks Gross average (Sacramento, CA, San Francisco, CA, San Jose, CA, Stockton, CA).

**1.1.59 Organics** shall include source separated organics such as Yard Waste, food waste, food soiled paper, nonhazardous wood waste or other Compostable materials Accepted in the City's program for delivery to a City Designated Facility. Organics shall also include three subsets, Commercial Food Waste, Residential Organics, and Other Commercial Organics.

**1.1.60 Organics Processing Facility.** The City Designated Facility for the receipt, Processing and marketing of Organics.

**1.1.61 Other Commercial Organics** includes Commercial Organics other than Commercial Food Waste; such as Yard Waste, green waste, nonhazardous wood waste and other Compostable

material from Commercial Facilities.

**1.1.62 Outreach and Technical Assistance Plan (“Plan”)** is a workplan agreed upon by City and Contactor to address the number of Customer visits per week, monthly waste audits, Customer training and education in order to improve the quality and quantity of diverted recyclable materials.

**1.1.63 Overage** means an amount of Permitted Materials in excess of the capacity of the Containers for which Generator has subscribed.

**1.1.64 Overage Bag(s).** A distinctive plastic bag made available for sale to Customer, by Contractor, for setting out Overage for Collection.

**1.1.65 Overage Bag Account.** Customers generating less than ten gallons of MSW per month whose Collection needs are met through the use of Overage Bags rather than Cart service.

**1.1.66 Party; Parties.** One or both of City and Contractor, as applicable.

**1.1.67 Pass Through Costs.** Governmental and regulatory fees, surcharges, and other costs, that are directly assessed against Contractor by governmental entities, that Contractor remits to such entities.

**1.1.68 Performance Bond.** The surety bond described in Section 10.13 of this Agreement.

**1.1.69 Person.** An individual, firm, corporation, association, partnership, consortium, joint venture, Commercial entity, governmental entity, or any other legal person.

**1.1.70 Permitted Waste or Permitted Materials** shall mean materials that the Collectors and Processors may handle under their permits and applicable federal, state and local laws and regulations.

**1.1.71 Pilot Program.** Experimental or trial activities intended to test the viability or any other aspect(s) of process or procedures. Typically, a pilot program involves a sample population, audience, or confined scope and precedes any implementation of a larger or entire program.

**1.1.72 Prior Agreements.** The Agreements listed in the Recitals of this Restated Agreement.

**1.1.73 Processing.** The reduction, separation, diversion, recovery, or conversion of MSW, Organics or Recyclables.

**1.1.74 Processing Facility.** A facility for the Processing of MSW, Recyclables or Organics.

**1.1.75 Processing Residues or Residue.** Materials remaining after the Processing of Recyclables and/or Organics which cannot be Recycled, Composted, marketed, or otherwise utilized through City accepted Processing standards.

**1.1.76 Rates; Collection Rates.** The fees charged to Customers by Contractor for

Collection Services under this Agreement. The Collection Rates are set forth in Exhibit A, as it may be amended from time to time.

**1.1.77 Reasonable Business Efforts.** Those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation that such Person has undertaken to satisfy.

**1.1.78 Recyclable(s).** Materials having a potential for reuse or reprocessing or other materials having value declared as Recyclables by City. Recyclables shall mean used Residential, business or Commercial materials which may be returned to the economic mainstream as commodities for reuse to create new or reconstituted products, which, if not segregated from MSW by the Generator or through Processing, would otherwise become MSW; including but not limited to Construction and Demolition Debris, plastic bottles and jars, paper, cardboard, glass, newspaper, metal containers, cans, as well as Organics such as green waste or Yard Waste.

**1.1.79 Recyclables Processing Facility.** The City Designated Facility for Recyclables Processing and marketing Collected pursuant to this Agreement.

**1.1.80 Recycle or Recycling.** "Recycle" or "Recycling" has the meaning set forth in California Public Resources Code Section 40180.

**1.1.81 Residential.** Of or pertaining to an MFD (Multi-Family) or SFD (Single-Family).

**1.1.82 Residential Organics.** Residential Yard Waste and Residential food scraps and trimmings from food preparation, fruit and vegetable rinds/peels, food contaminated paper such as pizza boxes, take-out food cartons, and paper towels.

**1.1.83 Responsible Party** means the individual or entity responsible for the Generator's management of Municipal Solid Waste, Organics, and Recyclables.

**1.1.84 Roll-Off Box.** A fabricated metal box typically with a capacity of between 6 and 40 cubic yards capable of being dropped off and transported by a specially equipped Collection vehicle.

**1.1.85 Self Haul (or Self Hauling or other variations)** means the act of a Generator transporting his or her own Permitted Materials by using a vehicle owned by that Generator and driven by the Generator's employees rather than using the hauling services of City's Collection Contractor or a third party hauling company.

**1.1.86 Significant Change.** A change in the Contractor's services or obligations from those described in this Agreement, resulting in an increase or decrease in Contractor's costs of more than the amount identified in Exhibit A as "Amount Regarded as Significant", over the remaining term of the Agreement.

**1.1.87 Single Commodity Soil, Asphalt and Concrete** means soil, concrete and asphalt resulting from construction, remodeling, repair or demolition on pavement, houses, Commercial buildings, Multi-Family dwellings and other structures that is source separated from each other and

any other Permitted Materials that contain a de minimis amount of Residue. Single Commodity Soil, Asphalt and Concrete as defined are exempt from this franchise Collection agreement.

**1.1.88 Single-Family Dwelling or SFD.** A detached or attached residence designed or used for occupancy by one family, which may include a unit in a condominium complex, town home complex, or mobile home park, provided that such residence can be serviced feasibly as a single unit.

**1.1.89 Source Separated Commercial Recyclables, also referred to as “High Value Commercial Recyclables”** means Recyclable Materials from Commercial Facilities which have been segregated by the Commercial Generator prior to Collection for the purposes of Recycling or Diversion; are Collected separately by Contractor from Municipal Solid Waste and Dry Mixed Recyclables; are generally placed in specially designated Bins by Generator; and contain materials such as corrugated cardboard, newspaper, paper, Recyclable food and beverage containers, metal (aluminum and steel) food and beverage cans, HDPE bottles and PET bottles and contain a Residue of no more than twenty (20) percent. Source Separated Commercial Recyclables (High Value Commercial Recyclables) do not include those Commercial Recyclables that a Generator chooses to donate, sell or Self Haul.

**1.1.90 Standard Industry Practice(s).** Reasonable diligence and prudence on part of Contractor in employing, at a minimum, the then-current development, operations, management, and business practices and standards of the California solid waste management industry in meeting Contractor's obligations hereunder.

**1.1.91 Transfer, Transport (or other variations thereof).** The movement of Collected material from the Generator to the City Designated Facility.

**1.1.92 Transfer Facility.** A "transfer or processing station", as defined in Section 40200 of the California Public Resources Code.

**1.1.93 Two-Tiered Recycling System** means a recyclable materials and diversion program implemented by the City and Contractor replacing the previous Wet/Dry System where the Collection focus is on Source Separated Commercial Recyclables (High Value Commercial Recyclables) and Dry Mixed Recyclables, through Collection and route modifications including Customer outreach and education.

**1.1.94 Unpermitted Waste.** Any and all material, including but not limited to Hazardous Waste, the Acceptance or handling of which would cause a violation of any permit condition or legal or regulatory requirement, damage or threaten damage to Contractor's equipment or facilities, or to the Disposal or Processing facilities, or present a substantial endangerment to the health or safety of the public or Contractor's employees, or Persons engaged in the Collection, handling, Processing or Disposal of MSW, Recyclables or Organics. Provided however, that de minimis quantities of waste of a type and amount normally found in Municipal Solid Waste after implementation of programs for the safe Collection, Recycling, treatment and Disposal of Household Hazardous Waste in compliance with Sections 41500 and 41802 of the California Public Resources Code shall not constitute Unpermitted Waste. Waste or material which is otherwise Permitted may be considered Unpermitted Waste or Material when commingled with Unpermitted Waste or Material.

**1.1.95 White Goods.** Discarded household appliances such as refrigerators, stoves, washers, water heaters and similar items discarded from Residential Premises.

**1.1.96 Working Days** shall mean Monday through Friday, except for City holidays.

**1.1.97 Work Stoppage Contingency Plan** means a plan to mitigate negative Customer impacts in the event of a Labor Action.

**1.1.98 Yard Waste.** Green or dry botanical (plant) material generated in the maintenance of landscaping, such as lawn trimmings, shrubs and tree pruning, leaves and untreated/unpainted wood. Excluded from this are fibrous materials such as palm fronds, cactus, flax, maguey, or century plants and liquids.

## **ARTICLE 2.00 – REPRESENTATIONS, WARRANTIES, AND COVENANTS**

### **2.1 Representations and Warranties of Contractor.**

Contractor hereby makes the following representations and warranties for the benefit of City as of the Effective Date.

**2.1.1 Duly Organized and Qualified to do Business.** Contractor is duly organized and validly existing as a corporation in good standing under the laws of the State of Delaware, with full legal right and power to enter into and perform its obligations under this Agreement.

**2.1.2 Corporate Authorization.** Contractor has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and delivery of this Agreement by all necessary and proper action by its Board of Directors, or by its shareholders, if necessary.

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

**2.1.4 No Conflict with Applicable Law or Other Documents.** Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder:

- a. conflicts with, violates or will result in a violation of any existing Applicable Law;
- b. conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement or instrument to which Contractor is a party, or by which Contractor or any of Contractor's properties or assets is bound; or
- c. will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor which will interfere materially with Contractor's performance hereunder.

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

**2.1.6 Financial Ability, Disclosures, No Material Change.** Contractor has sufficient financial resources to perform all aspects of its obligations hereunder. Contractor has provided City with its most recent audited financial statements for its parent company which present fairly, in

accordance with generally accepted accounting principles, the financial resources of Contractor. There has been no material adverse change in Contractor's or Contractor's parent company's financial circumstances since the date of those financial statements.

**2.1.7 Expertise.** Contractor has the expert, professional, and technical capability to perform all of its obligations under this Agreement.

**2.1.8 Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding this Restated Agreement and the work to be performed by Contractor under the Agreement, and enters into this Restated Agreement on the basis of that independent investigation.

**2.1.9 No Improper Consideration.** Contractor has not provided any financial or other consideration to any council member, officer, or employee of City, or to any third party, in order to obtain the rights granted it by this Agreement.

## **2.2 Representations and Warranties of City.**

City hereby makes the following representations and warranties to and for the benefit of Contractor as of the Effective Date:

**2.2.1 Duly Organized.** City is a California municipal corporation, duly organized and validly existing under the laws of the State of California, with full legal right, power and authority to enter into and perform its obligations under this Restated Agreement.

**2.2.2 Execution Authorized.** The parties executing this Restated Agreement on behalf of City are duly authorized by the City Council to do so. This Restated Agreement constitutes the legal, valid and binding agreement of City and is enforceable against City in accordance with its terms.

**2.2.3 No Conflict with Applicable Law or Other Documents.** Neither the execution and delivery by City of this Restated Agreement, nor the performance by City of its obligations hereunder:

- a. conflicts with, violates or will result in a violation of any existing Applicable Law; or
- b. conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement or instrument to which City is a party.

**2.2.4 No Litigation.** There is no action, suit, proceeding or, to the best of City's knowledge, investigation at law or equity, before or by any court or governmental entity, pending or formally threatened against City or otherwise affecting City, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by City of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement.

## **ARTICLE 3.00 – TERM, SCOPE OF AGREEMENT; REPRESENTATIVES**

### **3.1 Term.**

The term ("Term") of this Agreement has commenced on January 1, 2003, and shall expire at midnight on June 30, 2019. Contractor agrees that City has the right to exercise an option as described in Exhibit J to extend the Term of the Agreement for an additional ten years from July 1, 2019 to June 30, 2029, including two (2) five (5) year Term extensions from July 1, 2029 to June 30, 2034 and July 1, 2034 to June 30, 2039. City may exercise the first 10-year option at its sole discretion at any time from March 15, 2016 up to and including June 30, 2017. City may exercise the two additional five year options upon mutual agreement of both parties by providing Notice to Contractor of City's intent to extend for one or both 5-year extension periods no later than six (6) months prior to the end of the Term, specifically January 1, 2029 and January 1, 2034 respectively.

The unexcused failure or refusal of Contractor to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, to terminate this Agreement for cause in accordance with the stated procedures. Upon the termination of this Agreement for any reason, or expiration of the Term, the indemnity provisions set forth in this Section, and any other provision which is expressly stated to survive the Term, shall remain in full force and effect.

**3.1.1 Extensions.** The Term of this Restated Agreement may be extended up to twelve (12) months, on a month-to-month basis at the sole discretion of City and at a cost no more than the Rates effective the final January before the expiration of the initial Term of the Restated Agreement. In no case, however, shall this extension cause Contractor to provide services under this Agreement longer than twenty-four (24) months without a CPI adjustment.

### **3.2 Scope of Exclusive and Nonexclusive Rights.**

**3.2.1 Scope of Exclusive Rights.** Subject to the terms and conditions of this Agreement and Applicable Law, including the rights of State, county and school district facilities to use a solid waste enterprise other than Contractor, City hereby grants and issues to Contractor the exclusive authority, right and privilege to: (a) Collect, Transport, and deliver at City Designated Facilities Other Commercial Organics and all MSW and Recyclables generated at all Residential and Commercial Facilities within the City; (b) Collect, Transport, Process, and market Commercial Food Waste and Residential Organics generated at all Residential and Commercial Facilities within the City.

**3.2.2 Acceptance of Terms.** City and Contractor agree that all of the recitals in this Agreement are true and correct. Contractor accepts the terms of this Agreement as defining the scope of its exclusive rights to provide MSW, Recyclables and Organics Collection, Processing, and Disposal services in the City. Contractor agrees this Restated Agreement is an accurate reflection of the prior Agreement dated 2003, as well as Amendments One through Nine, and also certain updated definitions and provisions which incorporate revisions in state law and the City of Fremont Municipal Code. This Restated Agreement supersedes all prior rights and prior agreement with the exception of those provisions specifically identified as surviving termination. Contractor waives any right or claim to provide MSW, Recyclables and Organics Collection, Processing, and Disposal services in the City under any prior grant of franchise, contract, license or permit, including but not limited to the Prior Agreements and any right under Section 49520, et seq. of the Public Resources Code. **THIS PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS**



## **AGREEMENT.**

**3.2.3 Waiver of Right to Challenge.** As a material inducement to City to enter into this Agreement, Contractor hereby waives any right it may possess to contest the legal right, power or the authority of City to enter into and perform this Agreement, or any provision hereof, and agrees to cooperate with and assist City in supporting the legal validity of and authorization for such provisions in the event of any legal challenge thereto brought or made in any manner by a third party.

**3.2.4 Exceptions to Exclusive Rights.** The exclusive rights granted Contractor in this Section 3.2 shall not preclude the following from being delivered to and/or Collected by third parties other than Contractor:

1. Recyclable Materials a Customer chooses to sell, or donate.
2. Single Commodity Soil, Asphalt and Concrete, as defined.

Recyclables Collected by third party haulers whose rights were covered under California Public Resources Code Section 49520. City has given Notice to these parties, and these parties are allowed to continue with their existing Customers until November 2017, at which time the five-year statutory time period will expire.

3. Persons permitted to Collect Hazardous Waste, medical and infectious wastes.
4. Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, codified in the California Public Resources Code, as such statute may be amended from time to time.
5. Organics that are Collected and Transported by a service provider as Self Haul where that Collection and Transport is incidental to the main business of the service provider and not as a separate hauling service, or Organics generated at City-maintained premises which are Transported by City, at its option, to a City Designated Facility.
6. Construction and Demolition Debris removed from a premise by a licensed demolition contractor as Self Haul where that Transport is incidental to the total service offered by that contractor, rather than as a separate hauling service.
7. Animal waste and remains from slaughterhouses or butcher shops for use as tallow; by-products of sewage treatment, including sludge, grit, and screenings.
8. The Collection of donated holiday trees by non-profit entities.
9. Nothing in this Agreement shall limit the right of any Person to donate or sell his or her Recyclables, or of any non-profit organization to Collect such materials without charge including but not limited to materials designated as Recyclables under this Agreement. However, no Person shall be permitted to Collect loads of commingled materials containing more than 10% MSW or other non-Recyclable material.

**3.3 Defense of Exclusive Rights.**

If necessary, and subject to Applicable Law and Contractor's indemnification obligation City will exercise its police powers to prevent infringement by third parties of the rights granted to Contractor under this Agreement that Contractor brings to the attention of City; provided however, that Contractor shall, with counsel reasonably acceptable to City, assume the prosecution (including all related costs) of any lawsuit necessary to enforce such rights, and, if necessary, defend and indemnify City against any lawsuit or other action arising out of City's performance under this Section.

**3.4 Effect of Termination of Prior Agreements.**

Notwithstanding the termination of the Prior Agreements or Amendments, any provisions of the Prior Agreements or Amendments in favor of City which expressly state that they shall survive expiration of the term or termination of the Prior Agreements or Amendments shall survive, and any remittances owed by either Party to the other pursuant to the Prior Agreements or Amendments shall remain due and payable.

**3.5 Representatives of the Parties.**

**3.5.1 Contractor Representative.** Contractor understands that, in entering into this Restated Agreement, the City has relied upon Contractor's ability to perform in accordance with its representations regarding the qualifications of the Contractor (including the qualifications of its Authorized Representatives, its personnel, and its subcontractors, if any). All services under this Agreement shall be performed by, or under the direct supervision of Contractor's Authorized Representatives. City may rely on the directions of the Contractor's Authorized Representatives as the direction of Contractor in all matters relating to this Restated Agreement, as it may be amended. Contractor may change the Contractor Authorized Representatives at any time, by delivery of written Notice in accordance with Article 15.

**3.5.2 City Representative.** City shall designate a City employee to act as its representative to Contractor in all matters relating to this Agreement. Contractor may rely on the directions of the City Representative as the directions of City, except as to those matters that expressly require the approval of the City Manager or City Council. The City Representative shall be City's Environmental Services Manager. City may change the City Representative at any time, by delivery of written Notice to Contractor in accordance with Section 15.

## **ARTICLE 4.00 – COLLECTION SERVICES**

### **4.1 General.**

Contractor shall perform MSW, Recyclables and Organics services as described in this Agreement and in accordance with the performance standards and applicable plans submitted pursuant to this Agreement. Contractor shall provide all labor, materials, equipment, vehicles, supervision and other items necessary for the performance of the services under this Agreement, and shall pay all related expenses including, but not limited to, all taxes and utility charges. All work and services shall be performed regardless of weather conditions. Contractor shall perform or cause to be performed all work in a thorough and professional manner that constitutes litter free, reliable, courteous and high-quality service. Contractor shall at all times perform its duties using best industry practices for comparable operations.

### **4.2 Alternative Fuel.**

At such time as the Air Resources Board implements the new standards for diesel emissions; Contractor shall employ the required technology to meet the new standards. Should the use of Alternative Fuel not be a recognized method of achieving the new standards, the use of Alternative Fuel may be discontinued if Contractor is achieving the new standards through other measures.

### **4.3 Single-Family Dwellings – Collection of MSW, Recyclables, and Organics**

**4.3.1 Municipal Solid Waste.** Contractor shall Collect all MSW from all Single-Family Dwellings in the City from the curb or alley on a weekly basis, on the same day that Recyclables and Organics are Collected from the SFD.

- a) **Access.** Contractor shall provide fully automated Collection service. Contractor acknowledges and agrees that its drivers may be required to leave the vehicle to Collect bags set out next to Carts. Additionally, drivers may be required to leave the Collection vehicle due to on-street parking. Contractor agrees that City is under no obligation to prohibit on-street parking to accommodate Contractor's operations.
- b) **Overage Bags.** Contractor shall provide Overage Bags upon the request of the SFD Customer, and shall Collect the Overage Bags on the Customer's regular service day. Contractor shall Collect MSW Overages from SFDs provided that such Overage is set out by the Customer in accordance with the requirements of City's Collection program. Customers generating less than ten gallons of MSW per month and using Overage Bags instead of Cart service shall be integrated into the Customer database and included in the reporting system established by Contractor and City. Customer must purchase a minimum of four Overage Bags per year. Contractor's Customer database shall show them as active Customers. Contractor shall make Overage Bags readily available to SFD Customers through distribution to easily accessible outlets as mutually agreed upon by Contractor and City. Bags shall be made available for purchase at Contractor's Fremont office and by mail or telephone. Contractor shall maintain a sufficient inventory of Overage Bags to accommodate Collection of Overages, and shall report the status of such inventory upon request to City.

**4.3.2 Recyclables.** Contractor shall Collect all Recyclables and used motor oil and oil filters from Single-Family Dwellings from the curb or alley on a weekly basis. Contractor shall provide

suitable one gallon Containers and oil filter Collection bags, approved by the City Representative, to Customers requesting this service. The used oil and filters shall be Collected from the curbside at the same time as the other Recyclables. Contractor shall replace the Customer's Container and filter bag at each occurrence of Collection. The Contractor shall maintain a sufficient inventory of Containers and bags to accommodate Collection of these materials.

**4.3.3 Residential Organics.** Contractor shall Collect all Residential Organics from SFDs from the curb or alley on a weekly basis and deliver to City Designated Facility. Contractor shall provide weekly Automated Collection of Organics from the curb or alley in a single 32, 64, or 96 gallon Cart in a size as determined by the Customer.

**4.3.4 Bulky Goods.** Contractor shall Collect Bulky Goods from residents in SFDs on demand. This service shall include up to two Bulky Goods Collections per SFD Customer per calendar year at no extra charge. Contractor shall provide additional on-call pick-up service upon request, and may charge a fee for such service as specified in Exhibit A. Customers that set out Bulky Goods in excess of the maximum 8 cubic yards of material may optionally pay for the extra material as specified in Exhibit A or remove the excess material from the set out area until they can schedule a future Bulky Goods Collection.

Contractor shall make good faith efforts to maximize the Recycling of Bulky Goods through partnerships with non-profit organizations. Outlined below is a summary of Contractor's Bulky Goods Collection and marketing plan:

- Fremont Single-Family Dwelling residents have the opportunity to schedule two Bulky Goods Collections per year. Unused Collections from any given year may be carried over to the next year until April 30th of the following year.
- Contractor will schedule the Bulky Goods Collection on the regular Collection day within 4 weeks following the request.
- Contractor will Collect all the Bulky Goods Collection materials from the route sheets printed out daily.
- Contractor will store materials identified by Customers as donations in Contractor's yard, at 42600 Boyce Road.
- Maintenance schedule for Collection equipment will be the same as MSW Collection vehicles.
- Contractor will maintain one back-up rear-load vehicle in the fleet and one flatbed vehicle. Should the need arise Contractor will rely upon Contractor's regional fleet of equipment for several more vehicles.
- Materials brought back to the Contractor's facility that are not desired by nonprofit partners will be designated for Disposal and will be Transported directly to the City Designated Disposal Facility.

**4.3.5 Special Services.** Items for Disposal, other than MSW; MSW in excess of the Customer's standard service; or Bulky Goods shall be Collected by Contractor at an extra charge if

arrangements for pickup are made in advance. Such Rates shall be determined according to Exhibit A and paid in advance and shall be separate from the regularly scheduled service Rates. Contractor may not charge a fee for estimation of such special services Rates.

To arrange for a special pickup, the Customer must call the local office of Contractor Monday through Friday between the hours of 8:00 am and 5:30 pm to arrange for a mutually acceptable time and day for the Collection of such objects or materials. Contractor shall then pick up the objects or materials at the agreed upon day and time. This day and time shall be within the week following the date when the Customer first called for this service, except when a Customer requests service at a later date or a holiday is observed during that week. If a holiday is observed during the week the request was received, pickup shall be within two weeks following the date when the Customer first called this service.

**4.3.6 Back Yard Service.** Contractor shall provide Back Yard Service at no charge to eligible SFD Customers. For purposes of this Section, "eligible SFD Customers" are those who are verified by City or Contractor that they live in a residence with no other residents capable of moving Carts, and (a) are physically unable to move the Carts as verified by a medical certificate; or (b) are over 65 years of age. Contractor shall be responsible for qualifying eligible SFD Customers for free Back Yard service. In the event of a dispute between the Customer and Contractor, the City Representative shall make the final determination of SFD Customers eligible for Back Yard Service at no charge. Contractor shall also provide Back Yard Service for any non-eligible SFD Customers requesting such service on a for-fee basis, at the Rate specified in Exhibit A.

**4.3.7 Electronic Waste (E-Waste) Recycling.** Contractor shall divert E-Waste from Disposal at landfills by Collecting E-Waste from Single-Family Dwellings as part of the Bulky Goods Collection, and operating an E-Waste drop-off program at Contractor's business office that shall be open to all Fremont residents. Contractor shall require proof of residency, and track the types, quantities, disposition process and costs for all E-Waste Accepted. For the purposes of this agreement, the E-Waste Accepted at the drop-off shall include fluorescent light tubes, dry cell batteries, televisions, computer monitors, and other miscellaneous electronic items identified as Universal Waste by the State of California. The cost of the E-Waste program shall be underwritten as follows: all costs of E-Waste Recycling including but not limited to Collection, Acceptance, preparation at Contractor's business office, tracking and administration shall be borne by Contractor except as otherwise provided herein. City shall identify Contractor as a designated Approved Collector by completing the Proof of Designation form required by the CalRecycle. Contractor shall be entitled to use CalRecycle reimbursement program funds to offset its administrative costs for electronic waste handling and service center operations costs. Upon verification of Contractor incurred third party Processing and/or Disposal fees, the City shall reimburse Contractor for disposition costs of universal and electronic waste not subject to the CalRecycle reimbursement program. If the CalRecycle program is ever terminated, the administrative universal and electronic waste program costs shall be incorporated into the Rate structure, or at the City's option, compensated by another mechanism. Contractor shall use reimbursement from the State or other enterprises or agencies to offset the costs of this E-Waste program. In the event the State program is terminated or reduced in scope, City and Contractor agree to discuss in good faith potential program modifications, including how to compensate the administrative costs. Contractor shall not charge residents setting out or dropping off E-Waste for the service unless they exceed the maximum limits set forth in Exhibit I. If such maximum limits are exceeded, those residents would then be subject to the fee schedule.

#### **4.4 Multi-Family Dwellings – Collection of MSW, Recyclables, and Organics**

**4.4.1 Municipal Solid Waste.** Contractor shall Collect all MSW that is placed in Containers for Collection at all Multi-Family Dwellings in the City at least once every week, or more frequently if required to handle the MSW stream of the premises. In determining the pickup area for MFDs, Contractor shall work with the Customer to ensure that the flow of traffic is not impeded and that the pickup area does not result in aesthetic degradation of an area. The designated Collection location, if disputed by the Customer or Contractor, shall be determined by the City Representative. If in the City Representative's opinion, the existing Collection location is inappropriate, the City Representative may require the Customer and/or Contractor to relocate the location of the Bin or Roll-Off Box(s).

**4.4.2 Recyclables.** Contractor shall provide automated Collection of Recyclables from Multi-Family Dwellings using one or more 96 gallon Carts, front-end loader (FEL) service, or a combination of Carts or Bins (as determined by the Customer) to meet the Recycling needs of a MFD. Minimum Containers shall be sized to provide at least 40 gallons for each dwelling unit. Cost for Recycling service shall be the greater of the standard MFD monthly per unit cost or FEL Commercial Recycling Rates as identified in Exhibit A. A MFD would only pay the FEL Commercial Rate in addition to the per unit Rate if it receives both Cart and FEL service. Contractor shall instruct its drivers to remove contaminants to the extent practicable from Recyclables, dispose of contaminants in the MSW Containers and Collect the Recyclables. In cases of extreme contamination, the Recycling Containers shall be disposed of as MSW and Contractor shall make the necessary arrangements to implement a focused outreach to the residents, including a site evaluation.

- a) **Used Motor Oil and Filters.** Contractor shall also Collect used motor oil Collection jugs and filters left in MFD Collection areas, and cause the oil and filters to be properly recycled.

**4.4.3 MFD Residential Organics.** Contractor shall Collect all Residential Organics that is placed in Containers for Collection at all Multi-Family Dwellings in the City at least once every week, or more frequently if required to handle the Organics stream of the premises. Contractor shall Transport Residential Organics to City Designated Facility.

**4.4.4 MFD Back Yard Service Fee.** The SFD Back Yard Service fee will apply at Multi-Family Dwellings (MFD) for each one-to-three Cart grouping located 15 feet or more from the closest Collection vehicle access or trash enclosure. For purposes of this paragraph, the phrase “closest Collection vehicle access” shall refer to the closest driving lane which can be safely traversed by the Collection vehicle used to Collect MSW from the MFD, without causing pavement or property damage. MFD Customers will be notified by Contractor and given the option of placing Carts closer to the closest Collection vehicle access or trash enclosure or paying the Back Yard Service Fee.

#### **4.5 Commercial Facilities – Collection of MSW, Recyclables, and Organics**

**4.5.1 Municipal Solid Waste.** Contractor shall Collect all MSW that is placed in Containers for Collection at all Commercial Facilities in the City at least once every week, or more frequently if required to handle the MSW stream of the premises. Contractor shall Collect all MSW from Commercial Generators with Containers sized to appropriately service the needs of the Customer, at a frequency as required by the Customer. In determining the pickup area for

Commercial Facilities, Contractor shall work with the Customer to ensure that the flow of traffic is not impeded and that the pickup area does not result in aesthetic degradation of an area. The designated Collection location, if disputed by the Customer or Contractor, shall be determined by the City Representative. If in the City Representative's opinion the existing Collection location is inappropriate, the City Representative may require the Customer and/or Contractor to relocate the location of the Bin or Roll-Off Box(s).

**4.5.2 Commercial Recyclables.** City grants the exclusive right and Contractor agrees that Contractor shall Collect all Commercial Recyclables from all Commercial Facilities on an as needed basis, but at a minimum once a week, except as noted in Section 4.5.3. This obligation to Collect Commercial Recyclables does not include those Commercial Recyclable materials that a Generator chooses to donate, sell or Self Haul. Contractor shall instruct its drivers to Collect the Commercial Recyclables. In cases of extreme contamination, the Recyclables Containers shall be Collected and delivered as MSW and Contractor shall make the necessary arrangements to implement a focused outreach to the Generators, including a site evaluation.

- a) **Delivery and Rates.** Contractor will be compensated for the Collection and Transport of Commercial Recyclables, including Source Separated Commercial Recyclables pursuant to Article 12 and Exhibit A as those may be adjusted.
- b) **Two-Tiered Commercial Recyclables System.** City and Contractor agree that Commercial Generators will have two options for Collection from Contractor: 1) a Container for Dry Mixed Recyclables plus a Municipal Solid Waste Container; or 2) a Source Separated Commercial Recyclables Container plus a Municipal Solid Waste Container.
- c) **No Increased Costs.** Since City and Contractor have agreed to modify Collections to a Two-Tiered Recycling System where the focus will be on Source Separated Commercial Recyclables and Dry Mixed Recyclables. City and Contractor agree that any increased costs for additional changes under the Outreach and Technical Assistance Plan, as revised, to achieve or maintain the Residue rates as defined herein, will be borne solely by Contractor and will not be eligible for Extraordinary Rate Review cost claim by Contractor.
- d) **Assigned Recycling Level.** City and Contractor have targeted certain areas of improvement in the Outreach and Technical Assistance Plan ("Plan"), as it is currently drafted and as it may be modified over the term of the contract to address the diversion goals. As part of these improvements, City will designate certain Customers to an assigned recycling level depending on the quality of the materials generated, and Contractor will accommodate and support those assignments through appropriate Customer outreach and Collection routing changes.
- e) **Collection Route Modifications.** Additional modifications to the Collection routes is expected in order to comply with the Plan and achieve and maintain desired material quality. Contractor agrees that any and all costs associated with compliance with this Plan, including but not limited to routing inefficiencies, changes in routes, increased Customer response, education and associated staffing (except for those third party consultant expenses specifically requested by City), audits, driver and operations

support and other City requested changes will be borne solely by Contractor and will not be eligible for any reimbursement or reconciliation. Further, Contractor agrees that these costs will not be eligible for Extraordinary Rate Review claims throughout the term of this Agreement.

**4.5.3 Roll-Off Service Frequency.** Roll-off and compactor service roll-off will be Collected on a mutually agreed to schedule between Contractor and Customer. For those Customers that desire monthly, instead of weekly Roll-Off Box service, the minimum monthly haul requirement for compacted MSW loads is one load per month. The minimum monthly haul requirement for non-compacted MSW loads is two loads per month.

**4.5.4 Commercial Food Waste.** Contractor shall Collect all Commercial Food Waste that is placed in Containers for Collection at all Commercial Facilities in the City at least once every week, or more frequently if required to handle the Commercial Food Waste stream of the premises. Contractor shall Collect all Commercial Food Waste from Generators with Containers sized to appropriately service the needs of the Customer, at a frequency as required by the Customer. Contractor agrees that additional service days or expanded Container sizes will be added as necessary to adequately service the Commercial Food Waste route.

- a) **Sales and Education.** Contractor agrees to make Customer contacts to promote the service to new participants. If the City recruits new participants in accordance with the terms of this Agreement, Contractor agrees to use its best efforts to implement the start-up or service adjustments within fourteen (14) days of receipt of the request from City. Contractor agrees to provide Customer training and reasonable monitoring. City may require Contractor to utilize specialized firms to provide such services as outreach pieces and Customer training; provided, however, that in such event the City shall promptly reimburse Contractor its actual costs, without deduction or offset, for retaining such specialized firms and providing such services. The cost for these services and materials will be reimbursed to Contractor after City review and approval of the supporting documentation in the invoices.
- b) **Acceptable Materials.** The following Commercial Food Waste materials will be Accepted into this program, absent any restrictions placed on Contractor's operations by any regulatory agency:
  - All Compostable vegetables and fruit materials.
  - All meat, poultry, fish and shellfish scraps.
  - All organic bakery, pasta, beans, rice, egg shells, and cheese products and by-products.
  - Biodegradable non-fiber (paper) food service containers, utensils and Bin liners.
  - All organic floral trimmings.
  - All organic tree trimmings, but such trimmings shall not exceed three (3) feet in length.
  - All organic brush, leaves, grass and weeds.
  - All wooden pallets & sawdust (untreated/unpainted), but the components of such wood pallets shall not exceed four (4) feet in length.



- c) **Unacceptable Materials.** The following Commercial Food Waste materials will not be Accepted into this program:
- Any plastics or polystyrene foam (wrappers, containers, etc.).
  - Any glass (container, window, automotive, etc.).
  - Any metals (container, flatware, automotive, etc.).
  - Any grease trappings or tallow.
  - Any Hazardous Waste.
  - Any other contaminants reasonably identified by Contractor during the term of this Agreement, where such components are objectionable to any applicable regulatory agencies. Additional materials may be added to the program upon mutual written agreement of the Parties.
- d) **Contamination Control Procedures.** Contractor agrees to reasonably enforce procedures designed to prevent contamination of the Commercial Food Waste. Contractor agrees to distribute educational materials to Customer participants in accordance with the terms of this Agreement, to advise them to avoid putting glass, plastics, metals, bottles, cans, liquids or Hazardous Wastes into their Commercial Food Waste Containers. Contractor agrees to encourage program participants to use biodegradable bags or place non-bagged food waste and soiled paper into the external Collection Bins and Carts. Contractor agrees to allow program participants to place clear plastic liner bags in kitchen Containers and include these liner bags, with food waste and soiled paper inside, in the external Bins and Carts for Collection by Contractor.

**4.5.5 Other Commercial Organics.** Contractor shall Collect Other Commercial Organics that are placed in Containers for Collection at all Commercial Facilities in the City at least once every week, or more frequently if required to handle the volume of material. Contractor shall Transport Other Commercial Organics to City Designated Facility(ies). Contractor shall Collect all Other Commercial Organics from Commercial Generators with Containers sized to appropriately service the needs of the Customer, at a frequency as required by the Customer. Contractor agrees that additional service days or expanded Container sizes will be added as necessary to adequately service Customers.

## **4.6 CITY FACILITIES AND CITY STREET RECEPTACLES**

**4.6.1 City Sites and Facilities.** Contractor shall Collect all MSW, Organics and Recyclables from City Sites and City Facilities, including parks, street sweeping operations, office and other municipal buildings, libraries, and various centralized locations where street sweepers will deposit dirt and other debris swept from the City streets, as well as MSW generated through the routine maintenance of City infrastructure. Such Collection shall be conducted in accordance with a mutually agreed upon service schedule, but no less often than weekly. Contractor shall provide these services without charge to City.

**4.6.2 City Street Receptacles.** Contractor shall also Collect, without charge, all materials including MSW, Recyclables and Organics from City Street Receptacles in accordance with the City's updated list of City Street Receptacles. This service shall be performed at least weekly, and more often if necessary to prevent overflowing. Contract shall also include monitoring, maintenance, and replacement of the Containers. Contractor shall:

- Clean litter spilled from the Containers;
- Replace damaged liners as needed;
- Contractor shall pay a lump sum annually for the equivalent value of ten (10) new City Street Receptacles per year. This current amount is reflected in Exhibit A and shall be adjusted by CPI on a biennial basis.

#### **4.7 Special Services.**

In addition to the services described above, Contractor shall provide to Customers the Special Services listed in this Section.

**4.7.1 Holiday Tree Collection.** Contractor shall Collect, from Single-Family Dwellings and Multi-Family Dwellings, holiday trees that have been cut to less than 6 foot lengths and set out at curbside. The Collection will coincide with the regularly scheduled Collection days.

**4.7.2 Miscellaneous Special Services.** Contractor shall provide the following additional Special Services, at the Rates set forth in Exhibit A:

- push and return services to manually move Bins to an area where accessible to the automated equipment (subject to the revenue cap described in 4.8.5).
- installation and use of locks on Bins or Bin enclosures, including replacement of lost locks or keys.
- additional Collection services outside the normal Collection schedule;
- provision of covered Roll-Off Boxes.
- miscellaneous hourly services (not otherwise required by this Agreement, which Contractor provides on an hourly basis upon request).

## **ARTICLE 5.00 - PERFORMANCE STANDARDS**

### **5.1 General**

Contractor shall provide all Collection services in accordance with the Performance Standards below, and applicable plans submitted by Contractor in accordance with this Agreement. These standards include the implementation of noise mitigation measures in areas where Commercial Facility accounts are in close proximity to Residential neighborhoods and/or where residents have complained about excess noise. Contractor shall provide all services pursuant to this Agreement efficiently and effectively. Contractor's failure to provide services in accordance with this Agreement shall not be excused by virtue of any claimed inadequacy in Contractor's Rates or by virtue of any claimed inadequacy in the labor force, productivity levels, or technology and equipment assumed in Contractor's Rates. Contractor shall perform or cause to be performed all services in a timely, thorough and workman-like manner that constitutes litter free, reliable, courteous and high-quality service. Contractor shall at all times perform its duties using best industry practices for comparable operations.

### **5.2 No Commingling**

MSW, Organics and Recyclables Collected from within the City shall not be mixed in Contractor's Collection equipment or combined with MSW, Recyclables, or Organics Collected from another municipality without prior written approval from City.

### **5.3 Collection Schedule and Hours**

Hours of Collection for MSW, Recyclables and Organics are limited to 6:00 a.m. to 6:00 p.m. for residential areas, which excludes mixed-use development that include residences. Collection from mixed use development areas may be scheduled at times with routes and schedules determined by City, including those with a transit-oriented development overlay (TOD). Under special circumstances including issues of operational safety, efficiencies and access, the City may approve an earlier start time. The City may also temporarily change Residential Collection hours to accommodate special events or circumstances. All Collection activities will be coordinated with other City services such as street sweeping, paving and repairs to streets.

### **5.4 Holidays**

Contractor shall not provide Collection services on Holidays. Contractor shall service accounts that fall on Holidays on the next Working Day. Accounts scheduled for subsequent Collection days will be Collected one day later culminating with the accounts scheduled for Friday Collection being Collected on the Saturday following the Holiday.

### **5.5 Care of City and Private Property**

Contractor's employees shall use reasonable care in handling Containers and enclosures; all damage thereto caused by the negligence or carelessness of Contractor's employees shall be promptly adjusted by Contractor with the owner. All emptied Containers shall be returned to within five (5) feet of the location from which they were picked up by Contractor's employees, upright with lids properly secured. Contractor's employees shall use all reasonable means to insure the Containers are not deposited in manner that blocks any driveway, sidewalk, or street. Contractor shall ensure that its employees close all gates opened by them in making Collections, unless otherwise directed by the Customer, and avoid crossing landscaped areas and climbing or jumping over hedges and fences. City will refer complaints about damage to private property to Contractor. Contractor shall repair all damage to private property caused by its employees. Contractor shall respond to damage claims

within one (1) working day and shall resolve damage claims within ten (10) days.

### **5.6 Noise**

All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations, including the requirement that the noise level during the stationary compaction process not exceed 60 decibels with the exception of 65 decibels for one-minute duration. City may conduct random checks of noise emission levels to ensure such compliance. Contractor shall promptly resolve any complaints of emission levels to ensure such compliance. Contractor shall promptly resolve any complaints of noise by implementing noise mitigation measures to the satisfaction of the City Representative.

### **5.7 Record of Non-Collection**

When any MSW or other material deposited for Collection is not Collected by Contractor for sufficient reason, Contractor shall leave a multi-lingual tag (English, Spanish, and any other languages specified by the City Representative) at least 2" x 6" in size, provided at Contractor's cost, on which Contractor has provided Contractor's phone number and indicated the reasons for Contractor's refusal to Collect the material, giving reference to the section of the Fremont Municipal Code or to the section of this Agreement which has been violated, and which gives grounds for Contractor's refusal. This information shall either be in writing or by means of a check box system. At City's request, a copy of any non-Collection tag, along with the name and address of the party tagged shall be delivered to the City Representative, within 24 hours of such request. The log book shall contain a record of the non-Collection, including the names and addresses of the parties involved, date of tagging, and reason for non-Collection.

### **5.8 Minimization of Litter and Spills**

Contractor shall use due care to prevent MSW or other waste, Recyclables, or Organics from being spilled or scattered during the Collection or Transportation process. If any material is spilled during Collection, Contractor shall promptly clean up all spilled materials; each Collection vehicle shall carry a broom and shovel at all times for this purpose. Contractor shall not move loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure or an accident has rendered the Collection vehicle inoperable or unsafe to operate.

### **5.9 Clean-Up**

During the Collection and Transportation process, Contractor shall clean up litter in the immediate vicinity of any Container storage area (including the areas where Containers are delivered for Collection) of any materials that escape from the Collection vehicle or Containers as a result of Contractor's service. In the event that litter not caused by Contractor's service is in the vicinity of the Container storage area, Contractor shall clean-up the litter, whether or not Contractor has caused the litter. Contractor shall discuss the spillage directly with the Customer responsible and shall report such instances to City. Contractor shall work with the Customer to resolve the spillage problem. City will attempt to rectify such situations with the Customer if Contractor has already attempted to do so without success.

### **5.10 Covering of Loads**

All loads shall be covered or otherwise secured to prevent spillage. No material shall be Transported in vehicle hoppers.

### **5.11 Oil or Other Vehicle Fluid Spills**

Contractor is responsible for cleaning-up all oil or vehicle fluid spills immediately and must notify City within 24 hours of each such spill. All vehicles must carry an acceptable absorbent material to use in the event of spills. Repair for damages caused by oil or other vehicle fluid spills shall be at Contractor's expense. Contractor will follow the spill procedures below:

- Driver will determine cause and source of spill.
- Each driver or shop employee is responsible for having enough absorbent in their vehicle to contain or prevent any hydraulic fluid or oil from entering a storm drain or sewer and to clean up small spills as they occur.
- Driver will contain or stop the leak and clean it up without endangering self.
- Driver will immediately notify dispatch or supervisor.
- Driver will not leave the spill until either a supervisor or spill response personnel arrive at the scene.
- Driver will keep all people, Carts, or other vehicles from walking or driving through the spill.
- Driver or spill response personnel will take all action necessary to prevent the spill from entering the storm drain system through any storm drain inlets, grates, or other entry points.

### **5.12 Vehicles and Equipment**

Contractor shall provide and maintain a fleet of Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms.

Contractor shall have available on Collection days sufficient back-up vehicles and qualified operators for each type of Collection vehicle used (i.e., Residential, Commercial, and special and Bulky Goods Collection vehicles) to respond to complaints and emergencies. Contractor shall furnish City a written inventory of all vehicles, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all vehicles by manufacturer, ID number, date of acquisition, type, capacity and decibel rating.

All trucks shall be fully automated to accommodate the efficient Collection of Recycling, Organics and MSW. Contractor may arrange with City for use of other types of trucks for Collections in hard to serve areas that may not be able to accommodate the larger automated trucks.

Contractor agrees that fifty percent (50%) of the Collection vehicles used for Commercial Facilities and MFDs will be no more than eight (8) years old. Upon the approval of the City Representative, a vehicle that has been refurbished and rebuilt may be included in the count of vehicles that are 8 years or newer.

Contractor shall arrange to store all vehicles and other equipment in safe and secure locations(s) in accordance with City's applicable zoning regulations. City reserves the right to inspect any and all of Contractor's vehicles and equipment at any time without prior notice, to determine compliance with sanitation requirements, Applicable Law, and this Agreement.

### **5.13 Specifications**

All vehicles used by Contractor in providing MSW, Recyclables, and Organics Collection services shall be registered with the California Department of Motor Vehicles and shall meet or exceed all legal standards. Contractor agrees to maintain all of its Collection vehicles in compliance with the provisions of the California Vehicle code, including but not limited to, Sections 27000(b), 23114, 23115, 42030, and all Vehicle Code sections regarding smog equipment requirements.

### **5.14 Vehicle Identification**

Contractor's name, local telephone number, and a unique vehicle identification number designed by Contractor for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2-1/2) inches high. City may request that Contractor include City's logo on its vehicle. At City's request, Contractor shall work cooperatively with City to develop an acceptable presentation of the logo on the Collection vehicles.

### **5.15 On-board Computer**

Contractor shall research and test the use of an on-board processing system and weighing system on the Commercial Collection vehicles and shall report its findings to City. The on-board processing system shall allow the driver to weigh and record the quantity of MSW Collected from each Customer using a scale and computer. The on-board processing system shall record the net weight, time, and date of the dumped Containers.

### **5.16 Cleaning and Maintenance**

Contractor shall maintain all of its vehicles and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times, and well and uniformly painted, to the satisfaction of the City Representative. Vehicles used in the Collection of MSW, Recyclables and Organics shall be thoroughly washed at a minimum of one (1) time per week, and thoroughly steam cleaned on a regular basis so as to present a clean appearance and minimize odors. All vehicles shall be painted on a regular schedule to maintain a clean, professional appearance, although City may require the painting of any vehicle which does not present a satisfactory appearance, as deemed by the City Representative, at any time. All graffiti shall be removed immediately. Contractor shall make vehicles available to the County Health Department for inspection at any frequency it requests.

Contractor shall (i) inspect each vehicle daily to ensure that all equipment is operating properly; and (ii) perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records available to City upon request. Vehicles which are not operating properly shall be taken out of service until they are repaired and operate properly.

Contractor shall repair, or arrange for the repair of all of its vehicles and equipment, including leaks, dents, or other body damage, for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a neat, safe and operable condition. If an item of repair is covered by a warranty, Contractor shall obtain warranty performance. Contractor shall maintain accurate records of repair, which shall include days/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

### **5.17 Operation**

Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's

recommendations or limitations imposed by state or local weight restrictions on vehicles. Collection vehicles shall not be operated in a manner that will cause a break in vehicle traction and/or leave skid marks on the streets. Contractor shall use all reasonable means to avoid damage to City streets, curbs, sidewalks and other City infrastructure. Any occurrence of damage to City property or infrastructure, shall be reported immediately to City. Contractor shall use all reasonable means to minimize any backing of Collection vehicles.

### **5.18 Collection Containers**

Contractor shall provide all Containers for storage of MSW, Organics and Recyclables. All such Containers shall be designed and constructed to be water tight and prevent the leakage of liquids. All Containers shall meet applicable federal regulations on solid waste Bin safety. Contractor is to provide all Containers to Customers at no charge. Provisions to lock Containers shall be provided at Customer request, at Rates defined in Exhibit A.

**5.18.1 Cleaning, Painting, Maintenance.** All Containers shall be maintained in a functional condition. All graffiti shall be removed promptly.

**5.18.2 Repair and Replacement.** Contractor shall repair or replace all Containers damaged by Collection operations or leaking due to routine use at no cost to City or Customers. Contractor shall also replace any Container at the Customer's request at no cost to the Customer one time per year. Additional replacements provided at the request of the Customer will be subject to a service charge in accordance with Exhibit A. Replacement Containers shall be provided free of charge to Customers if the previous Container is rendered unserviceable by means other than the Customer's action.

**5.18.3 Container Signage-Hot Stamps, Labeling.** Contractor and City agree that City retains the right to approve all logos, labeling and hot stamping for all Containers, including Residential Carts as well as Commercial Bins. Contractor will be responsible for the costs of labeling all such Containers. All Containers shall be painted Contractor's standard color and shall prominently display the name and telephone number of Contractor as well as the Container size. City may request that Contractor include City's logo on the Containers. At City's request, Contractor shall work cooperatively with City to develop an acceptable presentation of the logo on the Containers.

**5.18.4 SFD Containers.** Contractor shall make available 20, 32, 64, and 96-gallon wheeled Carts to SFD units. Contractor shall also furnish Containers for intermediate food waste storage suitable for use in the kitchen. Contractor shall replace broken food pails for Customers as needed.

**5.18.5 MFD Containers.** Containers provided to MFDs for Collection shall include 32 - 96 gallon Carts and Bins 1 to 8 cubic yards. Contractor shall also furnish Containers for intermediate food waste storage suitable for use in the kitchen. Contractor shall replace broken food pails for Customers as needed.

**5.18.6 Residential Cart Replacement and Color.** StopWaste has expressed intent to transition Container color for consistency throughout the county. City and Contractor agree that Collection Carts will be transitioned to green for Organics (Compostables), blue for Recycling, and black for Municipal Solid Waste. The City's goal is to have all of the blue MSW Carts removed from use on City streets as soon as is feasible through replacement of damaged Commercial Containers as well as Residential Carts on an as needed basis. All new orders and replacement Containers will be

black for Municipal Solid Waste (with landfill stamp), and green for Organics. Until all blue MSW Carts are completely off City streets, Recyclable Carts will be grey with a recycling hot stamp. City reserves the right to purchase all Carts at the time the contract ends, and the purchase price will be based on standard depreciation schedules to be agreed to by the City and Contractor.

The parties hereby agree that the Contractor's sole obligation relative to this Article will be to supply new Carts as described herein only when, in the reasonable judgment of the Contractor, a replacement Cart is required.

**5.18.7 Commercial Facility Containers.** Containers provided to Commercial Facilities for MSW Collection shall include 32 to 96 gallon Carts, 1 to 8 cubic yard Bins, and Roll-Off Containers 6 to 40 cubic yards.

### **5.19 Personnel**

Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the Collection services required by this Agreement in a safe and efficient manner. All of Contractor's employees must be able to read, write and speak English with sufficient proficiency to enable them to successfully meet and adhere to all of the terms of this Agreement.

### **5.20 Driver Qualifications**

All drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class with appropriate endorsements, issued by the California Department of Motor Vehicles. All drivers shall also complete Contractor's in-house training program which includes education on the use of all vehicles in the Collection fleet, Collection programs, and route information as well as Customer service practices and safety information. If any employee is found not to be operating Collection vehicles in the safe manner required by this Agreement, Contractor shall take all appropriate corrective measures including but not limited to a formal progressive step disciplinary program.

### **5.21 Safety Training**

Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for Collection of MSW, Recyclables, or Organics or who are otherwise directly involved in such Collection. Contractor shall train its employees involved in Collection to identify, and not to Collect Hazardous Waste or Infectious Waste.

### **5.22 Employee Appearance and Conduct**

All employees, while engaged in Collecting or gathering MSW, Organics, or Recyclables within City, shall be attired in suitable and acceptable uniforms, which are subject to approval by City. Contractor shall require its drivers, and all other employees who come into contact with the public, to wear a uniform with an identification badge, name tag, or other means of identifying the employee, as approved by City. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner.

Contractor shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures including but not limited to



a formal progressive step disciplinary program.

**5.23 Provision of Field Supervision**

Contractor shall designate a minimum of two (2) qualified employee as supervisors of field operations. The field supervisors shall devote whatever time is necessary, but not less than fifty percent (50%) of their time in the field checking on Collection operations, including responding to complaints.

**5.24 Service Complaints**

Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. Contractor shall respond to all complaints from Customers within twenty-four (24) hours, weekends and Holidays excluded. If a complaint involves a failure to Collect MSW from premises, Contractor shall collect the MSW in question within such twenty-four (24) hour period, provided it has been delivered for Collection in accordance with City's Municipal Code.

**5.25 Report Accumulation of MSW: Unauthorized Dumping**

Contractor shall direct its drivers to note (1) the addresses of any premises at which they observe significant and ongoing accumulation of materials that is not being delivered for Collection; and (2) the address, or other location description, at which materials have been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to the City Representative within three (3) Working Days of such observation.

**5.26 Overflowing MSW Containers**

Contractor shall notify Customers that recurrently set out MSW in volumes greater than can be contained in the Customer's MSW Container(s) of their need to subscribe to a service level adequate to meet their need.

**5.27 Report Unsafe Conditions**

Contractor shall direct its drivers noticing conditions of City property or infrastructure that present a danger or need of attention to notify their supervisor or dispatcher who in turn shall pass the information on to City.

**5.28 Schedule and Coordination with City Services**

Contractor shall provide all Collection services in accordance with the Service Schedule. Contractor shall coordinate the Collection of MSW, Recyclables, and Organics with City street sweeping and other City activities. City will assist Contractor in coordinating routing and scheduling matters with other City services.

**5.29 Community Relations Program**

Contractor shall maintain, in coordination with City, an effective Community Relations Program. In conjunction with and in addition to the "Plan" to be provided by Contractor, City will implement a community relations program to inform City residents of the services provided, to encourage maximum participation in City integrated waste management programs, and to respond to special Collection problems or needs.

**5.30 Certain Required Employees**

In addition to the Field Supervisors specified in section 5.23, Contractor shall designate, and maintain

throughout the term, the following employees: (a) a Business Recycling Representative; (b) a MFD Recycling Representative; (c) a General Manager; (d) an Operations Manager; and (e) an Accounting Manager. The Business Recycling Representative and MFD Recycling Representative shall all be dedicated to City full time and located at the Contractor's Fremont office. The Contractor may combine the two Recycling Representative positions into a single more senior position with written authorization from the City. The Recycling Representatives, General Manager, Route Supervisors, Accounting Manager and Operations Manager shall be full-time and dedicated to their respective positions in order to ensure that the Customer service levels are maintained and shall be located at the Contractor's Fremont office. Contractor agrees that City may rely on the General Manager as one of the Contractor Representatives in accordance with Section 3.6.1 of this Agreement. The minimum number of Customer Services representatives available for the Fremont call center will be nine (9) representatives plus one manager, and this will be maintained in order to provide the required service levels throughout the term of this Agreement. The Contractor's Customer Service representatives must be located in the Contractor's Fremont office. Contractor agrees that Customer Services representatives will not be relocated to regional offices during the term of this Agreement.

### **5.31 Coordination of Recyclables Methodologies**

Contractor shall coordinate Recyclables Collection methodologies and technologies with the methodologies used by the City Designated Facilities, in order to maximize the efficiency and cost-effectiveness of Recyclables diversion including, but not limited to monitoring Recyclables for contamination with excessive amounts or MSW or other non-recyclable material.

### **5.32 Audit of MFD Collection Routes**

Upon City request, Contractor shall perform up to three audits per year of the MFD Collection routes to determine an accurate allocation between MFD and Business Front End Loader Collection of MSW and Recyclables for reporting purposes.

### **5.33 Zero Generator Status**

Pursuant to Sections 8.40.110 and 8.40.120 of the Fremont Municipal Code, a SFD Customer may apply to City for exemption from payment of that portion of the Rate that is attributable to Recyclables services, if the Customer demonstrates through City approved documentation that he or she is diverting these materials by one of the City sanctioned methods and does not discard any Recyclables. SFD Customers may no longer apply to City for exemption from payment of that portion of the Rate that is attributable to Organics services, however, those SFD Customers who have a current exemption for Organics services will be allowed to continue with their exemption from payment of that portion of the Rate that is attributable to Organics, as long as they provide adequate documentation to the City which shows that they do not produce or discard Organics requiring Collection. Failure to provide such documentation may result in a revocation of the exemption by the City. Contractor shall have the ability to develop a verification process to ensure participating Customers continue to meet the exemption requirements. City shall approve the verification process prior to implementation by Contractor.

### **5.34 Public Education**

Throughout the Term, Contractor shall provide Customers with information pertaining to this Agreement and shall conduct public education services that include, but are not limited to, providing information pertaining to the following:

- New services implementation;

- Change in service;
- Notices of incorrect setouts;
- Curbside Bulky Goods Program;
- Annual Holiday tree Collection Services, including non-profit Collection alternatives;
- Coordination with City in development of monthly promotions and public education materials on source reduction, Recycling, back yard Composting and Organics Program topics. City shall have the right to review and approve all public education and promotion materials prior to distribution by Contractor;
- The availability of free Back Yard Service for qualifying Customers;
- The availability of extra Containers, Back Yard Service, and extra on call Bulky Goods services for an additional fee;
- Household Hazardous Waste Program and E-Waste recycling services provided pursuant to this agreement;
- Providing Recycling outreach to schools and community groups as requested. City shall have the right to review, approve, and participate in all education and outreach materials prior to distribution;
- The availability of the lifeline Rate for qualified Residential householders.

### **5.35 Press Releases**

All press releases, reports, or other documents prepared by Contractor for release to the public, the CIWMB, or any other public agency that materially affect the City shall be subject to the prior review (for a period of at least five Working Days) of the City Manager. The parties agree that, for purposes of this subsection, any reports or other documents relating to the Collection system in the City, or to City's Source Reduction and Recycling Element (SRRE), Household Hazardous Waste Element (HHWE), and Diversion rate, materially affect the City.

### **5.36 Public Access to Contractor**

**5.36.1 Office.** Contractor shall establish and maintain at all times during the Term an office and corporation yard within the City. Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 5:30 p.m. Monday through Friday, except Holidays, and Saturdays from 8:00 a.m. to 12:00 p.m. A responsible and qualified representative of Contractor shall be available at Contractor's office during office hours for communication with City and the public.

**5.36.2 Telephone System.** Contractor shall maintain a toll-free telephone system in operation at its in-City office while the Call Center is open to assist Customers during the hours of 8:00 a.m. to 5:30 p.m. Monday through Friday, and from 8:00 a.m. to 12:00 p.m. on Saturdays. For

those Saturdays which fall on the day after a Holiday, the hours will be 8:00 a.m. to 5:30 p.m. Contractor shall install telephone equipment, and have available service representatives, sufficient to handle the volume of calls typically experienced on the busiest days. Customers must be able, with reasonable convenience, to reach Contractor's office by phone during the hours set forth in this Section. However, Contractor may use an answering service when the call center is closed. Contractor shall have a representative, answering service or voicemail system available at the toll-free telephone number during all hours other than the Call Center hours set forth herein. Any recording shall provide an additional number to call in the event of an emergency. Contractor shall provide the City Representative the means to contact a representative of Contractor directly by telephone on a 24-hour basis in the event of an emergency.

**5.36.3 Service Complaints and Response.** Contractor shall maintain a computer-based log ("Complaint Log") of all oral and written service complaints registered with Contractor from Customers or the public within the City. The Complaint Log shall be maintained in a computerized database format reasonably acceptable to the City Representative. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. Contractor will maintain staffing levels that are adequate to ensure maximum telephone hold times of twenty (20) minutes during peak times. Contractor shall respond to all complaints from Customers within one business day. Customer complaints that cannot be reasonably resolved may be appealed to the City Manager or his designee for final resolution. Contractor shall record in the Complaint Log all written and oral complaints, including maximum and average telephone hold times, notifications of missed pickups, noting the name and address of complainant, date and time of complaint, nature of complaint, name of Contractor employee taking the complaint, and the nature and date of resolution. Contractor shall also note in the Complaint Log all praise received and Contractor's responses. The Complaint Log shall be maintained so that representatives of City upon request may conveniently inspect it. Contractor shall deliver a summary of complaints by number and type, and a copy of the Complaint Log reflecting action to date with the required monthly and annual reports or otherwise upon request of the City.

**5.36.4 Customer Privacy.** Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers, or the composition or contents of a Customer's Municipal Solid Waste, Organics or Recyclables, shall not be revealed to any Person, private agency, or company, unless upon the authority of a court of law, authorized Federal, State, or City Representative by statute, or upon valid authorization of the Customer. Contractor shall not market or distribute mailing lists with the names and addresses of Residential or Commercial Customers. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by City. The rights accorded Customers pursuant to this Section shall be in addition to any other privacy rights accorded Customers pursuant to Federal or State law.

### **5.37 Change in Operations, Administration or Schedule**

Contractor shall notify the City Representative in writing of any proposed material changes in or to the Collection Services operation (e.g. vehicle routes, equipment type or number, crew size), administration (e.g., management and employees), and schedule prior to implementation. Any changes to the Collection operation shall meet the service standards and other terms of this Agreement. In the case of changes to the Collection schedule, Contractor must notify all affected Customers at least (14) days prior to any change in the Collection day. Contractor shall not permit any Customer to go more than seven (7) days without service in connection with a Collection

schedule change.

### **5.38 Performance Reviews**

At City's sole discretion, upon 30 days written notification to Contractor, City may conduct a performance review, which may include a public hearing at which Contractor shall be present and participate, to review Contractor's performance and quality of service and to provide for evaluation of technological and regulatory changes and their effect on the services provided under this Agreement. The reports required by this Agreement, including but not limited to those regarding Customer complaints, may be utilized as a basis for review. Such reviews and/or hearings may be scheduled by City at its discretion throughout the Term of this Agreement. Within 30 days after conclusion of any such review and/or hearing, City will issue a report on the adequacy and quality of Contractor's performance. If a review not involving a public hearing is conducted, Contractor shall be provided an opportunity to meet and confer with City staff prior to issuance of the report. The provisions of this Section are complementary and supplemental to, and in no way limit, any other provision of this Agreement.

### **5.39 Emergency Services and Transportation**

Contractor shall provide emergency services (i.e. special Collection, Transfer, Processing) at City's request in the event of an emergency (that is, major accidents, major disruptions of municipal services, or natural calamities), or other event which makes the City Designated Transfer Facility or City Designated Disposal Facility inoperable. Contractor shall be capable of providing emergency services within 24 hours of notification by City or as soon thereafter as is reasonably practical in light of the circumstances.

Contractor guarantees use of the Newby Island Landfill, at City's sole option, for a maximum period of 30 days (which days need not be consecutive) during the Term or longer if capacity is available, for Disposal in situations where the City Designated Disposal Facility or City Designated Transfer Facility are unable to Accept materials. The Disposal Fee in such situations shall be as reflected in Exhibit A, and adjusted biennially for CPI.

Emergency services which exceed the scope of work under this Agreement and which are not compensated as Special Services shall be compensated through Extraordinary Rate Review in accordance with Section 12.4. City reserves the right, in its sole discretion, to retain additional service providers to expedite completion of emergency services. Contractor also agrees to provide these emergency Collection services to the City at an hourly Transportation rate as described in Exhibit A.

**5.39.1 Contingency Planning.** Contractor shall maintain adequate back-up equipment and manpower to Collection operations as a contingency for equipment failure, emergency service response, traffic congestion, and driver illness. Bad weather shall not affect Collection operations except for severe storms or blizzards. Contractor's regional network of Collection companies will be called upon, if necessary, to provide additional vehicles and manpower on an emergency basis. Within four hours, Contractor shall initiate deployment of trucks and personnel to Fremont. Relief drivers shall receive training on fully-automated and semi-automated Collection procedures, route documentation, and handling and recording of Overages. Relief drivers shall also be trained and familiar with all route areas so they are able to service an uncovered route without delay.

## **5.40 Changes in Scope of Work**

**5.40.1 Required Changes.** City, in its reasonable discretion, may require changes in the services provided under this Agreement without contract modification where the change required does not substantially exceed the scope of work contemplated under this Agreement, or where the change is required for City to comply with State, local laws and policies, or in the event of a material Change in Law which substantially alters City's duties to provide for waste diversion, Collection and Disposal or other aspects of integrated waste management. Increased or decreased costs associated with such changes shall be evaluated for compensation or other Rate adjustment through Extraordinary Rate Review in accordance with Section 12.4 of this Agreement. City shall consult in good faith with Contractor on the most efficient means of altering services to enable City's compliance with its diversion goals or the Act or subsequent legislation. City may require testing of new waste management technologies and methodologies at any time during the Term of this Agreement. City shall notify Contractor in writing at least six months in advance of any required implementation date for a Pilot Program for such new technologies. Increased or decreased costs associated with such Pilot Programs shall be handled through Extraordinary Rate Review.

**5.40.2 Negotiable Changes.** For changes in work that substantially depart from the scope of work contemplated under this Agreement, and which are not required for City's compliance with state or local law and policies, City and Contractor shall enter into good faith negotiations to alter the scope of work in a contract modification.

## **ARTICLE 6.00 – TRANSFER, DISPOSAL, PROCESSING, MARKETING**

### **6.1 Use of City Designated Facilities**

**6.1.1 City Designated Facilities.** Except as expressly set forth herein, Contractor shall at all times Transport and deliver all MSW, Recyclables, and Organics Collected in the City to a City Designated Facility, in accordance with this Article. City has identified the following as the current City Designated Facilities:

- City Designated Disposal Facility – Altamont Landfill, 10840 Altamont Pass Rd, Livermore, CA 94551
- City Designated Transfer Facility - Fremont Recycling and Transfer Station 41149 Boyce Rd, Fremont, CA 94538
- City Designated Commercial Food Waste and Residential Organics Processing Facility- Newby Island Recyclery, 1601 Dixon Landing Road, Milpitas, California
- City Designated Other Commercial Organics, Commercial and Residential Recycling and Processing Facility- Fremont Recycling and Transfer Station, 41149 Boyce Rd, Fremont, CA 94538

**6.1.2 City's Exclusive Right To Designate Facilities.** Except as expressly set forth herein, City reserves the right to modify the list of City Designated Facilities at any time for Transfer, Processing and Disposal of all material streams at its sole discretion. Any such change in the list of City Designated Facilities shall be effective upon 180 days written Notice to Contractor. City shall have the exclusive authority to negotiate contractual arrangements with all City Designated Facilities. Changes in City Designated Facilities that increase or decrease Disposal costs to Contractor shall result in an adjusted increase or decrease in pass-through or other compensation to Contractor. City reserves the right to incorporate the savings or additional costs into the service Rates or through some other mechanism.

**6.1.3 Denial of Access to the City Designated Facility.** In the event that Contractor is denied access to, or access becomes impossible to City Designated Disposal Facility, City Designated Transfer Facility, City Designated Recyclables Processing Facility, or City Designated Organics Processing Facility, Contractor shall Notify City immediately, and deliver or Transfer the affected materials to the corresponding Alternate Facility, unless otherwise directed by City. If the Alternate Facility (ies) are not available, Contractor shall exert its best efforts to: (a) deliver or Transfer the affected materials in any lawful manner to properly permitted facilities; (b) obtain or arrange for any permits or licenses needed; and (c) achieve such Disposal, Transfer, and/or Processing at the lowest possible cost given then current market conditions. If Contractor's use of such other permitted facilities results in a Significant Change in Contractor's cost of Transportation or Disposal, then City shall authorize a Rate adjustment in accordance with Section 12.4 hereof.

### **6.2 Transfer and Disposition of MSW**

**6.2.1 Contractor to Transport MSW to Designated Facility.** Contractor shall Transport all MSW Collected under this Agreement to the City Designated Transfer Facility. If City's direction

of MSW to an Alternate Disposal Facility or an Alternate Transfer Facility results in a Significant Change in Contractor's cost of Transportation or Disposal, then City shall authorize a Rate adjustment in accordance with Section 12.4 hereof.

**6.3 Transfer and Disposition of Recyclables.** Contractor shall Transport all Recyclables Collected pursuant to this Agreement to the City Designated Transfer or Processing Facility.

**6.4 Transfer and Disposition of Commercial Food Waste and Residential Organics**  
For the purposes of section 6.4 the term Organics shall refer to Commercial Food Waste and Residential Organics and excludes Other Commercial Organics.

**6.4.1 Designated Organics Processing Facility.** City and Contractor agree that the Newby Island Recyclery (1601 Dixon Landing Road, Milpitas, California), which is owned or Controlled by Contractor, shall be the City Designated Organics Processing Facility throughout the Term of this Agreement. Residential Organics shall be Transferred through the City's Designated Transfer Facility while Commercial Food Waste will be direct hauled by the Contractor. Organics Processing shall not be performed at any other facility absent written mutual agreement between the Parties.

**6.4.2 Organics Processing Obligations** For so long as the City Designated Organics Processing Facility is a facility owned or Controlled by Contractor, Contractor shall provide the following Organics Processing and marketing services:

**a. Commercial Food Waste Tonnage Capacity.**

Contractor shall provide Commercial Food Waste Processing and marketing Services as long as Contractor retains the ability to do so under the applicable permits. These services will be provided at the City Designated Organics Processing Facility with a guaranteed Processing capacity sufficient to receive and Process, at the City's sole option, all Commercial Food Waste Collected or delivered from City or City designated contractor, up to an average of Five Hundred (500) tons per month. Subject to permit limitations, this capacity commitment from Contractor shall remain in effect throughout the term of this Agreement. City and Contractor agree that this capacity guarantee can only be affected by a change in applicable permits, and this capacity guarantee will not be affected by price or contract opportunities offered to or available to Contractor by other Customers.

**b. Residential Organics Processing Capacity.**

Contractor shall operate and maintain an Organics Processing Facility with a guaranteed Composting capacity sufficient to receive and Compost one hundred percent (100%) of all Residential Organics Collected or delivered under this Agreement, and adequate storage capacity for the handling and disposition of Organics products and Processing Residues. Contractor may apply to City for express written approval by the Environmental Services Manager to use a percentage of Organics for Approved Diversion, as opposed to Composting. Contractor shall Compost 100 % of City's Organics, unless such written consent is given for Approved Diversion.

**c. Approved Diversion.**

Approved Diversion is limited to the use of Processed Organics for other beneficial reuses approved for Organics in Alameda County and the State of California; which are approved by the City in writing and which qualify for diversion credit under the state statutes, regulations



of CalRecycle, Alameda County Waste Management Authority or any subsequent regulatory agencies or boards which have jurisdiction over these matters. Contractor shall not use Organics Collected in the City for Alternative Daily Cover (ADC) or Land Application.

**d. Remedies.**

Organics shall not be used for a purpose other than Composting or Approved Diversion even for a limited time period without the express written consent of City's Environmental Services Manager. Failure to provide any of the services described in this Article 6.4.2 shall cause the Contractor to be subject to all of the remedies described in Article 13 and Exhibit H. City may elect to verify Contractor's Processing capacity and Composting capacity and performance through a verification audit process in a format to be determined by City's Environmental Services Manager.

**e. Audit Process.**

The purpose of this verification audit process is to ensure that there is adequate Processing and Composting capacity to meet all of Contractor's contractual obligations. The verification audit will occur no more than biennially. As part of this audit process, Contractor agrees to provide City or City's consultant with the Processing Facility's Organics receipts by jurisdiction, the Composting and Processing methods and tons, as well as the disposition/marketing and end use by jurisdiction of all Organics tonnage received by the Primary Organics Processing Facility and any Alternate Facilities used during the previous annual period.

**f. Capacity Shortfall.**

In the event of a capacity shortfall, the shortfall amount will be allocated proportionately to each jurisdiction where the Contractor is required by contract to Process or Compost the Organics based on incoming tonnages. In the event of a shortfall, any calculation of damages under Article 13 and Exhibit H will be based on this proportional shortfall amount. This verification audit may be performed solely on behalf of the City, or may be performed on a regional basis in conjunction with other local agencies at the discretion of City.

**g. Audit Costs.** The cost of such audit will be borne solely by the Contractor, whether it is part of a regional audit or an audit performed solely for the City. The cost of such audit shall be paid by Contractor within thirty (30) days of invoicing by City, in an amount identified and adjusted in accordance with Exhibit A. However, City has the right to perform an expanded audit and is responsible for costs in excess of the organics verification audit allowance specified in Exhibit A. Nothing herein shall preclude City from participating in a regional audit or using information obtained by other local agencies.

**6.4.3 Permits.** Contractor shall comply with these Processing performance obligations throughout the term of this Agreement, and shall operate the facility in accordance with accepted practice for comparable facilities, sound management and operations practice, the facility's operation and maintenance manual, plans and specifications, permits, Applicable Law (including OSHA standards), and covenants, conditions and restrictions pertaining to the property. Contractor shall be responsible for maintaining and renewing all necessary permits, licenses, and clearances necessary to operate project. Contractor shall maintain and renew permits; provided, however, Contractor shall not be responsible for any delays in maintaining or renewing, or failure to maintain or renew, the permits, if Contractor has exercised due diligence in maintaining and/or renewing the permits, and such failure is caused by any action or inaction of the issuing or renewing authority.

**6.4.4 Turnaround Time.** Contractor shall achieve a maximum delivery vehicle turnaround time of 20 minutes based on peak arrival rates. Contractor shall conduct facility operations in a safe manner, in accordance with Applicable Law, requirements of insurance carried, and Standard Industry Practices in the waste management/industry.

**6.4.5 Weighing.** Contractor shall install and maintain State certified motor vehicle scales in accordance with Applicable Law. Contractor shall develop and manage system of weighing materials received from applicable City and Transfer vehicles. Contractor shall record tonnages of material received, at a minimum, the recorded data must indicate for each delivery, the source, method of delivery, truck number if applicable, time of delivery, tonnage delivered, vehicle license number, Person receiving the delivery.

**6.4.6 Substitute Scales.** To the extent that all the scales are inoperable, being tested, or otherwise unavailable, Contractor shall substitute portable scales until the permanent scales are replaced or repaired. Contractor shall arrange for scale to be repaired or temporarily substitute scales to be used as soon as possible, and in any event, within 48 hours after failure of the permanent scales.

**6.4.7 Estimates.** Pending substitution of portable scales, City and Contractor shall estimate the quantity of materials being delivered to the Processing Facility and Residue and recovered materials being Transported from the Processing Facility, on the basis of delivery truck and Transfer trailer volumes, tare weight, broker's weigh records, and data obtained, through historical information from the Processing Facility and purchasers of recovered materials. City and Contractor shall estimate the quantity of recovered materials on the basis of data obtained from recycling outlets such as preprocessor, material brokers, or end users. These estimates shall take the place of actual weighing and shall be the basis for records while scales are inoperable. If City and Contractor cannot agree on the estimated quantities, the estimate will be the average of City's and Contractor's respective estimates.

**6.4.8 Maintenance Standards.** Contractor shall maintain the facility and site in good working order and repair, including maintaining spare parts inventory and performing periodic maintenance in accordance with the operations and maintenance manual, manufacturer's recommendations, accepted practice for comparable facilities, and sound management and operations practice. Contractor shall maintain the aesthetic appearance of the facility and site in a clean and neat manner in accordance with the plans and specifications, with due regard for reasonable control of odors, dust, and noise.

**6.4.9 Personnel.** Contractor shall engage and train qualified and competent employees, including managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient for facility operations and to perform Contractor's obligation under this Agreement. Contractor shall train such staff to perform their work in a safe and efficient manner in accordance with the health and safety plan in the facility's operation and maintain maintenance manual and ensure that each staff member treats permitted users of the facility, and other members of the public with courtesy.

**6.4.10 Recovery Standards.** Contractor shall use Reasonable Business Efforts to maximize the recovery of delivered materials in a manner acceptable to receive diversion credit under State and local law and policies.

**6.4.11 Right to Enter and Inspect Facility.** City and its designated representatives shall have the right, but not the obligation to enter, observe, and inspect the Processing Facility during the receiving hours; meet with the facility manager or his or her representative at any time, and meet with other employees upon request, which request shall not be unreasonably denied. Upon City request, Contractor shall make personnel available to accompany City employees on inspections. Contractor shall ensure that its employees cooperate with City and respond to City's reasonable inquiries. Contractor shall make operational and business records other than financial records available to City during receiving hours upon City request.

**6.4.12 Tours of Facility.** Upon seventy-two (72) hours notice from City, Contractor shall provide tours of the facility. Such tours shall not unreasonably disrupt facility operations. City shall not be charged for labor, overhead, overtime, or any other costs associated with such tours. As part of such tours, if requested, Contractor shall prepare and shall distribute an educational brochure, printed on recycled paper, on conservation, recycling, and general solid waste management programs.

**6.4.13 Transportation of Residue.** Contractor shall Transport and deliver all Residue to an acceptable Disposal facility as required by Applicable Law. Contractor shall select routes from the facility to the Disposal facility which minimize inconvenience and disturbance to the public and comply with permits and Applicable Law. Contractor shall enclose or cover all vehicles Transferring Residue from the facility to prevent spillage.

**6.4.14 Inability to Process Organics.** If for any reason Contractor becomes unable to receive, Process and/or Compost Organics as required by City at the Designated Organics Processing Facility, it is Contractor's responsibility to provide an Alternative Processing Facility. Contractor shall notify City immediately and make immediate arrangements to Transfer Collected Organics to an Alternate Processing Facility at its sole cost. The Alternate Processing Facility shall provide the temporary or permanent receipt, storage, Processing and/or Composting of Organics Collected under this Agreement in the event that Contractor is unable or otherwise fails to receive and Compost and/or Process Organics in accordance with the obligations under this Agreement. Contractor shall be responsible for securing an Alternate Organics Processing Facility at no additional cost to City. Contractor shall be responsible for the Transport of Organics Collected under this Agreement and payment of any additional costs incurred, including Transport costs. In no event shall Contractor Transfer Organics to a Disposal Facility without the prior written consent of City. Any failure or inability to Process or Compost Organics as required by City at the City Designated Organics Processing Facility, or failure to immediately secure an Alternate Processing Facility to Compost and payment of all related costs, and/or the failure to provides any of the above services described in this Section 5.4.2 shall cause Contractor to be subject to the remedies provisions described in Article 13 and Exhibit H.

**6.4.15 City Not Responsible for Markets, End-Use.** City shall have no responsibility for the availability of markets for Organics products, nor shall it have any liability associated with or resulting from the markets for or end-uses of Organics products, and Contractor shall indemnify and hold City harmless from same. Proceeds or deficits from the marketing of these products are assumed solely by Contractor.

**6.4.16 Contractor Responsible for Disposition of Processing Residues, Disposal Costs.** Contractor is solely responsible for the proper and lawful Disposal of all Processing Residues. In no event shall Contractor's selection of a facility for the Disposal of Processing Residues result in

the imposition of a host fee, or otherwise cause a higher Rate to be charged to Customers than would be charged were Processing Residues disposed of at the City Designated Disposal or City Designated Transfer Facility.

**6.4.17 City Access to Compost.**

Contractor agrees to provide to City upon City's request unlimited amounts of Compost made from the Organics products, free of charge; and up to 100 cubic yards of redwood chips produced at the Processing Facility. With the exception of bagged Compost for the annual Compost give-away, City will arrange for Transportation of requested Compost and redwood chips.

**6.5 Transfer and Disposition of Other Commercial Organics.**

Contractor shall Transport all Other Commercial Organics Collected from Commercial Facilities to the City Designated Facility.

## **ARTICLE 7.00. – HAZARDOUS AND UNPERMITTED WASTE**

### **7.1 General.**

Contractor shall notify on an ongoing basis all Customers and, where applicable, other contractors of (a) the prohibition against the set out and delivery of Hazardous Waste and Unpermitted Waste and (b) the obligation of each Customer and Contractor to provide for the proper handling and disposition of Hazardous Waste and Unpermitted Waste. City is not a “Generator” or “arranger” as those terms are used in the context of CERCLA Section 107 (a) (3), and that it is Contractor, not City, which is “arranging for” the Collection of MSW, Organics and Recyclables from Residential and Commercial premises in the City, and transporting of same for Disposal, Recycling of Recyclables, and Processing of Organics.

### **7.2 Collection of Hazardous and Unpermitted Waste.**

**7.2.1 Contractor to Reject.** Contractor shall refuse to Collect or Accept any Hazardous Waste or Unpermitted Waste identified by the waste screening program specified in Section 7.2.5 of this Agreement.

**7.2.2 Contractor to Segregate.** Contractor shall segregate for disposition any Hazardous Waste or Unpermitted Waste which is identified after waste has been Accepted or loaded, and shall not further Process or Transport such Hazardous Waste or Unpermitted Waste except in accordance with Section 7.2.3 below.

**7.2.3 Contractor to Arrange for Disposition.** Contractor shall handle Hazardous Waste and Unpermitted Waste segregated in accordance with Section 7.2.2 in a lawful manner and shall arrange for the Transport and disposition of such Hazardous Waste and Unpermitted Waste to a properly permitted Recycling, treatment or Disposal facility of Contractor's choosing.

**7.2.4 Contractor Solely Responsible.** Contractor shall be solely responsible for handling and arranging the Transport and disposition of all Hazardous Waste and Unpermitted Waste that is Collected or received by Contractor. The cost of such activity shall be eligible for Extraordinary Rate Review only if Contractor demonstrates that its waste screening program was diligently and competently implemented and could not have prevented the Acceptance of such Hazardous or Unpermitted Waste. Contractor shall make every reasonable effort to identify, and recover its special handling and Disposal costs from the Generator of such Hazardous or Unpermitted Waste, and shall request Extraordinary Rate Review for such costs only to the extent that Contractor has not been able, after pursuing all legal avenues, to recover those costs from the Generator.

**7.2.5 Waste Screening Program.** Contractor shall implement and maintain a waste screening program in conformance with Exhibit E designed to minimize the potential for Collection, receipt and/or improper Disposal of Hazardous Waste and Unpermitted Waste or materials. Contractor's waste screening program is attached hereto as Exhibit E; Contractor shall provide City with any revisions thereto, and evidence that the waste screening program has received all required governmental approvals. Compliance with the waste screening program shall not discharge the obligations of Contractor otherwise to comply with the provisions of this Article 7.

**7.2.6 Contractor to Establish Operating Procedures.** Contractor shall establish, implement and maintain written operating procedures, in addition to the waste screening program

specified above, designed to insure Contractor's compliance with the provisions of this Article 7.

**7.3 Employee Training.**

Contractor shall establish, implement and maintain an employee training program for the waste screening program established pursuant to Exhibit E and for the operating procedures and shall ensure that employees responsible for the identification, removal, handling, Transport and Disposal of Hazardous Waste and Unpermitted Waste are at all times fully trained. Contractor shall maintain documentation which describes the training program and documents that all employees responsible for the identification, handling, Transport and Disposal of Hazardous Waste and Unpermitted Waste are at all times fully trained.

**7.4 Remediation of Spills.**

**7.4.1 Contamination.** Contractor shall be solely responsible for any contamination existing at its facilities. No cost incurred as a result of such contamination shall be recoverable under this Agreement.

**7.4.2 Removal and Remediation.** Contractor shall immediately remove and remediate any Hazardous Waste that it knows or should know has been spilled or deposited at any location during the course of its operations. Contractor shall be responsible for remediation of its facilities or other locations impacted by spills or releases; the cost of such remediation shall not be recoverable under this Agreement.

**7.5 City Has No Control.**

Contractor acknowledges and agrees that this Agreement does not provide City, its agents or employees with any Control whatsoever over Contractor's compliance with environmental laws and regulations.

**7.6 Record Keeping.**

Contractor shall create and maintain records which document and describe the amounts, nature, and disposition of all Hazardous Waste screened, discovered, released, removed or remediated by Contractor in the course of performing under this Agreement.

**7.7 Inspection by City.**

All documentation required by this Article 7 shall be available for review by City and City shall have the right to audit Contractor's implementation of all programs, procedures and training required under this Article.

## **ARTICLE 8.00 – PLANNING AND IMPLEMENTATION**

### **8.1 Required Plans and Schedules.**

At City's request, Contractor shall provide to City a service schedule which includes the following information for all MSW, Recyclable and Organics service:

- Route Maps
- Route numbers
- Route information including start and end points, number of accounts, vehicle type and capacity, and labor requirements
- Residential service schedules
- Commercial service schedules

Contractor shall provide an updated service schedule to City at least ten (10) days prior to any modification. All service schedules shall be stored on Contractor's computer system and shall be accessible to City via link to Contractor's computer system in accordance with the Agreement.

### **8.2 Work Stoppage Contingency Plan**

Contractor is required to have a Work Stoppage Contingency Plan on file, which has been reviewed and approved by City's Environmental Services Manager. In the event of a work stoppage, this Plan will ensure proper contingency planning. Contractor agrees that it will include an effective communication element in the Work Stoppage Contingency Plan, which addresses timely communication to all Customers, as well as steps the Contractor will take to minimize any impact on Customer service. Critical Customers such as hospitals will be identified and operations will be staged in order to provide prompt and satisfactory Collection service. Any proposed changes to the Collection operations in the Work Stoppage Contingency Plan will be dependent on the type of work stoppage and the anticipated length of time the stoppage will be in effect. However, City and Contractor agree that at a minimum, the Work Stoppage Contingency Plan will provide for any rescheduled Collection service to be provided within the service week of the originally scheduled Collection service and no later than two service days past the originally scheduled service pickup day.

### **8.3 Outreach and Technical Plan**

City and Contractor have targeted certain areas of improvement in the draft Outreach and Technical Assistance Plan; specifically focusing on the 250 high volume recycling accounts, providing more technical support including additional Customer audits and site visits, educating Customers on recycling mandates, and monitoring loads for compliance and reduced contamination. City and Contractor agree that this approach will be used going forward, and that this Plan may be revised from time to time in order to continue to improve the material diversion and maintain the Residue limitations for Source Separated Commercial Recyclables at twenty percent (20%) or less and Dry Mixed Recyclables at forty percent (40%) or less. Participation in Dry Mixed Recyclable program will be at City's discretion. This Plan may be amended administratively by mutual agreement of City and Contractor and will not require a formal amendment of this Agreement.

## **ARTICLE 9.00 – RECORD KEEPING, INSPECTIONS, AND REPORTING**

### **9.1 Record Keeping.**

**9.1.1 Databases.** Contractor shall create and maintain databases to provide adequate billing and service information to Customers, monthly reports to City, and efficient routing capability. All records shall be maintained on a computerized database formatted and accessible to City electronically. Contractor shall provide a backup system as a precaution against primary system failure. City may require in its reasonable discretion the maintenance of additional records.

**9.1.2 Records.** Contractor shall create and maintain during the Term of this Agreement the following records in accordance with Exhibit F:

- a. billing and financial records as required under Article 11 of this Agreement.
- b. Customer service records as required under Article 5 of this Agreement.
- c. records pertaining to Hazardous Waste as required under Article 7 of this Agreement.
- d. records of the quantity of MSW Collected by day, including the number of accounts serviced daily and Overage data for all accounts.
- e. records of the quantities of MSW, Recyclables and Organics Transferred to City Designated Facilities by day, itemized by vehicle and facility.
- f. records of the quantity of Recyclables and Organics Collected by day, including the number of accounts serviced daily, by commodity, including Overage data for all residential accounts.
- g. records of the types and quantities of Organics received for Processing daily, segregating direct-hauled Organics from Contractor and Transferred Organics from City Designated Facilities.
- h. Organics inventories showing types of materials and balances at the beginning of each month, tons received during each month, tons of products sold during each month and the balances at the end of each month.
- i. sales statements for Organics showing volumes of finished products sold, the use to which products will be put, name of purchaser, date of sale/transaction, terms of sale/transaction, quantity purchased and net receipt.
- j. records of the quantities of Organics by month processed but ultimately Transferred to Disposal Facilities due to market conditions or other contingencies.
- k. supporting documentation for reports required by this Agreement, including without limitation Contractor's reports submitted under Section 9.3 of this



Agreement.

1. Contractor agrees to provide the City with monthly reports on the Commercial Food Waste program and results with participating Customers. These reports will be provided in written form, and will include, but is not limited to information identified in Exhibit F.

## **9.2 Inspection.**

City shall be granted access on demand to all records and reports maintained or submitted by Contractor under this Agreement, including all computerized records maintained by Contractor, and shall be granted access on demand to hard copies of such records at Contractor's facilities. City shall be granted access on demand to inspect Contractor's facilities, including but not limited to receiving, weighing and Processing areas. City shall have the right to accompany Collection vehicles on routes with one week prior notice to Contractor. The City may request, and the Contractor shall reasonably facilitate arrangement for surveys of incoming material to determine the contamination rates and percentages of bagged material, and perform waste composition analysis relevant to the Commercial Food Waste program.

## **9.3 Reporting.**

**9.3.1 General.** Contractor shall provide monthly and annual reporting as described in Exhibit F; however, City reserves the right to request additional information as necessary including but not limited to State and local regulatory reporting requirements. In addition to the information required in this Article 9 and Exhibit F, Contractor shall provide City with a statement of revenues Collected during the preceding month and outstanding accounts receivable as of the end of the billing period. The monthly Collection statement shall contain the following items:

- a) Other applicable City Fees as authorized by City Resolution.
- b) Disposal Differential Report - including Disposal volume reports and supporting documentation for payment verification by City staff.

**9.3.2 Monthly Reports.** Contractor shall submit monthly reports consistent with section 11.6.1 and Exhibit F.

**9.3.3 Monthly Meeting.** Contractor shall attend a monthly meeting with City staff at the offices of the Environmental Services Division, currently located at 39550 Liberty Street, Fremont. At the meeting, Contractor will provide City with an update of the services performed, Customer service records, problems or barriers encountered, and any other issues that impact the level of service provided to Customers.

**ARTICLE 10.00 – COMPLIANCE WITH AGREEMENT, LAW, PERMITS/ INDEMNITY,  
INSURANCE, PERFORMANCE SECURITY**

**10.1 Compliance with Law.**

Contractor shall comply, at its expense, fully and faithfully with all provisions of this Agreement, City Legislation (including but not limited to Chapter 8 of the Fremont Municipal Code, which is incorporated herein by this reference), and all other Applicable Laws, as they may from time to time be amended, including, but not limited to the Act, CERCLA, and RCRA.

**10.2 Permits, Authorizations, Licenses.**

Contractor shall obtain, and shall maintain throughout the Term of this Agreement, at Contractor's sole expense, all necessary permits, licenses, inspections and approvals required for Contractor to perform all the work and services agreed to be performed by Contractor pursuant to this Agreement, including a City of Fremont business license, and shall comply with the terms and conditions thereof. Contractor shall show proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses or approvals upon the request of City.

**10.3 Facility Operating Rules.**

Contractor shall observe and comply with the operating rules and regulations established by the applicable county and the State regarding the facilities where MSW, Recyclables, and Organics are delivered pursuant to this Agreement, including without limitation those governing delivery procedures, receiving hours, vehicle and waste inspection, Hazardous Waste screening, litter control and safety measures.

**10.4 Contractor's Duty to Indemnify City.**

(a) Contractor shall and does defend, indemnify and hold harmless City, its agents, officers, employees, successors, assigns and appointed and elected officials (collectively "Indemnitees") from and against any and all liabilities, claims, suits, allegations, actions, damages, interest, penalties, fines and/or causes of action (collectively "Claims") arising from or in connection with Contractor's performance hereunder, except to the extent such Claims arise out of the sole negligence or willful misconduct of City, in which case Contractor's indemnification shall be reduced proportionate to City's degree of comparative fault. Contractor shall defend, indemnify and hold harmless the Indemnitees from and against all costs of investigation, litigation, negotiation or alternative dispute resolution; counsel fees; expenses incurred in obtaining expert testimony and the attendance of witnesses; and all other expenses and liabilities incurred in connection with the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered therein. City shall provide Contractor with prompt Notice of any Claims, and Contractor may assume the defense of any Claim, with counsel reasonably acceptable to the Indemnitees, and Contractor shall have authority to settle any Claim provided such settlement fully releases and extinguishes Indemnitees' alleged liability under the Claim. Where a conflict of interest exists between the Indemnitees and Contractor with respect to a Claim, Contractor shall provide the Indemnitees with independent legal counsel of the Indemnitees' choice, at Contractor's expense.

(b) Without limiting the generality of the foregoing, Contractor's indemnification shall include personal injury, death or damage to property (including contamination); product liability; violation

of federal, state or local law; or any other Claim whatsoever connected with the activities of Contractor, its subcontractors, agents, and/or employees under this Agreement or on account of the performance or character of the work performed hereunder, including unforeseen difficulties, accidents, occurrences or omissions, including but not limited to, any failure to exclude Hazardous Waste from Collection or Processing; any Claim that Contractor, or its agents, subcontractors, directors, officers, employees or representatives, has breached an express or implied warranty of merchantability or fitness for particular use or any other warranty relating to any materials marketed pursuant to this Agreement; or any Claim that any of them has violated any license, copyright, or other limitation on Contractor's use of computer software in connection with Contractor's performance of services under this Agreement; any Claim that the Indemnitees have provided Contractor a contract or rights which allegedly violate state or federal law under then current judicial precedent; and any claim arising from City's performance of its obligations pursuant to Sections 3.3 and 9.2.

(c) Contractor shall not be required to indemnify the Indemnitees for: (1) Claims resulting from the acts or omissions of independent (not affiliated with Contractor) third party owners or operators of the City Designated Transfer Facility or City Designated Disposal Facility, where such third party acts or omissions are beyond Contractor's Control, provided such third party acts or omissions are determined by agreement between the Parties or by the findings of a court of competent jurisdiction. In instances where such third party acts or omissions accounts for only a percentage of the liability involved, the obligation of Contractor will be for the entire portion or percentage of liability not attributable to the third party acts or omissions; and (2) third party Claims based solely on Contractor's delivery of the de minimis amounts of materials excluded from the definition of Hazardous Waste under this Agreement to a City Designated Transfer Facility or City Designated Disposal Facility.

(d) Approval of insurance coverage, or acceptance of work or services by City under this Agreement does not relieve Contractor or its agents, subcontractors, directors, officers, employees or representatives of liability under this Section. The provisions of this Section Duty of Contractor to indemnify City shall survive the termination and/or expiration of this Agreement. Nothing in this Section shall prohibit Contractor from pursuing Claims against third parties who are not Indemnitees.

### **10.5 Insurance.**

Contractor shall secure and maintain throughout the course of the Agreement insurance against claims for injuries to Persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees or subcontractors. The cost of such insurance shall be included in Contractor's fixed price for provision of service hereunder.

### **10.6 Commercial General Liability Insurance.**

Contractor, at its own expense, shall maintain liability and property damage insurance for the period covered by this agreement in the amount of Five Million Dollars per occurrence combined single limit coverage. City may require increases in the amount of coverage on an annual basis proportionate to inflation in the CPI. Such coverage shall include, but not be limited to, protection against claims arising from: bodily and personal injury, including death resulting therefrom; damage to property resulting from activities contemplated under this Agreement; product liability;

and claims relating to completed operations. City, its officers, employees, appointed and elected officials, agents and volunteers (collectively "Insured Parties") shall be named as additional insureds for all liability arising out of: activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Any failure to comply with reporting or other provisions of the policies including breaches of warranties, shall not affect coverage provided to the Insured Parties. The policy shall stipulate that this insurance is primary insurance and that no other insurance carried by City will be called upon to contribute to a loss suffered by Contractor hereunder. Such insurance shall be with insurers and under forms of policies reasonably satisfactory in all respects to City and shall provide that written Notice must be given to City thirty days prior to policy cancellation as described in Article 15.1. Contractor shall notify City within ten days of its knowledge of any material change in coverage.

#### **10.7 Automobile Liability Insurance.**

Contractor, at its own expense, shall maintain automobile liability insurance for the period covered by this Agreement in the amount of One Million Dollars per occurrence combined single limit coverage for personal and bodily injury and property damage. City may require increases in the amount of coverage on an annual basis proportionate to inflation in the CPI. Such coverage shall include, but shall not be limited to, the use of owned and non-owned automobiles. Such insurance shall be with insurers and under forms of policies reasonably satisfactory in all respects to City and shall provide that written Notice must be given to City thirty days prior to policy cancellation as described in Article 15.1. Contractor shall notify City within ten days of its knowledge of any material change in coverage.

#### **10.8 Workers' Compensation Insurance.**

Contractor, at its own expense, shall carry and maintain full Workers' Compensation Insurance, as required by the California Labor Code and Employer's Liability insurance with limits not less than One Million Dollars per accident. Such insurance shall be with insurers and under forms of policies reasonably satisfactory in all respects to City, unless Contractor is self-insured and complies with the requirements of Section 10.9. Such policies shall provide that written Notice must be given to City thirty days prior to cancellation as described in Article 15.1. Contractor shall notify City within ten days of its knowledge of any actual or impending material change in coverage under insurance policies or self-insurance programs.

#### **10.9 Deductibles and Self-Insured Retentions.**

In the event Contractor is self-insured, it shall furnish a Certificate of Permission to Self-Insure signed by the California Department of Industrial Relations Administration of Self Insurance. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Contractor shall either reduce or eliminate such deductibles or self-insured retentions or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### **10.10 Non-renewal or Cancellation.**

Upon Notification of receipt by City of a notice of cancellation, material change in coverage, or expiration of policy(ies), Contractor shall file with City a certified copy of a new or renewal policy(ies) and certificates for such policy(ies), satisfactory to City.

**10.11 Failure to Comply.**

If at any time during the Term of the Agreement, Contractor fails to comply with the provisions of this Section 10, or rightful claims are not paid in a timely manner City may, in addition to any other remedy available to City, take out and maintain, at Contractor's expense, such insurance as City may deem proper and charge the cost thereof to Contractor.

**10.12 Reporting Damage.**

If any damage (including death, personal injury or major property damage) occurs in connection with the performance of this Agreement, Contractor shall promptly notify the City Risk Manager's office by telephone at 510-284-4050, and Contractor shall promptly submit to the City's Risk Manager and the City's Authorized Representative, a written report (in a form reasonably acceptable to the City) with the following information: (a) name and address of the injured or deceased Person(s), (b) name and address of witnesses known to Contractor, (c) name and address of Contractor's insurance company, and (d) a description of the damage and whether any City property was involved.

**10.13 Performance Bond or Alternative Performance Security.**

Contractor shall provide City with a fully prepaid surety bond (Performance Bond) in the amount of the Security Amount, payable to City, assuring Contractor's prompt and faithful performance of its obligations under this Agreement. The Performance Bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California and which corporation is reasonably acceptable to City.

At City's sole option, Contractor shall provide as Alternative Performance Security (i) a fully prepaid irrevocable letter of credit issued by a financial institution acceptable to City; (ii) a certificate of deposit in the name of City with a financial institution acceptable to City; (iii) a trust account established for the benefit of City; or (iv) an alternate instrument securing Contractor's performance which is acceptable to City at its sole discretion. In all events the Performance Bond or Alternative Performance Security, alone or in combination, shall secure an amount at least equal to the Security Amount. Nothing in this subsection shall in any way obligate City to accept an Alternative Performance Security in lieu of the Performance Bond.

Such Performance Bond or Alternative Performance Security shall be either (i) expressly provided for the full Term of the Agreement, or (ii) provided for consecutive annual terms, provided that Contractor shall deliver to City an annual Performance Bond or Alternative Performance Security in a form acceptable to City no less than thirty (30) days prior to the expiration of the preceding Performance Bond or Alternative Performance Security.

For purposes of this Section 10.3, the "Security Amount" shall be Five Million Dollars (\$5,000,000.00). City may require that Contractor increase or decrease the face amount of the Performance Bond or Alternative Performance Security at any time; any such increase or decrease that is a Significant Change shall result in a Rate adjustment in accordance with Section 12.4. Contractor shall pay the premium for the bond, and the costs of providing the Alternative Performance Security, if any.

**10.14 City's Right to Draw Against, Contractor Obligation to Replenish.**

City shall have the right to draw against the Performance Bond or, if applicable, the Alternative

Performance Security, in the event of a breach or default of Contractor or the failure of Contractor to perform fully any obligation under this Agreement. Without limiting the generality of the foregoing, City may draw against the Performance Bond or Alternative Performance Security immediately in the event that Contractor's payments of Disposal Facility, Transfer Facility, franchise, or regulatory fees, or other applicable payments under Article 11 become more than thirty days delinquent. Contractor covenants that it shall not dispute with its bonding company or the administrator of any Alternative Performance Security City's right to draw upon the Performance Bond or Alternative Performance Security if Contractor's payments become more than thirty days delinquent. Within five calendar days of receipt of Notice from City, Contractor shall renew or replace such sums as needed to replenish the Performance Bond, or, if applicable, the Alternative Performance Security.

**10.15 Termination of Performance Bond or Alternative Performance Security Obligation.**

Under no circumstances shall Contractor change, or allow the expiration of, the Performance Bond or Alternative Performance Security provided under this Agreement without written Notice to City and written authorization from City to allow such change or expiration. If Contractor shall fully perform the covenants, promises, undertakings and obligations contracted by Contractor to be performed under this Agreement, then City shall not draw against the Performance Bond or Alternative Performance Security. Contractor's obligation to maintain the Performance Bond, or Alternative Performance Security, shall terminate and be cancelled upon the completion of all of Contractor's obligations under this Agreement including, without limitation, Contractor's payments of all Disposal Facility, Transfer Facility, franchise, and regulatory fees and other applicable payments under Article 11. In the event of Contractor's default, the Performance Bond shall remain in effect until City or its designated agent has completed all of Contractor's obligations under this Agreement. City shall execute and deliver to Contractor or Contractor's surety promptly upon the completion of all of Contractor's obligations under this Agreement, such certificates or other documents as either of them may reasonably request for the purpose of terminating and canceling the Performance Bond or Alternative Performance Security.

**10.16 Parent Guaranty.**

On or before the date set forth in Section 3.1, Contractor shall provide City with a Parent Guaranty in the form attached hereto as Exhibit D, executed by Contractor in favor of City. Contractor shall cause the Parent Guaranty to be maintained and updated as necessary throughout the Term.

## **ARTICLE 11.00 – BILLING, PAYMENT, AND PAYMENT COLLECTION SERVICES**

### **11.1 General.**

Contractor shall:

- a) bill Customers for MSW, Recyclables and Organics and Commercial Food Waste Collection, Processing and disposal services. Contractor agrees to bill Customers in the format directed by City;
- b) collect payment for those services;
- c) maintain billing and payment records;
- d) remit the franchise fee and regulatory fees to City monthly in accordance with Section 11.6;
- e) provide payment, within thirty days (or such other time as agreed with the facility owners or operators) of Contractor being billed, to all Disposal Facilities or Transfer Facilities utilized pursuant to this Agreement; and
- f) in the event that MSW, Recyclables or Organics services are provided under agreement with City by Persons other than Contractor, transfer within fourteen days (or such other time as agreed between the parties) of all fees payable to such other service providers.

### **11.2 Senior Discounts.**

Contractor shall discount the SFD Rate for the 20 or 32-gallon service level for seniors 70 through 79 years of age at 50%; and for seniors 80 years and older 100%. To qualify for the discounts seniors must document proof of age and that they are the head of household. Contractor shall make these discounts available to eligible seniors in mobile home parks that are being serviced as SFD. In order to ensure that those Customers receiving reduced senior Rates appropriately qualify for this program, City and Contractor agree to implement an audit program with a verification and notification process to be developed and agreed upon by City and Contractor.

### **11.3 Deposits.**

City, in its sole discretion, may require the deposit of revenues equal to all Disposal Facility, Transfer Facility, franchise and regulatory fees due under this Agreement, and payments, if any, due a Person other than Contractor providing MSW, Organics or Recyclables services, in a separate trust account or other financial instrument established for the benefit of City.

### **11.4 Customer Billing and Billing Inserts.**

- a) Residential MSW, Recyclables and Organics Collection services shall be billed quarterly in advance of services provided.
- b) Commercial MSW, Recyclables and Organics services shall be billed monthly in advance of services provided.
- c) Roll-Off services shall be billed monthly for services provided the previous month.

- d) City shall have the right to direct Contractor to collect surcharges in addition to the Rates and to direct Contractor to revise the billing format to itemize certain charges and/or to consolidate individual components into one monthly amount. City also may direct Contractor to insert mailers with billings relating to integrated waste management activities.

## **11.5 Billing Records.**

**11.5.1 Records.** Contractor shall keep records of all billing documents and Customer account records, including but not limited to invoices, receipts and collection notices, each in chronological order, for a period of four (4) years after the date of receipt or issuance.

**11.5.2 City Computer Access to Billing Information.** Contractor shall provide City with access to Contractor's billing system. City shall have access to review data but shall not modify or input data on line. City shall be able to access, at a minimum, the following information: (a) names and addresses of Customers and account classification (i.e., SFD, MFD, Commercial), and service level (i.e., number and size of Containers, frequency of pickup); (b) records of missed pickups; and (c) log of praises and complaints. Upon expiration or termination of this Agreement, City shall have the immediate and permanent right to access and copy all such information contained in Contractor's database relevant to this Agreement.

## **11.6 Franchise Fee; Regulatory Fees.**

Exclusive of rates charged to Fremont Unified School District and Ohlone College, the Collection Rates include the following franchise and regulatory fees: (1) a franchise fee of ten percent (10%) of gross receipts from all Residential MSW, Organics and Recyclables; (2) a franchise fee of twelve percent (12%) of gross receipts from all Commercial Facility MSW Collection services; (3) an Integrated Waste Management Fee of 16% of gross receipts from all Residential MSW and 13.5 % on all Commercial Facility MSW Collection services; (4) Disposal Differential and Household Hazardous Waste Disposal as specified in the biennial Rate Resolution, and other fees adopted by the City Council as specified in the Rate Resolution and incorporated into Exhibit A. City reserves the right to modify these fees at any time and adjust the Rates accordingly.

Notwithstanding the foregoing paragraph and any other provision of the Agreement, Contractor shall not owe or pay to the City any franchise fee relating to the Commercial Organics or Source Separated Commercial Recyclables programs or the revenues derived therefrom. This paragraph does not affect Contractor's obligation to pay all franchise fees for that material Collected as Municipal Solid Waste, Dry Mixed Recyclables or Residential Organics.

All of the foregoing fees shall be remitted to City monthly. The percentage and per ton amounts of the fees may be adjusted at City's option, provided that such adjustments shall be made in accordance with Article 12. For the purposes of calculating franchise and regulatory fees, gross receipts shall include all revenue collected from billings, excluding bad debt write-offs, Fremont Unified School District Billings, and Ohlone College Billing but including bad debt recoveries. Contractor shall be responsible for developing a mechanism, subject to City approval, to segregate MSW Collection service (Residential and Commercial) revenues from total gross receipts for the purpose of accurately calculating franchise and regulatory fees. The regulatory fees levied on a per ton basis shall be calculated by totaling the number of tons disposed and multiplying that total by the per ton Rate of each fee.



**11.6.1 Remittance of Franchise and other Fees.** Contractor shall remit to City the Monthly Collection Statement by the 19th of the month or if the 19th falls on a weekend or holiday, the next business day immediately following the 19th. City shall have the right to review and approve the reports and remittance amount of the franchise fee and all other fees. Contractor agrees to wire transfer all the fees due for the previous month on the last business day of each month. The payment shall be considered delinquent for any day past the times described above. A late fee of one thousand dollars (\$1000.00) per business day shall apply for each day the monthly fee remittance to the City is delinquent.

**11.7 Contractor Audit of Routes.**

In addition to any other auditing requirements under this Agreement, Contractor shall perform a comprehensive audit of all Customer accounts annually, and submit to City a written report on the results of that audit, no later than the 30th day of June of each year. The purpose of this audit is to ensure that each Customer is receiving the service for which the Customer is being billed. Contractor shall submit a description of the scope of the audit and the audit work plan for City approval no later than March 31 of each succeeding year. If City requests, Contractor shall cooperate fully with City to allow City and/or City's consultant to conduct an independent audit of Contractor's route and Customer information to verify the accuracy of Contractor's annual route audit report.

**11.8 Financial Auditing.**

In addition to all other reports required under this Agreement, at City's request Contractor shall submit year-end financial statements for its parent corporation. Contractor shall also submit its own annual revenue statements to City detailing revenues billed and received under this Agreement, outstanding accounts receivable, bad debt write-offs and recoveries, and franchise and regulatory fees remitted to City.

At City's request, annual financial statements and reports submitted by Contractor to City pursuant to the terms of this Agreement shall be audited and certified, at Contractor's expense, by a certified public accountant mutually approved by City and Contractor. Such audits shall be conducted initially as limited scope, screening audits which examine the validity of a representative sampling of financial data. If significant discrepancies are found in the initial, screening audit, a more comprehensive, complete audit shall be conducted. The expanded scope for that year shall be the basis of the beginning scope for the following year's comprehensive audit, and that scope shall be expanded as necessary until the end of the Agreement Term.

These annual audits, as expanded, shall be at the sole expense of Contractor. If City and Contractor fail to agree on the selection of a certified public accountant, City shall submit to Contractor a list of five certified public accountants, developed through a competitive process and acceptable to City, from which Contractor will select one. Contractor shall notify City of its choice not later than fifteen (15) calendar days from the date of receipt of City's list. Expense information submitted by Contractor in accordance with this Section shall not be photocopied and shall be held in strict confidence by City to the extent permitted by law. Contractor shall indemnify City against and, with counsel reasonably acceptable to City, assume the defense of (including all fees and costs of defense) any suit or other action challenging City's confidential treatment of such information.

## **ARTICLE 12.00 – RATE MAKING**

### **12.1 General.**

The Rates contained in Exhibit A, as they may be adjusted from time to time in accordance with this Agreement, provide the compensation to Contractor for services pursuant to this Agreement. The Rates are conditioned upon the specific services provided by Contractor in accordance with this Agreement.

The Rates include all current Disposal and facility fees and franchise, regulatory and other governmental fees. Disposal fees are dependent upon the fees charged at the City Designated Disposal Facility; any change in the fees charged at a City Designated Facility will be "passed through" to the Customer through an adjustment in the Rates.

Rate calculations shall be subject to review and concurrence by City and Contractor. City reserves the right to implement billing Rates that are different than the Rates agreed to between Contractor and City. If the service Rate exceeds the billing Rate due to request or action of City, Contractor will invoice City for the difference. If the billing Rate exceeds the service Rate, Contractor will remit the difference to City on a monthly basis as a separate line item on the monthly fees due to City. City shall have reasonable discretion to allocate Rates across service types.

### **12.2 Biennial Rate Adjustment.**

**12.2.1 Biennial Adjustment Methodology.** The Rates in this Agreement, with the exception of special services as described in section 12.2.4, will be adjusted biennially every other year during even numbered years. Rate adjustments will be calculated by applying the appropriate index to the various components of each unit price reflected in Exhibit B. The biennial increase will reflect:

- a) Changes in the CPI and its effect on the variable Rate components that are subject to the CPI. The CPI Change will be calculated using the most recent issued June CPI and CPI index twenty-four (24) months prior.
- b) Changes in the Health Insurance Index for the most recent 24 month period and its effect on the associated variable components. The health insurance change will be calculated using the most recently issued June Health Insurance Index and the Health Insurance Index twenty-four (24) months prior.
- c) Biennial changes to the variable component will be calculated using a weighted index of 12% of the Health Insurance Index and 88% of the CPI index change with a minimum increase of 5% for the twenty-four (24) month period.
- d) Changes in the twelve month average OPIS Index and its effect on the fuel cost component. The biennial change to the fuel component shall be calculated using the average of the most recent 12 months OPIS Diesel Fuel Index ending in June compared to the same average twelve-month index used for the prior adjustment period.

- e) Changes in the Per-Ton Disposal Fee established by the City Council and its effect on the Disposal component, and changes in Pass Through Costs that have occurred since the prior adjustment.
- f) There will be no biennial adjustment to the fixed component of the unit prices.

**12.2.2 Biennial Adjustment Formula.** The following example illustrates how the biennial adjustment to the unit prices is calculated:

Contractor Compensation = Fixed unit price + Disposal unit price X (current Disposal Rate/previous Disposal Rate) + Variable unit price X (total percentage change of weighted indexes or minimum, if applicable) + Fuel unit price X (current OPIS Fuel index/prior OPIS Fuel Index)

Total Unit Price = Contractor Compensation / (1- applicable franchise fee and Integrated Waste Management Fee percentage)

Franchise/Integrated Waste Management Fee = Total Unit Price X applicable franchise/Integrated Waste Management Fee percentage

Exhibit B will be revised whenever the fees are adjusted. For purposes of calculating the biennial adjustment, any approved Extraordinary Rate Review adjustments will be categorized as fixed, disposal, variable, or fuel depending upon the nature of the cost and incorporated into the unit price break down reflected in Exhibit B.

**12.2.3 CPI Adjustment.** City and Contractor agree that the biennial CPI adjustment shall be based upon the June to June Index, adjusted for a minimum CPI as described above in 12.2.1. If the CPI exceeds 10% inflation for a given period, Contractor may request a commensurate Rate adjustment if and only if Contractor submits cost information demonstrating that its variable costs subject to CPI adjustment under Exhibit B have increased more than 10%. City may consider such a request based on the information submitted by Contractor or, at City's option, may require an audit of financial data relevant to Contractor's request. If City elects to have an audit performed, the auditor shall be selected by mutual agreement of the parties, and each party shall pay 50% of the cost of the audit. If the audit confirms that Contractor's CPI-variable costs have increased 10% or more, City shall grant a Rate adjustment commensurate with the actual increase in such costs, up to but not to exceed the inflation rate. If the audit reveals that such costs have increased less than 10%, City shall grant a Rate adjustment commensurate only with the actual increase in CPI-variable costs.

**12.2.4 Application of Biennial Adjustment Formula to Rates.** Rates reflected in Exhibit A will be adjusted biennially every other year during even numbered years according to the following method:

- a) SFD MSW, Organics, Recycling, Bulky Goods, additional MSW Cans and Back Yard Services Rates will be determined by the unit price calculations shown in Exhibit B.
- b) SFD Lifeline and Senior Rates will be calculated based upon applying the specified discount to the SFD Rates.

- c) Overage Bags will be adjusted by the same percentage as the 32 gallon SFD MSW Rates.
- d) Additional SFD Organics Can shall be increased by the same percentage as the combined SFD Organics Collection and Processing Rate.
- e) SFD, MFD and Commercial Container exchange will be adjusted by CPI.
- f) Bulky Goods items pickup will be adjusted by the same percentage increase as reflected in the Bulky Goods Collection component of the SFD standard Rates.
- g) MFD Recycling Rates will be determined by the unit price calculations shown in Exhibit B.
- h) The Rate adjustments for MFD MSW, Commercial MSW, Commercial Recycling and Commercial Food Waste will be performed on the average fee per cubic yard specified in the unit price breakdown. The percentage increase or decrease will be applied to the Rate schedule for each service type.
- i) Commercial Recycling Rates will be 75% of the Commercial MSW Rate to reflect that Franchise and Integrated Waste Management fees do not apply.
- j) Commercial Can Rates shall be adjusted by the same percentage as the equivalent sized SFD MSW Rate.
- k) Special Collection Rates for Commercial and MFDs Collection shall be adjusted by the same percentage increase as the standard Commercial front-end loader MSW Rates.
- l) Special Collection Rates for Commercial Food Waste Collection shall be adjusted by the same percentage increase as the standard Commercial Food Waste Rates.
- m) Monthly front-end load push & return charges, lock charges, lock/unlock Bin charges, Container exchange, reinstatement of account fee, special request hourly services Rate, and oil filter processing fee shall be adjusted by the weighted Variable Index.
- n) Compacted front-end loader Commercial MSW Rates shall be adjusted by the same percentage increase as the standard compactor Rates.
- o) Emergency Transportation Rates, the Emergency Recycling Processing Rate, and the base component of the Emergency Solid Waste Disposal Fee shall be adjusted by 96% of the CPI Index change and 4% of the Fuel Index change used in calculating the unit price adjustments described in section 12.2.2.
- p) The excess per-ton Disposal Rate for MSW shall include the landfill Disposal fee plus any applicable City or regulatory fees.
- q) Liquidated Damages, Organics audit, City Street Receptacle funding and Amount Regarded as Significant will be adjusted by 100% of the CPI.
- r) Contractor shall be compensated for the regulatory fee component of the Emergency Solid Waste Disposal Rate that is in effect at the time the Emergency Solid Waste Disposal services are used.

### **12.3 Pass Through and Disposal Fees.**

Contractor shall be compensated for the Pass Through Costs and Disposal Fees within the Rate making calculations. Pass Through Costs and Disposal Fee increases that may occur between biennial Rate adjustments shall be compensated through the billing fees or by alternative methods at City's option. Conversely, any costs offset by City funding or grants received for Organics Collection, Processing or Composting shall be reflected as savings passed on to the Customers. The Pass Through Costs are limited to City-approved (which approval shall not unreasonably be withheld) costs incurred by Contractor as a direct result of mandatory Federal, State, regional, and local governmental and/or regulatory fees, surcharges, assessments or other governmental payments related to delivery of services under this Agreement. Costs related to judgments, settlements, fines, or liquidated damages are NOT "Pass Through Costs".

### **12.4 Extraordinary Rate Review.**

**12.4.1 General.** Other than as provided in Section 12.2, any adjustments of the Rates under the terms of this Agreement shall be the result of an Extraordinary Rate Review as provided in this Article. An Extraordinary Rate Review may result in an upward or downward adjustment of the Rates.

**12.4.2 Definition.** An Extraordinary Rate Review is the review of a specified change in circumstances with relation to the performance of services under this Agreement that may result in a change in the Rates, a change in Contractor's Obligations, and/or a Change of Scope. An Extraordinary Rate Review can be initiated by either Party.

**12.4.3 Conditions for an Extraordinary Rate Review.** Other than as expressly provided elsewhere in this Agreement, the following are the only conditions under which the Rates will be modified or an alternative form of increased or decreased compensation as provided in Section 12.4.5(c) shall be specified:

- a) **Change in City Designated Facility.** A Significant Change in Disposal or Transportation costs directly incurred by Contractor due to City changing a City Designated Facility;
- b) **Change in Contractor's Obligations.** A Significant Change in costs that result from a Change in Scope as directed by, or approved by City, including but not limited to provision of emergency services in the event of major accidents, disruptions, or natural calamities;
- c) **Change in Law.** A Change in Law such that a Significant Change in operating costs or capital costs occurs which results in changes to the variable, fuel or fixed components of the Service Rates.
- d) **Force Majeure.** A Force Majeure that results in a Significant Change in Contractor's costs;
- e) **Changes to the Primary Transfer Facility services.** City makes a Significant Change to the Transfer and diversion services provided by the City Designated

Transfer Facility contractor(s) (or City, if it shall have taken over Transfer activities in whole or in part from the Transfer Facility contractor(s)), which result in a major impact to the quantity, characterization, or methodology of the Collection services and the ability of Contractor to meet Contractor's obligations.

**12.4.4 Items Ineligible for an Extraordinary Rate Review.** Items that are not eligible for an Extraordinary Review include, but are not limited to:

- a) **Variations in Customer Counts.** Variations or fluctuations in the numbers of Customers receiving waste management services, unless such variation or fluctuation is caused by a change to Contractor(s) services as provided in Section 12.4.3(b);
- b) **Labor Action.** Labor Actions experienced by or directly affecting Contractor;
- c) **Errors and Omissions.** Errors and omissions on the part of Contractor in preparing Contractor's Proposal or this Agreement, unless an error or omission is deemed by City to be insignificant and waived by City at its sole discretion;
- d) **Contractor Error.** Equipment failure or failure to Collect MSW, Organics or Recyclables, or deliver for Disposal or Processing MSW, Organics, and Recyclables to the City Designated Facility(ies) due to Contractor error(s) in planning, failure to maintain proper Permits; regulatory actions against Contractor that prohibit or curtail facility operations; underestimation of costs; other operating problems, and/or problems related to internal company operations of Contractor, its subcontractors, its vendors, or its agents;
- e) **Contractor's Costs.** Costs incurred by Contractor in fulfillment of Contractor's Obligations for fines, judgments, and settlements levied against Contractor by third parties;
- f) **Loss(es) Covered by Insurance.** Costs incurred by Contractor which Contractor can recover from any insurers or from another party;
- g) **Two-Tiered Recycling.** Any increased Contractor costs which results from the Two-Tiered Recycling System implementation or changes described in the Outreach and Technical Assistance Plan, as it may be revised throughout the term of the Agreement. Such costs include but are not limited to routing inefficiencies, changes in routes, increased Customer response, education and associated staffing, audits, driver and operations support and other City requested changes to improve the diversion and quantity and quality of recyclable materials.

**12.4.5 Extraordinary Rate Review Process.** A request for an Extraordinary Rate Review shall be conducted as provided in this Section. Contractor is obligated to meet requirements of this Section whether the process is City-initiated or Contractor-initiated.

- a) **Notice of Extraordinary Rate Review.** The Party initiating an Extraordinary Rate

Review shall provide a written Notice to the other Party, citing the applicable provisions of this Article and providing a complete written summary of the reason for the Extraordinary Rate Review, and its impact on Contractor's services and the Rates.

- b) **City's Request for Proposal.** If a Notice of Extraordinary Rate Review is issued by City or Contractor, City may request a proposal from Contractor in accordance with the Proposal Format specified in Section 12.4.5(d). As soon as possible, but in any event within twenty (20) Working Days of receiving City's request for proposal, Contractor shall submit the proposal. Such proposal shall be deemed Contractor's offer with regard to changes in Contractor's compensation, Contractor's obligations, and/or Change in Scope pertaining to the extraordinary circumstances under review, as appropriate, in accordance with the terms of such proposal, and shall be binding for one hundred and eighty (180) calendar days.
- c) **Form of Compensation.** City may, at its sole discretion, require that Contractor propose a change in compensation under this Article in the form of an adjustment to the Rates. As an alternative City may require that Contractor propose compensation in a form of a lump-sum fixed price; a reimbursement of documented direct costs; or other form(s) of compensation to be determined.
- d) **Proposal Format.** For any proposal submitted under this Section Contractor shall:
  - i. Describe the circumstance warranting an Extraordinary Rate Review.
  - ii. Describe the impact of the circumstance under Extraordinary Rate Review on Contractor's compensation, Contractor's services, or the need for a Change in Scope.
  - iii. Submit work plan for implementing a change in Contractor's services or a Change of Scope if applicable, identifying physical changes to the equipment or rolling stock, changes in operating methods and labor needs, and implementation schedule.
  - iv. Identify the capital and/or operating cost of modifying Contractor's services and/or implementing any Change in Scope if applicable to support any requested change in Contractor compensation. Contractor shall include detailed documentation supporting its cost proposal, including cost substantiation. Contractor covenants that it will not propose a cost in excess of the fair market price for such change in Contractor's services or Change of Scope, whether it implements such changes itself or through a subcontractor.
  - v. Propose a change in compensation, as necessary, as a change in the Rates, or in an alternate form as directed by City pursuant to Section 12.4.5(c).
  - vi. Provide draft language changes to the provisions of this Agreement, as Contractor deems appropriate and necessary to affect any change in

Contractor's compensation, Contractor's obligations, and/or Change in Scope.

- e) **City's Review.** Within ninety (90) Working Days of receiving Contractor's proposal, City shall review and comment on, and approve or disapprove such Extraordinary Rate Review request. City and Contractor may mutually agree to extend the time periods for review due to complexity of the specific Extraordinary Rate Review request, the time needed for review or approval, or for other reasonable reasons.

City may request the assistance of an independent third party to review the proposal. The reasonable costs of such review shall be paid by Contractor if the Extraordinary Rate Review is initiated by Contractor or by City if the Extraordinary Rate Review is initiated by City. The cost of such review shall be estimated in advance of the work, and provided to Contractor for comment and agreement to pay. Contractor's refusal or failure to pay the reasonable cost of review of a Contractor-initiated proposal shall be grounds for City rejection of such proposal.

City may request from Contractor operating and business records reasonably required to verify the reasonableness and accuracy of the impacts associated with an Extraordinary Rate Review. Contractor shall fully cooperate with City's request and provide City and its agent(s) copies of or access to Contractor's records.

- f) **Approval of Extraordinary Rate Review.** Upon City approval or determination, City will issue a statement of its approval or determination of the Extraordinary Rate Review and documenting any change to the Rates, any approved change in Contractor's obligations, and/or any approved Change in Scope. This statement, with appropriate language will become an amendment to this Agreement. No adjustment in Contractor compensation, change in Contractor's obligations, or Change in Scope shall become effective absent such written City approval or determination.
- g) **Resolution of Disputes.** Any dispute regarding compliance with this Section will be resolved according to the provisions of Sections 13.6 and 13.7.
- h) **Withdrawal of Notice for Extraordinary Rate Review.** The Party that initiated the Extraordinary Rate Review may withdraw its request for Extraordinary Rate Review at any time.

**12.4.6 Contractor's Implementation of Change in Scope.** Upon approval of a Change in Scope pursuant to Section 12.4.5(f), Contractor shall diligently perform such work in accordance with the approved work plan, schedule, and cost proposal. If City has agreed to pay for such work, Contractor shall submit invoices for such implementation in accordance with the schedule contained in the proposal and shall provide full documentation of costs incurred.

**12.4.7 Change in Rates.** Upon City approval or determination of a change in the Rates pursuant to this Section 12.4, such change in compensation shall be implemented as provided in this



Article and in the written statement of determination.

**12.4.8 Insurance and Other Third Party Payments.** To the extent that any costs resulting from an Extraordinary Rate Review are incurred by City and/or Contractor pursuant to this Article, and can be recovered by Contractor or City from any insurance provider or from another third party, Contractor and City shall exercise with due diligence such rights as either Party may have to affect such recovery. Either Party shall give prompt Notice to the other Party of the receipt of any such recovery which shall be applied as appropriate to the costs resulting in the Extraordinary Rate Review. Contractor shall provide City with copies of all documentation, and shall afford City a reasonable opportunity to participate in all conferences, negotiations and litigation, regarding insurance claims which materially affect City's interest under this Agreement.

**12.4.9 Limitations to Change in Compensation.** Contractor shall be entitled to an Extraordinary Rate Review scheduled only in conjunction with the biennial Rate review for any cost increase eligible pursuant to this Article 12, whether or not such cost increase is Significant.

## **ARTICLE 13.00 – DEFAULTS AND REMEDIES**

### **13.1 Events of Default.**

Each of the following shall constitute an event of default hereunder:

- a) Contractor fails to perform its obligations under this Agreement and (i) the failure or refusal of Contractor to perform as required by Article 4, Article 5, or Article 11 of this Agreement is not cured within two (2) Working Days after receiving Notice from City specifying the default; or (ii) in the case of any other breach of this Agreement, the breach continues for more than thirty (30) calendar days after written Notice from City specifying the default, provided that where Contractor demonstrates to City's reasonable satisfaction that such breach cannot be cured within such thirty (30) day period, Contractor shall not be in default of this Agreement if Contractor shall have commenced action required to cure the particular breach promptly in light of the circumstances, but in any event within thirty days after such Notice and thereafter diligently prosecutes such cure to completion within ninety (90) days after receipt of written Notice thereof, except that no such additional time to cure shall be allowed for failure to pay any amount due to City under this Agreement, or if the nature of the default is such that the health, welfare, or safety of the public is endangered as determined by the City Representative;
- b) Any representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement or any modification to this Agreement proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement;
- c) There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limitation its vehicles, maintenance or office facilities, or Processing facilities or any part thereof, of such proportion as to substantially impair Contractor's ability to perform under this Agreement, and which is not released, bonded or otherwise lifted within forty-eight (48) hours excluding weekend and Holidays;
- d) Contractor files a voluntary petition for debt relief under any applicable bankruptcy and solvency debtor relief or other similar law now or hereafter in effect, or consents to the appointment or taking of possession by a receiver, liquidator, assignee (other than as part of a transfer of equipment no longer useful to contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator or similar official of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due, or shall take any action in furtherance of any of the foregoing;
- e) A court having jurisdiction shall enter a decree or order for relief in respect of Contractor in any involuntary case brought under any bankruptcy, insolvency, debtor relief or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator,

assignee, custodian, trustee, sequestrator (or similar official) of Contractor or for any part of Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor;

- f) Contractor fails to provide reasonable assurances of performance as required under Section 13.5.6 of this Agreement; or
- g) Contractor shall be considered to have performed criminal activity pursuant to Section 13.3.

## **13.2 Remedies.**

**13.2.1 Termination.** Upon default by Contractor, City shall have the right to terminate this Agreement upon any further five-day Notice.

**13.2.2 Possession of Property Upon Default.** In the event of Contractor's default, City shall have the right to take possession of any and all of Contractor's land, equipment, facilities and other property reasonably necessary for the provision of services hereunder and the billing and collection of fees for those services. City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of services, which may include the award of an agreement to another service provider. If City retains possession thereof after the period of time for which Contractor has already been paid by means of bills issued in advance of providing service for the class of service involved, Contractor shall be entitled to the reasonable rental value of such property, which shall be offset against the damages due City for Contractor's default. Contractor agrees that it will fully cooperate with City to effect the transfer of possession of property for City's use. If City so requests, Contractor shall keep in good repair all such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain property in operational condition. City may immediately engage all or any personnel necessary for the provision of services, including if City so desires employees previously employed by Contractor. Contractor further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Contractor whose skills are reasonably necessary for the continuation of services. City agrees that it assumes complete responsibility for the proper, normal use of such equipment and facilities while in its possession. Contractor covenants that it shall not create or impose any lien, charge or encumbrance on its facilities or equipment during the Term of this Agreement that will prevent City's exercise of rights under this Section. Contractor agrees that City's exercise of its rights under this Section: (a) does not constitute a taking of private property for which compensation must be paid; (b) will not create any liability on the part of City to Contractor other than the payment of reasonable rental value as provided for in this subsection; and (c) does not exempt Contractor from the indemnity provisions of Article 10.00 which are meant to extend to circumstances arising under this Section. City has no obligation to maintain possession of Contractor's property for continued use for any period of time and may at any time at its sole discretion relinquish possession to Contractor.

**13.2.3 Direct and Consequential Damages.** Contractor shall be liable to City for all direct and consequential damages arising out of Contractor's default.

**13.2.4 Liquidated Damages.** In certain cases, City shall be entitled to Liquidated Damages, as more specifically set forth in Section 13.4.

**13.2.5 City Right to Set Off.** City shall have the right to set off, during annual or Extraordinary Rate Review adjustment, any amounts due or damages it reasonably believes it has suffered as a result of any event of default; provided, however, that City shall have the burden of proof as to the appropriateness of its actions.

**13.2.6 Cure.** Contractor shall be responsible for curing all events of default and all consequences thereof at its own expense without any right of reimbursement under this Agreement whether through Rates or otherwise. Nothing in the foregoing shall be construed to prevent use by Contractor of insurance proceeds to cure default.

**13.2.7 Specific Performance.** By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, and the lead time required to effect alternative service, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive relief compelling the specific performance of Contractor's obligations hereunder.

**13.2.8 City's Remedies Cumulative.** City's right to terminate this Agreement, City's right to take possession of Contractor's properties, and all other remedies set forth in this Agreement are cumulative, not exclusive, and City's termination of the Agreement shall not constitute an election of remedies. All remedies provided in this Article shall be in addition to any and all other legal and equitable rights and remedies which City may have.

### **13.3 Criminal Activity of Contractor.**

Contractor shall be considered to have performed criminal activity should Contractor or any of its officers or directors be "found guilty" of felonious conduct relating to Contractor's obligations under this Agreement, or other felonious conduct by the Contractor, its officers, directors, or management or fiscal employees (where "management employee" means an employee with general responsibility, direction and Control over the Contractor's activities and "fiscal employee" means an employee with direct responsibility and Control duties relating to financial matters) or its Guarantor, its officers or directors, arising under this Agreement. The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty, and any admission of guilt by Contractor, or any of Contractor's officers, directors or employees including, but not limited to, the pleas of "guilty", "nolo contendere", "no contest" or "guilty to a lesser felony" entered as part of any plea bargain. Such felonious conduct includes, but is not limited to: (i) price fixing, (ii) illegal Transport or Disposal of Hazardous Materials, Household Hazardous Waste, or toxic materials, (iii) bribery of public officials, or (iv) fraud or tampering. In the event of Contractor conducted criminal activity, the City reserves the right to exercise one or more of the remedies specified in this Section 13.3. Such action shall be taken after Contractor has been given Notice and an opportunity to present evidence in mitigation. If the City does not terminate this Agreement, Contractor shall dismiss or remove officers, directors or employees found guilty of felonious behavior and take all action necessary and appropriate to remedy any breach of Contractor's obligations. City shall have the right to one or more of the following remedies:

- a) **Unilateral Termination.** To unilaterally terminate this Agreement in accordance with Section 13.2.1, in which event the parties shall have no further obligations to each other. However, if Contractor is in Breach or Default of any of its obligations hereunder other than the Criminal Activity of Contractor described in this Section, City shall be entitled to pursue

any other remedies it may have pursuant to Section 13.2 hereof for breach of such other obligation, notwithstanding the termination of this Agreement pursuant to this subsection (a).

- b) **Exercise Remedies.** If the City does not terminate this Agreement, Contractor shall dismiss or remove officers, directors or employees found guilty of felonious behavior and take all action necessary and appropriate to remedy any breach of Contractor's obligations. Contractor's failure to cure any breach in accordance with Section 13.1 shall be a Contractor default, and City shall have the right to all other remedies specified therein including, without limitation, the right to terminate this Agreement pursuant to this Article.

### **13.4 Liquidated Damages.**

**13.4.1 General.** All time limits and acts required to be done by this Agreement are essential elements of this Agreement. Should Contractor fail to perform or complete the work required to be done at the time set forth in this Agreement, it is mutually understood and agreed that the public will necessarily suffer damages and that such damages, from the nature of the default in performance will be extremely difficult and impractical to fix. 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 by 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 to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity, which are incapable of measurement in precise monetary terms;
- c) 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.

At the discretion of the City Manager, Contractor shall be obligated to pay to City the liquidated damage amounts specified in Exhibit H. Exhibit H contains specific circumstances that constitute a breach of contract, with an associated payment to be paid by Contractor to City. The purpose of the payments contained in Exhibit H is to provide a clear and expeditious means for remedying the specified breaches occurring during the Term, without incurring the time and cost necessary to determine proof of actual damage. The breaches contained in Exhibit H are not intended to be inclusive of all events of breach, but rather are circumstances for which a specific payment has been assessed with the agreement of the Parties. Therefore, the Parties agree that the Liquidated

Damages specified in Exhibit H constitute a reasonable estimate of the damages incurred in each instance, considering all of the circumstances existing on the Effective Date, including the relationship of the payments to the range of harm that reasonably could be anticipated. In signing this Agreement, each Party specifically confirms the accuracy of this Section 13.4.1 and of Exhibit H, and the fact that each Party had ample opportunity to consult with legal counsel and to obtain an explanation of these provisions. In the event City seeks Liquidated Damages for Contractor's failure to meet one or more of Contractor's obligations, City shall not be entitled to compensatory damages for the same Contractor failure.

**13.4.2 Adjustment of Schedule of Liquidated Damages.** The initial Liquidated Damage amounts specified in Exhibit H shall be increased by the percentage change in the CPI, at the same time as the Rates are adjusted by the CPI.

**13.4.3 Payment of Liquidated Damages.** On or before the fifteenth (15th) day of each month, and beginning with the month immediately following the month in which City Notices Contractor that Liquidated Damages are due, Contractor shall submit payment to the City via wire transfer for any Liquidated Damages assessed pursuant to this Agreement. If Contractor disputes any amount of Liquidated Damages pursuant hereto, it shall nevertheless pay the undisputed amount and the dispute shall be resolved in accordance with Section 13.6 and, if necessary, Section 13.7.

### **13.5 Excuse from Performance.**

**13.5.1 Force Majeure.** Neither Contractor nor City shall be excused from the performance of its obligations under this Agreement except where a party's failure to perform is due to an event of Force Majeure, as defined in this Agreement.

**13.5.2 Obligation to Mitigate Damages.** Any suspension of performance by a party pursuant to this Agreement shall be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the party claiming excuse from obligation shall use its best efforts in an expeditious and commercially reasonable manner to remedy its inability to perform, and mitigate damages that may occur as result of the event.

**13.5.3 Recovery of Cost.** Subject to Section 13.5.5 below, Contractor shall be entitled to recover through Extraordinary Rate Review the incremental costs reasonably necessary and prudently incurred by it in responding to an event of Force Majeure, if Contractor shall have complied fully with all of the other provisions of this Agreement, including without limitation the Notice provisions under this Article 13.

**13.5.4 Notice Requirement.** Contractor shall file with City a written Notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure if, at any time after execution of this Agreement, Contractor reasonably believes that such an event has occurred and will materially prevent Contractor's performance of one or more of its obligations hereunder. Notice required by this Section shall be filed with City promptly in light of the circumstances but in any event not later than ten (10) calendar days after Contractor learned or should have learned of the event of Force Majeure. Such Notice shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure; a description

of any remedial work required to be undertaken to enable contractor to resume full operations under this Agreement; an itemized breakdown of the projected incremental costs for such remedial work; an itemized description of the changes to then current Rates which would be needed to recover costs for the implementation of the remedial work; and such other information as City reasonably requests.

**13.5.5 City's Right in the Event of Force Majeure.** The partial or complete interruption or discontinuance of Contractor's service caused by an event of Force Majeure shall not constitute an event of default under this Agreement. Notwithstanding the foregoing: (a) City shall have the right to assume possession of Contractor's property and facilities in accordance with Section 13.2.2 of this Agreement in the event of Force Majeure; (b) if Contractor's excuse from performance for reason of Force Majeure continues for a period of thirty days or more, City shall have the right in its sole discretion to terminate this Agreement by giving ten days Notice, except that City shall retain the right to assume possession of Contractor's property in accordance with Section 13.2.2.

**13.5.6 Right to Demand Assurances of Performance.** If Contractor (a) is the subject of any Labor Action; (b) appears in the reasonable judgment of City to be unable to regularly pay bills as they become due; or (c) is the subject of a civil or criminal judgment or order entered for violations of environmental laws, and City believes in good faith that Contractor's ability to perform has been placed in substantial jeopardy, City may at its option, in addition to all of the remedies that it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance that City believes is reasonably necessary in the circumstances.

**13.5.7 Claimed Inadequacy in Rates Not Excuse for Performance.** Notwithstanding any other provision of this Section 13.5 or this Agreement, Contractor's failure to provide services in accordance with this Agreement shall not be excused by virtue of any claimed inadequacy in Contractor's Rates or by virtue of any claimed inadequacy in the labor force, productivity levels, or technology and equipment assumed in Contractor's Rates.

### **13.6 Mediation.**

Without limiting the rights of City under this Article 13, the parties agree as follows:

**13.6.1 Meet and Confer.** In the event of disputes regarding the performance of any obligation under this Agreement, City and Contractor agree that they promptly will meet and confer to attempt to resolve the matter between themselves.

**13.6.2 Mediation.** In the event that disputes arising under this Agreement, other than those specified in Section 13.6.3, cannot be resolved satisfactorily between the parties, City and Contractor agree that such disputes shall be submitted to mandatory, non-binding mediation by a mutually agreed upon independent third party.

**13.6.3 Limitation.** Contractor agrees that it shall not dispute any Rate adjustment (including denial of a request for a Rate adjustment) where the aggregate annual amount in controversy is less than a Significant Change.

### **13.7 Arbitration.**

**13.7.1 Arbitration of Certain Disputes; Limitation.** In the event of any dispute: (a) regarding the annual Rate adjustment determined by City in accordance with Exhibit B of this Agreement; (b) concerning City's decision resulting from an Extraordinary Rate Review conducted in accordance with Section 12.4 of this Agreement; or (c) regarding the payment of Liquidated Damages in accordance with Section 13.4 and Exhibit H, is not satisfactorily resolved through mediation, the parties agree to submit the matter to binding arbitration pursuant to Part 3, Title 9 (Sections 1280 et seq.) of the California Code of Civil Procedure.

**13.7.2 Notice Requirements; Establishment of Arbitration Panel.** The party calling for arbitration under this Section shall serve Notice in writing upon the other party, setting forth in detail the issue or issues to be arbitrated and the name and address of that party's designated arbitrator. The party who receives the Notice of arbitration shall, within ten days of receipt of the Notice, give the other party written Notice of the name and address of its designated arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator within ten days of the designation of the second arbitrator.

**13.7.3 Conduct of the Arbitration.** Arbitration shall be conducted in accordance with the provisions of this Section and, where this Section is silent, in accordance with Part 3, Title 9 (Sections 1280 et seq. of the California Code of Civil Procedure.

**13.7.4 Schedule for the Arbitration.** Unless determined otherwise by the arbitration panel, arbitration under this Section shall be completed within sixty (60) days of the Notice commencing the arbitration.

**13.7.5 Decisions; Burden of Proof.** The written decision of any two of the three arbitrators shall be binding and conclusive on the parties in any arbitration proceeding under this Section. If Contractor disputes a Rate determination made by City, Contractor shall bear the burden of proving by a preponderance of the evidence the incorrectness of City's determination.

**13.7.6 Award.** The power of the arbitration panel to make an award to Contractor shall be limited to compensation to Contractor for any shortfalls in revenues caused by an incorrect Rate determination, including interest thereon at then current one-year Treasury Bill rates. Such compensation shall be provided through a Rate adjustment as though the arbitration award were the final determination of an Extraordinary Rate Review, and the amount awarded shall be amortized over a reasonable period determined by the arbitrators.

**13.7.7 Attorneys' Fees and Costs of Arbitration.** In the event of arbitration conducted under this Section 13.7, the prevailing party shall be entitled, in addition to any other relief awarded in the arbitration, to recover from the non-prevailing party all of its fees and costs of arbitration, including, but not limited to, the fees and expenses of the arbitrators, reasonable attorneys' fees, costs and expenses and compensation paid to witnesses and technical consultants. If Contractor is the prevailing party, such costs shall be recovered through a Rate increase implemented through Extraordinary Rate Review.



## **ARTICLE 14.00 – ASSIGNMENT; SUBCONTRACTING**

### **14.1 Assignment of Agreement.**

**14.1.1 General.** Contractor shall not assign, sell, subcontract or otherwise delegate authority to perform any portion of this Agreement, including but not limited to a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party, or between a subsidiary and a parent company or Affiliate, without the prior written express approval of City. City may, at its sole discretion permit new ownership or management of Contractor to assume the rights and responsibilities of Contractor under this Agreement. City has sole discretion to determine whether a change in Control or ownership of Contractor constitutes a default by Contractor of its duties under this Agreement. In the event of any assignment duly authorized by City, the assignee shall assume the liability of Contractor. Notwithstanding the first sentence of this subsection 14.1.1, upon ninety days' written Notice to City Contractor may assign this Agreement without City's consent to another wholly-owned subsidiary of Contractor's parent corporation, if and only if: (i) such subsidiary employs the same personnel as Contractor, and (ii) Contractor's parent corporation guaranties the performance of such subsidiary, and delivers to City, prior to such assignment, a guaranty in a form substantially identical to Exhibit E hereto.

**14.1.2 Transfer of Stock or Interest.** No sale, gift, or transfer of stock or other interest of Contractor, including but not limited to 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 would result in a change of Control of Contractor, shall be made without prior written approval of the City Council. Violation of this provision shall be a breach of this Agreement and grounds for termination by City without the need for compliance with the notification requirements of Section 13.1.

**14.1.3 Assignment Request.** If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. City need not consider any request by Contractor for consent to an assignment unless and until Contractor has met the following requirements:

- a) Contractor shall pay to City the transfer fee described in Section 14.1.4;
- b) Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years; and
- c) Contractor shall furnish City with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all Collection Services, including:
  - i. that the proposed assignee has at least 10 years of experience in the provision and management of Municipal Solid Waste, Organics and Recyclables Collection Services on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement;
  - ii. in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any State, federal or local agencies

and the assignee has provided City with a complete list of such citations and censures;

- iii. the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion;
- iv. the proposed assignee conducts its Municipal Solid Waste, Organics and Recyclables Collection Services in accordance with sound practices, and in full compliance with all federal, State and local laws regulating the Collection and Disposal of materials including hazardous substances; and
- v. any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

**14.1.4 Application and Transfer Fee.** Any application for an assignment transfer shall be made in a manner prescribed by the City Representative. The application shall include a transfer fee in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. In addition, Contractor shall reimburse City for any and all additional costs related to the assignment requested and not covered by the transfer fee. Bills shall be supported with evidence of the expense or cost incurred. Contractor shall pay such bills within (30) days of receipt. The transfer fees are over and above any Contractor Fees specified in this Agreement.

**14.1.5 Transition.** If City consents to an assignment, Contractor shall cooperate with City and the assignee to assist in an orderly transition, in accordance with Section 15.3.

## **14.2 Subcontractors.**

**14.2.1 General.** Contractor shall indemnify and hold harmless City for the acts and omissions of its subcontractors, and its subcontractors' officers, employees, and agents. No provision of this Agreement, nor of any subcontract, shall be construed as creating a contractual relationship between City and a subcontractor, unless City accepts assignment of a subcontract pursuant to Section 14.2.5.

**14.2.2 Approval.** During the Term of this Agreement City shall have the right to object to any or all subcontracts of all or part of Contractor's duties as defined in this Agreement. Contractor shall notify City of a proposed subcontract no later than ninety days prior to the date on which the proposed subcontract is to become effective. Under no circumstances shall a subcontract to provide services under this Agreement take effect without the express written consent of City, provided that City's consent shall not be withheld unreasonably. In no way shall a subcontract, or City's approval of a subcontract, relieve Contractor of its duty to perform pursuant to this Agreement.

**14.2.3 Subcontractor's Representations and Warranties.** No fewer than thirty days before a subcontract entered to provide services under this Agreement becomes effective, Contractor shall provide City a certificate, in a form acceptable to City, bearing warranties and representations from that subcontractor that are substantially similar to those warranties and representations made by Contractor in Section 2.1 of this Agreement. Each subcontractor's

activities must be covered fully by the Performance Bond and/or Alternative Performance Security pursuant to the provisions of Section 10.13. Each subcontractor's activities must be covered expressly and fully by Contractor's insurance provided and maintained under Section 10.2.

**14.2.4 Subcontractor's Duty to Comply with this Agreement and Other Laws.** Any subcontract entered to provide services under this Agreement shall be subject to the provisions of this Agreement. Any such subcontract shall also be subject to any applicable federal, state, and local laws.

**14.2.5 Assignment of Subcontracts.** Any subcontract entered to provide services under this Agreement shall contain a clause providing that if Contractor defaults on its performance of the Agreement and City accepts assignment of the subcontract pursuant to this Section 14.2, the subcontractor shall recognize City as the Contractor. In such event City shall have all of the rights, remedies, and responsibilities of Contractor under that subcontract. Upon City's determination that Contractor has defaulted on its performance under this Agreement and written Notice from City, Contractor agrees to assign all of its rights in that subcontract to City.

### **14.3 Assignment.**

Contractor may assign or delegate its duties which are defined in this Agreement only in accordance with procedures prescribed by City in its sole discretion, and subject to the provisions of this Section 14. Any attempt by Contractor to assign or delegate its duties in any other manner shall be void and have no effect. City must provide written Notice and a true copy of the assignment to Contractor in order to assign or delegate City's duties as defined in this Agreement.

### **14.4 Successors and Assigns.**

This Agreement shall be binding upon the successors and assigns of the Parties, subject to the provisions contained in this Section 14. In no event may an assignment of this Agreement by either Party be binding upon the other Party unless such other Party consents to the assignment in writing.

**ARTICLE 15.00 – MISCELLANEOUS**

**15.1 Notices.**

All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery when delivered personally or upon receipt when delivered by the US Postal Service, Return Receipt Requested, or upon receipt when delivered by private carriers such as Federal Express or UPS. All notices or other communications sent by US Mail shall be sent postage prepaid by certified first class mail, return receipt requested, to the address specified below:

If to City, address to:

City Manager  
City of Fremont  
P.O. Box 5006  
3300 Capitol Avenue  
Fremont, California 94537-5006  
Telephone: (510) 284-4000  
Facsimile: (510) 284-4001  
and  
Environmental Services Manager  
P.O. Box 5006  
39550 Liberty Street  
Fremont, California 94537-5006  
Telephone: (510) 494-4740

**If to Contractor or any Affiliate, address to:**

General Manager  
Allied Waste Services of North America, LLC  
P O Box 5013  
42600 Boyce Road  
Fremont CA 94537-5013  
Telephone: 510 657-1350

District Manager  
Allied Waste Services of North America, LLC  
P O Box 5013  
42600 Boyce Road  
Fremont, Ca 94537-5013  
Telephone:510 657-1350  
Fax: 510 252-4661

Either party may designate a different mailing address or telephone number by providing written Notice to the other party as provided in this Section.  
Notice by City to Contractor of a missed pick-up or a Service Recipient problem or complaint may

be given to Contractor orally by telephone at Contractor's local office with written confirmation sent within twenty-four (24) hours of the oral notification.

## **15.2 Contractor Is An Independent Contractor.**

**15.2.1 Independent Contractor.** Contractor shall perform all work under this Agreement as an independent contractor. Neither Contractor nor its employees, agents, subagents, contractors, or subcontractors shall be considered an employee, agent, subagent, or servant of City. No approval or review by City of a subcontract or other agreement between Contractor and a third party shall affect the status of Contractor as an independent contractor.

**15.2.2 Contractor Solely Responsible for its Acts and Omissions.** Contractor shall have exclusive Control over the details of the services and work performed pursuant to this Agreement, and over all Persons performing such services and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents or subagents, employees, and contractors or subcontractors.

**15.2.3 No Partnership or Joint Venture Created.** Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor, or as giving City a duty to supervise or Control the acts or omissions of any Person performing services or work under the Agreement.

**15.2.4 No Entitlement to Benefits.** Neither Contractor nor its officers, employees, agents, subagents, contractors, or subcontractors shall be entitled to any retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to any City employees, and Contractor expressly waives any claim it may have or acquire to such benefits.

## **15.3 Transition to Next Contractor.**

At the expiration of the Term or earlier termination of this Agreement, Contractor, at its own expense, shall cooperate fully with City to ensure an orderly transition to any and all new service providers, and City shall have no continuing obligations to Contractor other than those expressly provided for under this Agreement. One (1) year prior to the conclusion of the Term, and in order to assist with the competitive procurement process, Contractor shall provide City with such information as may reasonably be requested, including, but not limited to, current route maps, account names and phone numbers, and level of service provided. Failure to provide full cooperation may at City's sole discretion preclude Contractor from participating in any competitive procurement process.

## **15.4 Amendment or Rescission.**

Except as provided in Section 5.41.1, this Agreement may be amended, modified, or rescinded only by a writing duly authorized by Contractor and City and executed by their authorized representatives.

## **15.5 Nondiscrimination.**

**15.5.1 Employment.** In performing this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of age, ancestry, color, mental or physical disability, marital status, national origin, race, religion, sex, sexual preference, HIV status,

AIDS or AIDS-related condition, or medical condition (cancer-related) (collectively, a “Protected Status”). Contractor further shall take affirmative action to ensure that employees and applicants are considered for employment without regard to their Protected Status. As used in this Subsection, "employment" includes, but is not limited to, the following: the hiring of an applicant; and the layoff, termination, promotion, or transfer of an employee.

**15.5.2 Treatment during Employment.** In performing this Agreement, Contractor shall not discriminate against any employee with regard to treatment during employment because of their Protected Status. Contractor further shall take affirmative action to ensure that employees receive treatment during employment without regard to their Protected Status. As used in this Subsection, "treatment during employment" includes, but is not limited to, the following: recruitment or recruitment advertising; rates of pay or other forms of compensation; and selection for training, including apprenticeship, free apprenticeship training, and on-the-job training.

**15.5.3 Treatment of Customers.** In performing this Agreement, Contractor shall be attentive to Customer needs, and shall not discriminate against Customers or potential Customers because of their Protected Status.

**15.5.4 Access to Records.** Contractor shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data or records relating to Contractor's obligations under Section 15.6 of this Agreement, by the Fair Employment Practices Commission, City or any appropriate employee, department, or agent designated by the Fair Employment Practices Commission or by City respectively, for the purpose of investigating Contractor's compliance with the California Fair Employment Practices Act or Section 15.6 of this Agreement.

**15.6 Fees and Gratuities.**

Contractor, its officers, agents or employees are prohibited from requesting, soliciting, demanding, or accepting, either directly or indirectly, any compensation or gratuity other than as set forth in this Agreement for the Collection of MSW, Recyclables, or Organics otherwise required to be Collected under this Agreement. Nor shall Contractor, its officers, agents or employees provide, directly or indirectly, any gifts or gratuities to any City employee.

**15.7 Governing Law, Jurisdiction.**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, including any regulation, ordinance, or other requirements of any governmental agency having jurisdiction over the subject matter of this Agreement. The parties agree that any state court action relating to this Agreement shall be instituted and prosecuted in the courts of Alameda County, State of California. In the event of litigation in a United States District Court, exclusive venue shall lie in the Northern District of California.

**15.8 Attorney's Fees.**

Should legal action be brought by either party to enforce any provision of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees, court costs, and other litigation expenses including, without limitation, expenses incurred for preparation and discovery, expert witness fees, and expenses relating to appeals, if any. The entitlement to recover such fees, costs and expenses shall accrue upon the commencement of the action regardless of whether the action is prosecuted to final judgment.

## **15.9 Interpretation; Context and Construction.**

**15.9.1 No Presumption Against Drafter.** This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting. Each of the parties has received the advice of legal counsel prior to signing this Agreement. Each party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party drafting this Agreement.

**15.9.2 Context and Construction.** When the context and construction so require, all words used in the singular shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. Whenever a reference is made to a particular Article of this Agreement, it means and includes all Sections, subsections and subparts thereof, and, whenever a reference is made to a particular Section or subsection, it shall include all subsections and subparts thereof.

**15.9.3 Headings.** The section headings used in this Agreement are intended for convenience and shall not, by themselves, be construed to determine the rights and obligations of the parties to this Agreement.

**15.9.4 References to Days.** All references to days herein are to calendar days, including Saturdays, Sundays and holidays, unless specified as Working Days.

**15.9.5 References to Laws.** All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

### **15.10 Agreement as Collateral.**

Contractor shall only use this Agreement as collateral to secure any loan if proceeds of the loan are used exclusively for the provision of services under this Agreement and only upon prior written consent of the City Representative. Contractor shall not create an encumbrance or lien against this Agreement without the prior written consent of the City Representative.

### **15.11 Parties in Interest.**

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

### **15.12 Condemnation.**

In addition to its rights under Section 13.2.2, City fully reserves the rights to acquire Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of its power of eminent domain.

### **15.13 Waiver.**

Waiver of any term or condition contained in this Agreement by any party to the Agreement shall be in writing and shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or a waiver of any other term or condition contained in the Agreement. The

subsequent acceptance by City of any fee, tax, or any other monies which become due from Contractor to City shall not be deemed to be a waiver by City of any breach or violation of any term, covenant or condition of this Agreement.

**15.14 Entire Agreement.**

This Agreement is executed in (2) duplicate originals, each of which is deemed to be an original. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, represents the full and entire Agreement between the parties regarding the matters covered herein, and supersedes all negotiations or previous agreements between the Parties regarding all or any part of the subject matter. Except as provided in Section 4.18.1, no party shall be bound to any obligations, conditions or representations except as contained herein unless agreed to by the parties in a written amendment of this Agreement.

**15.15 Severability.**

If any term of this Agreement and amendments (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement and amendments shall be construed as not containing that term, and the remainder of this Agreement and amendments shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement and amendments.

**15.16 Signatures.**

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Contractor and the City. This Restated Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, City and Contractor have duly authorized execution of this Agreement, and have executed the Agreement as of the date first set forth above.

**Allied Waste Industries of North America**

**City of Fremont**

by: \_\_\_\_\_  
Mike Caprio  
Area President, West  
Date:

by: \_\_\_\_\_  
City Manager  
Date:

**Corporate Resolution Attached**

Approved as to Form:

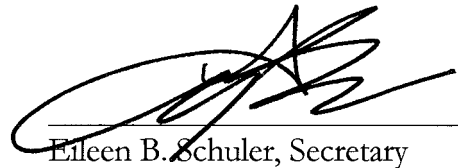
\_\_\_\_\_  
Harvey E Levine  
City Attorney



## CERTIFICATE OF SECRETARY

The undersigned, Secretary of **ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**, a Delaware limited liability company (the "Company"), does hereby certify on behalf of the Company, that **MICHAEL A. CAPRIO**, is a duly elected Vice President of the Company, that in such capacity he, the President or any other Vice President of the Company, can exercise such power and perform such duties as usually accompanies such offices, and implicit in such power is the authority to execute that certain *Amended and Restated Agreement for the Collection, Processing, and Disposal of Municipal Solid Waste, Recyclables, and Organics* with the City of Fremont, in the State of California, and that there is no current intention to remove him from such office.

**IN WITNESS WHEREOF**, the undersigned has hereunto set her hand this 28th day of March, 2017.



---

Eileen B. Schuler, Secretary

**EXHIBIT A  
SOLID WASTE COLLECTION RATES 2016-2017**

**Solid waste collection rates include applicable landfill disposal fees and are effective January 1, 2016 through December 31, 2017.**

**RESIDENTIAL RATES**

All Residential Rates include 10% Franchise Fees and 16% Integrated Waste Management Fee

**SINGLE FAMILY DWELLING RATES – Weekly Service**

<b>Standard Rates</b>				
<b>Description</b>	<b>20 gallon</b>	<b>32 gallon</b>	<b>64 gallon</b>	<b>96 gallon</b>
MSW Collection	\$15.86	\$16.54	\$19.64	\$36.12
Bulky Collection	\$1.24	\$1.24	\$1.24	\$1.24
Recycling Collection	\$4.68	\$4.68	\$4.68	\$4.68
Organics Collection	\$7.60	\$7.60	\$7.60	\$7.60
Organics Processing	\$1.83	\$1.83	\$1.83	\$1.83
<b>Total</b>	<b>\$31.21</b>	<b>\$31.89</b>	<b>\$34.99</b>	<b>\$51.47</b>

<b>Lifeline Rates - 30% Discount</b>				
<b>Description</b>	<b>20 gallon</b>	<b>32 gallon</b>	<b>64 gallon</b>	<b>96 gallon</b>
MSW Collection	\$11.10	\$11.58	\$13.75	\$25.28
Bulky Collection	\$0.87	\$0.87	\$0.87	\$0.87
Recycling Collection	\$3.28	\$3.28	\$3.28	\$3.28
Organics Collection	\$5.32	\$5.32	\$5.32	\$5.32
Organics Processing	\$1.28	\$1.28	\$1.28	\$1.28
<b>Total</b>	<b>\$21.85</b>	<b>\$22.33</b>	<b>\$24.50</b>	<b>\$36.03</b>

<b>Senior Rates (Age 70-79) – 50% Discount</b>				
<b>Description</b>	<b>20 gallon</b>	<b>32 gallon</b>	<b>64 gallon</b>	<b>96 gallon</b>
MSW Collection	\$7.93	\$8.27	N/A	N/A
Bulky Collection	\$0.62	\$0.62	N/A	N/A
Recycling Collection	\$2.34	\$2.34	N/A	N/A
Organics Collection	\$3.80	\$3.80	N/A	N/A
Organics Processing	\$0.92	\$0.92	N/A	N/A
<b>Total</b>	<b>\$15.61</b>	<b>\$15.95</b>	N/A	N/A

**Other Residential Services**

<b>Other Residential Services</b>			
<b>Description</b>	<b>Standard</b>	<b>Lifeline</b>	<b>Senior</b>
Additional MSW can 20 gallon	\$15.86	\$11.10	N/A
Additional MSW can 32 gallon	\$16.54	\$11.58	N/A
Additional MSW can 64 gallon	\$19.64	\$13.75	N/A
Additional MSW can 96 gallon	\$36.12	\$25.28	N/A
Additional Organics Can	\$3.78	\$2.64	\$1.89
Backyard Service Fee (see note 3)	\$19.05	\$13.34	\$9.53
Overage Bag	\$7.34	\$5.14	\$3.67
Container Delivery	\$35.13	\$24.59	\$17.57
Residential 6 yard C & D - 3 day use	\$229.09	N/A	N/A

**Single Family Dwelling Rate Notes**

1. All rates include 10% franchise fees.
2. MSW rates include 16.0 % integrated waste management fee.
3. Qualifying disabled residents will receive backyard service at no charge.
4. Qualifying seniors age 70-79 get 50% discount and seniors over 80 receive free service for 20 gallon or 32 gallon volume.
5. Lifeline rates reflect a 30% discount and are for residents meeting qualifications agreed to by the City and Republic Services.

**Multi-Family Dwelling Rates**

<b>RECYCLING WEEKLY SERVICE</b>	
<b>Collection/Processing Type</b>	<b>Per Unit/Per Month</b>
Recycling Collection Fee	\$6.02

**Multi Family Dwelling Recycling Rate Notes**

1. The residential backyard service fee is applicable to multi-family dwelling units receiving non-curbside recycling service for each grouping of 3 carts located more than 15 feet from a trash enclosure.

**Multi-Family Dwelling Rates**

<b>MSW Collection Rates Per Month</b>						
<b>Size</b>	<b>Collections Per Week</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
One cubic yard	\$93.61	\$181.35	\$269.09	\$356.85	\$444.62	\$532.36
Two cubic yards	\$151.92	\$297.98	\$444.07	\$590.10	\$736.20	\$882.26
Three cubic yards	\$210.26	\$414.64	\$619.05	\$823.46	\$1,027.85	\$1,232.23
Four cubic yards	\$268.58	\$531.29	\$794.05	\$1,056.76	\$1,319.49	\$1,582.19
Six cubic yards	\$385.22	\$764.62	\$1,143.97	\$1,523.37	\$1,902.72	\$2,282.08
Seven cubic yards	\$443.59	\$881.28	\$1,318.97	\$1,756.67	\$2,194.37	\$2,632.09
Eight cubic yards	\$501.86	\$997.94	\$1,493.93	\$1,989.97	\$2,485.97	\$2,982.08

**COMMERCIAL RATES**

All commercial MSW rates include 12% Franchise Fees and 13.5 % Integrated Waste Management Fees

**Front-End Loader Commercial Rates**

Fees include a contractor provided container

<b>MSW Collection Rates Per Month</b>						
<b>Size</b>	<b>Collections Per Week</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
One cubic yard	\$93.09	\$180.37	\$267.77	\$355.11	\$442.39	\$529.74
Two cubic yards	\$151.18	\$296.58	\$442.01	\$587.37	\$732.82	\$878.21
Three cubic yards	\$209.26	\$412.72	\$616.25	\$819.74	\$1,023.22	\$1,226.72
Four cubic yards	\$267.30	\$528.88	\$790.47	\$1,052.05	\$1,313.65	\$1,575.19
Six cubic yards	\$383.49	\$761.27	\$1,138.97	\$1,517.16	\$1,894.45	\$2,272.21
Seven cubic yards	\$441.58	\$877.39	\$1,313.20	\$1,749.07	\$2,184.86	\$2,620.69
Eight cubic yards	\$499.63	\$993.54	\$1,487.49	\$1,981.42	\$2,475.33	\$2,969.23

<b>Maximum Recycling Collection Rates Per Month</b>						
<b>Size</b>	<b>Collections Per Week</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
One cubic yard	\$69.82	\$135.28	\$200.83	\$266.33	\$331.79	\$397.31
Two cubic yards	\$113.39	\$222.44	\$331.51	\$440.53	\$549.62	\$658.66
Three cubic yards	\$156.95	\$309.54	\$462.19	\$614.81	\$767.42	\$920.04
Four cubic yards	\$200.48	\$396.66	\$592.85	\$789.04	\$985.24	\$1,181.39
Six cubic yards	\$287.62	\$570.95	\$854.23	\$1,137.87	\$1,420.84	\$1,704.16
Seven cubic yards	\$331.19	\$658.04	\$984.90	\$1,311.80	\$1,638.65	\$1,965.52
Eight cubic yards	\$374.72	\$745.16	\$1,115.62	\$1,486.07	\$1,856.50	\$2,226.92

**Front-End Loader Compactor Rates**

<b>MSW Collection Rates Per Month</b>						
<b>Size</b>	<b>Collections Per Week</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
Two cubic yards	\$474.08	\$948.17	\$1,422.29	\$1,897.57	\$2,370.46	\$2,844.54
Three cubic yards	\$675.12	\$1,347.82	\$2,021.75	\$2,695.69	\$3,369.55	\$4,043.51
Four cubic yards	\$898.57	\$1,797.13	\$2,695.69	\$3,594.23	\$4,581.64	\$5,391.39
Five cubic yards	\$1,123.18	\$2,246.41	\$3,369.60	\$4,492.81	\$5,615.99	\$6,739.25
Six cubic yards	\$1,347.82	\$2,695.69	\$4,043.51	\$5,391.39	\$6,739.22	\$8,087.08

<b>Maximum Recycling Collection Per Month</b>						
<b>Size</b>	<b>Collections Per Week</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
Two cubic yards	\$355.56	\$711.13	\$1,066.72	\$1,423.18	\$1,777.85	\$2,133.41
Three cubic yards	\$506.34	\$1,010.87	\$1,516.31	\$2,021.77	\$2,527.16	\$3,032.63
Four cubic yards	\$673.93	\$1,347.85	\$2,021.77	\$2,695.67	\$3,436.23	\$4,043.54
Five cubic yards	\$842.39	\$1,684.81	\$2,527.20	\$3,369.61	\$4,211.99	\$5,054.44
Six cubic yards	\$1,010.87	\$2,021.77	\$3,032.63	\$4,043.54	\$5,054.42	\$6,065.31

**Commercial Can Rates**

The backyard service fee will be charged to units receiving non-curb-side service. Service will be on a weekly pickup.

<b>Size</b>	<b>MSW Container</b>	<b>Recycling Container</b>
32 gallon can (each)	\$18.25	\$13.69
64 gallon can (each)	\$36.63	\$27.49
96 gallon can (each)	\$55.50	\$41.63
Backyard Service Fee	\$23.37	\$23.79

**Commercial Food Waste**

<b>Size</b>	<b>Frequency</b>	<b>Qty of Containers</b>	40%	60%	100%
			<b>City Charge</b>	<b>Customer Charge</b>	<b>Total Charge</b>
Cart - 64 gallon	1 x week	1	\$ 20.18	\$ 30.27	\$ 50.45
Cart - 64 gallon	2 x week	1	\$ 37.66	\$ 56.50	\$ 94.16
Cart - 64 gallon	3 x week	1	\$ 54.10	\$ 81.16	\$ 135.26
Cart - 64 gallon	4 x week	1	\$ 67.63	\$ 101.45	\$ 169.08
Cart - 64 gallon	5 x week	1	\$ 81.16	\$ 121.73	\$ 202.89

Cart - 64 gallon	1 x week	2	\$ 40.35	\$ 60.53	\$ 100.88
Cart - 64 gallon	2 x week	2	\$ 65.27	\$ 97.90	\$ 163.17
Cart - 64 gallon	3 x week	2	\$ 93.22	\$ 139.83	\$ 233.05
Cart - 64 gallon	4 x week	2	\$ 116.53	\$ 174.79	\$ 291.31
Cart - 64 gallon	5 x week	2	\$ 139.83	\$ 209.75	\$ 349.58
Cart - 64 gallon	1 x week	3	\$ 60.53	\$ 90.80	\$ 151.33
Cart - 64 gallon	2 x week	3	\$ 103.60	\$ 155.41	\$ 259.01
Cart - 64 gallon	3 x week	3	\$ 148.32	\$ 222.49	\$ 370.81
Cart - 64 gallon	4 x week	3	\$ 185.41	\$ 278.11	\$ 463.51
Cart - 64 gallon	5 x week	3	\$ 222.49	\$ 333.73	\$ 556.22
Cart - 64 gallon	1 x week	4	\$ 80.70	\$ 121.06	\$ 201.76
Cart - 64 gallon	2 x week	4	\$ 125.97	\$ 188.96	\$ 314.93
Cart - 64 gallon	3 x week	4	\$ 179.64	\$ 269.46	\$ 449.10
Cart - 64 gallon	4 x week	4	\$ 224.55	\$ 336.83	\$ 561.38
Cart - 64 gallon	5 x week	4	\$ 269.46	\$ 404.19	\$ 673.65
Cart - 64 gallon	1 x week	5	\$ 100.88	\$ 151.32	\$ 252.20
Cart - 64 gallon	2 x week	5	\$ 151.92	\$ 227.87	\$ 379.79
Cart - 64 gallon	3 x week	5	\$ 216.40	\$ 324.59	\$ 540.99
Cart - 64 gallon	4 x week	5	\$ 270.50	\$ 405.74	\$ 676.24
Cart - 64 gallon	5 x week	5	\$ 324.59	\$ 486.89	\$ 811.49
Cart - 64 gallon	1 x week	6	\$ 121.06	\$ 181.58	\$ 302.64
Cart - 64 gallon	2 x week	6	\$ 175.83	\$ 263.74	\$ 439.57
Cart - 64 gallon	3 x week	6	\$ 249.90	\$ 374.85	\$ 624.75
Cart - 64 gallon	4 x week	6	\$ 312.38	\$ 468.56	\$ 780.94
Cart - 64 gallon	5 x week	6	\$ 374.85	\$ 562.28	\$ 937.13
Cart - 64 gallon	1 x week	7	\$ 139.22	\$ 208.82	\$ 348.04
Cart - 64 gallon	2 x week	7	\$ 202.63	\$ 303.94	\$ 506.57
Cart - 64 gallon	3 x week	7	\$ 287.80	\$ 431.69	\$ 719.49
Cart - 64 gallon	4 x week	7	\$ 359.75	\$ 539.62	\$ 899.36
Cart - 64 gallon	5 x week	7	\$ 431.69	\$ 647.54	\$ 1,079.24
Cart - 64 gallon	1 x week	8	\$ 161.40	\$ 242.10	\$ 403.50
Cart - 64 gallon	2 x week	8	\$ 224.13	\$ 336.19	\$ 560.32
Cart - 64 gallon	3 x week	8	\$ 317.82	\$ 476.73	\$ 794.55
Cart - 64 gallon	4 x week	8	\$ 397.28	\$ 595.91	\$ 993.19
Cart - 64 gallon	5 x week	8	\$ 476.73	\$ 715.10	\$ 1,191.83
Cart - 64 gallon > 8	1 x week	each	\$ 20.18	\$ 30.27	\$ 50.45
Cart - 64 gallon > 8	2 x week	each	\$ 28.02	\$ 42.02	\$ 70.04
Cart - 64 gallon > 8	3 x week	each	\$ 39.73	\$ 59.59	\$ 99.32
Cart - 64 gallon > 8	4 x week	each	\$ 49.66	\$ 74.49	\$ 124.15

Cart - 64 gallon > 8	5 x week	each	\$ 59.59	\$ 89.39	\$ 148.98
One cubic yard	1 x week		\$ 50.50	\$ 75.75	\$ 126.25
One cubic yard	2 x week		\$ 97.87	\$ 146.80	\$ 244.67
One cubic yard	3 x week		\$ 145.30	\$ 217.94	\$ 363.24
One cubic yard	4 x week		\$ 181.62	\$ 272.43	\$ 454.05
One cubic yard	5 x week		\$ 217.94	\$ 326.92	\$ 544.86
Two cubic yards	1 x week		\$ 82.03	\$ 123.04	\$ 205.07
Two cubic yards	2 x week		\$ 160.92	\$ 241.38	\$ 402.30
Two cubic yards	3 x week		\$ 239.82	\$ 359.74	\$ 599.56
Two cubic yards	4 x week		\$ 299.78	\$ 449.67	\$ 749.45
Two cubic yards	5 x week		\$ 359.74	\$ 539.60	\$ 899.34
Three cubic yards	1 x week		\$ 113.54	\$ 170.30	\$ 283.84
Three cubic yards	2 x week		\$ 223.94	\$ 335.91	\$ 559.85
Three cubic yards	3 x week		\$ 334.36	\$ 501.55	\$ 835.91
Three cubic yards	4 x week		\$ 417.96	\$ 626.93	\$ 1,044.89
Three cubic yards	5 x week		\$ 501.55	\$ 752.32	\$ 1,253.87
Four cubic yards	1 x week		\$ 145.03	\$ 217.54	\$ 362.57
Four cubic yards	2 x week		\$ 286.96	\$ 430.45	\$ 717.41
Four cubic yards	3 x week		\$ 428.90	\$ 643.36	\$ 1,072.26
Four cubic yards	4 x week		\$ 536.13	\$ 804.20	\$ 1,340.33
Four cubic yards	5 x week		\$ 643.36	\$ 965.03	\$ 1,608.39

<b>Front End Loader Commercial Food Waste Special Collection Rates</b>					
Size	Frequency	Qty of Containers	40%	60%	100%
			City Charge	Customer Charge	Total Charge
Cart - 64 gallon	per pick up	1	\$ 10.63	\$ 15.95	\$ 26.59
Cart - 64 gallon	per pick up	2	\$ 21.26	\$ 31.90	\$ 53.16
Cart - 64 gallon	per pick up	3	\$ 31.90	\$ 47.85	\$ 79.75
Cart - 64 gallon	per pick up	4	\$ 42.53	\$ 63.80	\$ 106.33
Cart - 64 gallon	per pick up	5	\$ 53.16	\$ 79.75	\$ 132.91
Cart - 64 gallon	per pick up	6	\$ 63.80	\$ 95.69	\$ 159.49
Cart - 64 gallon	per pick up	7	\$ 73.37	\$ 110.05	\$ 183.42
Cart - 64 gallon	per pick up	8	\$ 85.06	\$ 127.59	\$ 212.64
Cart - 64 gallon	per pick up	> 8	\$ 10.63	\$ 15.95	\$ 26.59
One cubic yard	per pick up		\$ 26.61	\$ 39.92	\$ 66.53
Two cubic yards	per pick up		\$ 43.23	\$ 64.84	\$ 108.07

Three cubic yards	per pick up		\$ 59.84	\$ 89.75	\$ 149.58
Four cubic yards	per pick up		\$ 76.43	\$ 114.64	\$ 191.07

**Rolloff Industrial Rates**

Fees include container and the disposal fee and are per haul.

Note: Excess disposal charge applies to each ton or fraction thereof above the maximum weight.

<b>Non-Compacted Container</b>		
<b>Size</b>	<b>Collection Fee - Recycling</b>	<b>Collection Fee – MSW</b>
6 cubic yard	\$259.07	\$345.43
8 cubic yard	\$267.38	\$356.51
10 cubic yard	\$275.69	\$367.58
14 cubic yard	\$292.32	\$389.76
20 cubic yard	\$325.75	\$434.33
30 cubic yard	\$426.19	\$568.25
40 cubic yard	\$610.39	\$813.85

<b>Maximum Weight Included in Base Fee</b>	
<b>Size</b>	<b>Weight in Tons</b>
6 cubic yard	4 tons
10 cubic yard	4 tons
14 cubic yard	5 tons
20 cubic yard	5 tons
30 cubic yard	5 tons
40 cubic yard	6 tons

<b>Compacted Container</b>		
<b>Size</b>	<b>Collection Fee - Recycling</b>	<b>Collection Fee - MSW</b>
6 cubic yard	\$602.79	\$803.72
8 cubic yard	\$652.29	\$869.72
10 cubic yard	\$701.78	\$935.70
14 cubic yard	\$800.70	\$1,067.60
20 cubic yard	\$949.10	\$1,265.47
24 cubic yard	\$1,048.08	\$1,397.44
25 cubic yard	\$1,072.79	\$1,430.38
30 cubic yard	\$1,196.47	\$1,595.29
34 cubic yard	\$1,295.41	\$1,727.21
38 cubic yard	\$1,394.35	\$1,859.13
40 cubic yard	\$1,443.84	\$1,925.12



**SPECIAL SERVICES**

**Monthly Front End Load Push & Return Charges**

<b>Distance</b>	<b>Charge (per push &amp; return)</b>
0' - 5'	No Charge
6' - 25'	\$9.95
26' - 50'	\$19.88
51' - 75'	\$29.82
76' - 100'	\$40.63
101' - 125'	\$50.58
126' - 150'	\$61.43

**Locks**

Installation - One Time Charge	\$88.08
Replacement Lock	\$17.58

**Lock/Unlock Bin Charge**

Lock/Unlock Fee	\$6.78
-----------------	--------

**Container Exchange**

<b>One annual container exchange</b>	<b>No charge</b>
Additional container exchanges - Commercial	\$115.56
Additional container exchanges - Residential	\$30.09

**Reinstatement of Accounts**

Commercial	\$34.21
Residential	\$16.52

<b>Other Rolloff Services – 2016/2017</b>	
Excess per ton disposal charge for MSW	\$121.56
Service fee-covered rolloff boxes	\$46.44
Cancellation Fee	\$120.75
Bin Move	\$120.75
Container Delivery	\$35.14

**Special Collection Rates – Commercial and Multi-Family Dwelling MSW**

<b>Monday – Saturday</b>		
	<b>MSW</b>	<b>Recycling</b>
1 cubic yard FEL bin	\$49.06	\$36.80
2 cubic yard FEL bin	\$79.68	\$59.76
3 cubic yard FEL bin	\$110.31	\$82.73
4 cubic yard FEL bin	\$140.90	\$105.68
6 cubic yard FEL bin	\$202.11	\$151.58
7 cubic yard FEL bin	\$232.72	\$174.54
8 cubic yard FEL bin	\$263.35	\$197.51

**Special Collection Rates – Compacted Front-End Loader Commercial MSW**

Applies to services outside normal collection schedule. Charges are per pickup.

3 cubic yard FEL compacted bin	\$363.32
4 cubic yard FEL compacted bin	\$483.06
5 cubic yard FEL compacted bin	\$603.74
6 cubic yard FEL compacted bin	\$724.48

**Bulky Items Pickup**

Applies to pickups in excess of 2 times per year for single-family residences. Bulky items are defined in section 1.8 of the Franchise Agreement for Municipal Solid Waste Collection Services.

Pickup fee for up to two items	\$59.75
Pickup fee for each additional item	\$22.19
Additional fee for appliances containing refrigerants	\$46.95

**Special Request Services**

Contractor will provide customer with a cost estimate prior to commencing services. \$276.64/hour

**Emergency Services**

Solid Waste Disposal Base - per ton	\$56.07
Solid Waste Disposal Regulatory Fees - per ton	<u>\$19.42</u>
Solid Waste Disposal Total - per ton	<u>\$75.49</u>

Recycling Fee/ton \$36.90

Transportation Rate per Hour - roll off vehicles	\$178.37
Transportation Rate per Hour - FEL vehicles	\$210.35
Transportation Rate per Hour - side loader vehicles	\$184.52
Transportation Rate per Hour - rear loader vehicles	\$175.73

**Miscellaneous**

Annual Funding for City Litter Receptacles	\$10,613.94
Amount Regarded as Significant	\$28,307.69
Oil Filter processing Fee - per filter	\$3.57
Organics Verification Audit Allowance	\$35,460.28

**EXHIBIT B**  
**UNIT PRICE BREAKDOWN**  
**January 1, 2016 – December 31, 2017**

Description	Fixed Unit Price	Disposal Unit Price	Variable Unit Price	Fuel Unit Price	Fran. Fee	IWM Fee	Total Unit Price
Single Family Dwellings MSW - 20 gal	\$0.76	\$5.17	\$5.44	\$0.36	\$1.59	\$2.54	\$15.86
Single Family Dwellings MSW - 32 gal	\$0.80	\$5.45	\$5.62	\$0.36	\$1.65	\$2.65	\$16.53
Single Family Dwellings MSW - 64 gal	\$0.92	\$6.78	\$6.41	\$0.42	\$1.96	\$3.14	\$19.63
Single Family Dwellings MSW 96 gal	\$1.71	\$12.24	\$12.01	\$0.77	\$3.61	\$5.78	\$36.12
Single Family Dwellings - Organic Waste Processing	\$0.29	\$0.01	\$1.26	\$0.09	\$0.18	\$0.00	\$1.83
Single Family Dwellings – Organic Waste Collection	\$1.06	\$0.75	\$4.73	\$0.30	\$0.76	\$0.00	\$7.60
Single Family Dwellings – Recyclables Collection	\$0.13	\$0.10	\$3.76	\$0.22	\$0.47	\$0.00	\$4.68
Single Family Dwellings - Bulky Goods Collection	\$0.02	\$0.09	\$0.77	\$0.03	\$0.12	\$0.20	\$1.23
Multi-Family Dwellings – Recycling Collection	\$0.05	\$0.10	\$4.97	\$0.30	\$0.60	\$0.00	\$6.02
Multi-Family Dwellings – MSW	\$0.76	\$5.74	\$5.63	\$0.36	\$1.69	\$2.70	\$16.88
Front End Load – MSW	\$0.48	\$6.36	\$4.60	\$0.30	\$1.89	\$2.13	\$15.76
Front End Load – Commercial Organics	\$0.53	\$12.72	\$5.06	\$0.32	\$0.00	\$0.00	\$18.63
Rolloff, Non-compacted – MSW	\$0.63	\$9.06	\$6.38	\$0.42	\$2.66	\$2.99	\$22.14
Rolloff, Compacted – MSW	\$0.75	\$36.19	\$3.59	\$0.22	\$6.56	\$7.38	\$54.70
Single Family Dwelling Backyard Service	\$0.00	\$0.00	\$13.24	\$ .85	\$1.91	\$3.05	\$19.05
Commercial Backyard Service	\$0.00	\$0.00	\$16.38	\$1.03	\$2.80	\$3.15	\$23.36

Single Family Dwelling and Multi Family Dwelling recycling prices quoted as a per unit, per month fee. All other prices are per cubic yard. Special MSW collection rates will be adjusted by the same percentage applied to the front-end load MSW rate schedule.

**EXHIBIT C**

**INTENTIONALLY LEFT BLANK**

**FORMERLY  
PERFORMANCE STANDARDS**

**The Performance Standards have been incorporated into Articles 4 and 5.**

**EXHIBIT D**

**GUARANTEE OF PARENT CORPORATION**

**Need from Republic**

## **EXHIBIT E**

### **WASTE SCREENING PROGRAM**

#### **I. RECOGNITION**

The cornerstone to the Waste Screening Program is recognition:

Customers and residents must recognize that Hazardous Waste must not be placed in MSW, Recycling, or Organic Waste containers.

Operations and Customer Service personnel must be able to articulate proper disposal options for Hazardous Waste and cannot assume the customer or resident understands these options.

Drivers must be able to recognize when Hazardous Waste is either, set out for collection or loaded into their vehicle. They must also be able to identify the waste by sight or smell.

Contractor recognizes that training and education are very important components to the success of this program and we have identified various opportunities to communicate; identification, proper disposal methods, or any new regulatory changes to both Contractor personnel and our customers.

- Monthly Training meetings
- Upon initial subscription of service (Welcome Packet)
- Change in service levels or extra collections communications
- Annual Newsletter communication
- Periodic "On Hold" message
- Bulky Goods collection appointments

#### **II. SURVEILLANCE**

In all cases, if any Contractor driver notices Hazardous Waste prior to dumping, the load will not be collected and a notice with proper handling and disposal instructions will be left for the resident or customer. The driver will also report the situation to the dispatcher, who will in turn attempt to notify the customer by phone.

##### **Residential MSW/Recycling/Organic Waste Collection**

Drivers will use mirrors to visually monitor the contents of each container emptied.

If the driver detects any hazardous or illegal waste by sight or smell they will immediately notify the dispatcher.

Proper response procedures will be followed (see below)

##### **Commercial MSW/Recycling Collection**

Drivers will use mirrors to visually monitor the contents of each container emptied.

If the driver detects any hazardous or illegal waste by sight or smell they will immediately notify the dispatcher.

Proper response procedures will be followed (see below).

### **Tipping at the Landfill or Transfer Facility**

The landfill transfer facility operator will be responsible for screening and identifying hazardous waste at the landfill.

If the landfill operator detects hazardous waste before the driver departs the tipping area, the driver will remain at the scene and notify dispatch.

Appropriate hazardous waste response will be followed (see below).

### **Tipping at Contractor's Organic Waste Processing Facility**

Spotters will visually inspect tipped loads for hazardous waste.

If a hazardous waste is detected, appropriate hazardous waste response will be followed (see below).

## **III. HAZARDOUS WASTE RESPONSE**

In the event that any hazardous or suspected hazardous waste is commingled with solid waste stream, Contractor shall take immediate and appropriate action to contain and remove it. Operations personnel will be trained both in hazardous waste identification and appropriate responses to hazardous waste incidents. Contractor maintains OSHA qualified on-site first responders to hazardous material incidents in accordance with OSHA Standard 29CFR1910.120, Hazardous Waste Operations and Emergency Response. Contractor maintains a self-contained spill response vehicle and crew to handle minor incidents.

Periodic training will be provided and recorded in order to ensure skill proficiency. Training programs will consist of monthly safety meetings for all drivers, mechanics, and other support personnel, including the identification of, and response to, hazardous material. Specialized training for spill responders in accordance with OSHA Standards 29CFR1910.120 will be conducted, as well as refresher courses required to maintain certification.

### **Procedures for Handling Hazardous Waste**

The procedures for handling hazardous waste will be as follows:

- Notification of suspected hazardous waste in the waste stream will be communicated from the driver to the dispatch center.
- Dispatch will notify the field supervisor and management to determine appropriate response level.



- Trained personnel will be assigned to inspect any material suspected of containing hazardous waste. (Inspection involves identification of both labeled and unlabeled hazardous waste containers and material.)
- Coordinating instructions will be issued by the team leader depending on the toxicity or volatility of the material.
- If the amount of hazardous waste is large or extremely toxic, the spill response team will be assembled. Otherwise, trained Contractor personnel will properly handle the hazardous waste.
- Depending on the situation and material to be handled, the waste will be segregated and containerized for transport and manifesting.
- If the toxicity or volatility of the hazardous material could potentially affect public safety, the Fremont Fire Department and Solid Waste Officials will be notified for oversight and assistance.
- For situations that require specialized equipment or involve extremely large amounts of material, an outside hazardous material-handling firm will be called to assist in the response.
- If the generator can be identified, the appropriate City Code Enforcement Agency will be notified.

### **Contractor Recycling and Organic Waste Processing Facility**

If hazardous waste is discovered after loads have been tipped at Contractor's Organic Waste processing facility, the following procedures will be followed:

- Site employees will immediately cordon the area and notify management.
- Small amounts will be properly handled by trained facility personnel.'
- Intact containers will be moved to a designated storage area by trained personnel.
- If extremely toxic material or large ruptured or leaking containers are found that could potentially affect public safety, the local fire department will be notified for oversight and assistance.
- For situations that require specialized equipment or involve extremely large amounts of material, an outside hazardous material-handling firm will be called to assist in the response.

EXHIBIT F  
REPORTING REQUIREMENTS

**F.1 Monthly Franchise Fee Reports**

Contractor shall submit monthly reports and documentation necessary for verification of the monthly franchise fee submittal to the City no later than the 19<sup>th</sup> of the month. The following reports are generally required:

1. Wire Cover Transmittal
  - a. Description of fee payments and adjustments
  - b. Account code
  - c. Net payment due
  
2. Wire Summary
  - a. Fees and deductions by service category/type
  - b. Detail by month
  
3. Franchise Fees and IWM Fees
  - a. Remittance by service category
  
4. Summary of Customer Billings
  - a. Amount billed and percent of billing by service category with cumulative annual total
  
5. Summary of Customer Receipts
  - a. Amount received and percent of receipts by service category with cumulative annual total
  
6. Receipts Adjustments
  - a. Amount by adjustment type with cumulative annual total
  
7. Disposal Differential Report
  - a. Tons disposed and differential collected by service type with cumulative annual total
  
8. Food Waste Charges
  - a. Total charges by customer detailing customer portion and City portion

9. City Subsidy for FUSD Food Waste Program
  - a. Total charges by school site detailing FUSD portion and City portion
10. Used Oil Filters & HHW Fee Summary
  - a. Oil filter disposal fees
  - b. HHW fees collected for remittance to City
11. Miscellaneous Reports Required for Franchise Fee Reconciliation
  - a. Backup documentation detailing Rolloff service activity, City collection services, BLT disposal trips and weights, receipts for e-waste collection or contractor services, etc.

## **F.2 Monthly Diversion Reports**

Contractor shall submit monthly reports to the City no later than the 19<sup>th</sup> of the month. Contractor shall typically provide the following diversion and customer service information by program (e.g. SFD, MFD, Commercial FEL, Roll off, City Facilities, etc.):

1. Monthly Collection Report/Summary of All Services, listed by generator and service type for MSW, recyclables, and organics collection
2. Customer Service Call Summary and Statistics
  - a. Call volume by type of inquiry with cumulative annual total
  - b. Customer call hold times
3. Summary of Materials Managed at Newby Island
  - a. Fremont Disposal Report detailing load information, commodity, and source.
4. Oil Report
  - a. Summary of oil jugs and oil filters collected
  - b. Oil jug and filter bag inventory

## **F.3 Annual Reports**

Contractor shall submit annual reports to the City no later than March 31. Contractor shall typically provide the following reports:

1. Summary Diversion Report

- a. Materials collected by generator, program and commodity, presented in monthly and annual totals
2. Customer Service Reports
  - a. Customer service call summary by type of inquiry and average hold time, reflected in monthly, quarterly and annual totals
3. Customer Service Levels
  - a. Annual update of service accounts reflecting total residential customers by refuse container size, recycling, and yardwaste, including Lifeline, Senior, and handicap customers
  - b. Yardwaste and Recycling account summary for HHW fee calculation
  - c. Front load bin service levels including container size, service frequency, and number of containers
  - d. Annual total of rolloff and compactor service with number of pulls by container size for compacted and non-compacted waste
4. Route Summary
  - a. Summary of total routes including route number, route type, vehicle type, day of week in operation
5. Equipment Inventory
  - a. Vehicle listing with truck number, year, make , model, serial number, date in service, title date, type, license plate, etc.
6. Public Education Activity
  - a. Public outreach report detailing activities involving print communications
  - b. Multi-Family outreach including outreach materials utilized and activities
  - c. Summary of website initiatives and revisions
  - d. Summary of special events, media contacts and advertising, community meetings, and school environmental education
7. Outreach Materials
  - a. Samples of outreach pieces utilized and updated during reporting year

8. City Services Summary

- a. City of Fremont collection sites including name and address of site, type of service, container volume and service frequency

9. City Street Litter Receptacles Serviced By Republic Services

- a. Updated listing of street litter receptacles serviced by Republic Services including container quantity and location

**EXHIBIT G**  
**LIST OF CITY STREET RECEPTACLES**

City street receptacles serviced by Contractor

<b># of Cans</b>	<b>Centerville Area</b>
1	36601 Fremont Blvd at Fremont Flowers
1	37085 Fremont Blvd at Creamery
1	37263 Fremont Blvd at The Pit Stop
1	37311 Fremont Blvd at Commercial Building
1	37359 Fremont Blvd at Ramirez Market
1	37397 Fremont Blvd at Center Theatre
1	37427 Fremont Blvd at Kung-Fu
1	37394 Fremont Blvd at Connie's
1	Bus Stop just North of Peralta Blvd
5	Amtrak Station behind Bus Stop
1	37156 Fremont Blvd at Mr. B's Auto Sales
1	37070 Fremont Blvd at Center Square
1	36800 Fremont Blvd at Centerville Rents
1	36640 Fremont Blvd at Dentist Office
1	36600 Fremont Blvd at Arden Plaza
1	Fremont Blvd just South of Central Avenue
3	On Central Avenue by Maple, Joseph & Dusterberry
2	Paseo Padre at Blackstone
4	Mowry Ave
<b>Total 29</b>	

<b># of Cans</b>	<b>Niles Area</b>
1	37161 Niles Blvd at Bus Stop
1	Niles Blvd at G St
1	37313 Niles Blvd at G St
1	37395 Niles Blvd at Fremont Photography
1	37477 Niles Blvd at Country Cutters
1	37507 Niles Blvd at Hotel
1	37533 Niles Blvd at Jade Village
1	37573 Niles Blvd at Intimate Flame
4	Niles Blvd at I St
1	37651 Niles Blvd at Bronco Billy's
1	37671 Niles Blvd at JD's
2	37695 Niles Blvd at Munoz Liquors
1	37713 Niles Blvd at Joe's Corner
1	37759 Niles Blvd at Niles Antiques
1	37769 Niles Blvd at Balloons
1	37815 Niles Blvd at Smith's
2	Niles Blvd-Across from J St
1	Niles Blvd-Across from I St
1	Niles Blvd-Across from H St at restrooms
1	Niles Blvd-Across from 37457 Niles Blvd
1	37378 Niles Blvd at Niles House
1	Niles Blvd-Across from 37457 Niles Blvd at bus stop
1	37298 Niles Blvd at Precision Auto
<b>Total 28</b>	

# of Cans	Irvington Area
1	40861 Fremont Blvd at Firestone
1	3933 Washington Blvd at under Blockbuster sign
1	40820 Fremont Blvd at 7-11
1	40648 Fremont Blvd at Tire Experts
10	Bay St between Chapel Way and Fremont Blvd
1	Washington Blvd and Fremont Blvd at bus stop
1	Corner of Union St and Fremont Blvd near Wells Fargo
<b>Total 16</b>	

# of Cans	Mission San Jose
2	Mission Blvd and Washington Blvd
1	Mission Blvd and Anza St
2	Mission Blvd and Cedar St
2	Warm Springs Blvd
<b>Total 7</b>	

# of Cans	Liberty Area
1	39100 Liberty St @ Bus Stop
1	West side of Liberty St, South of Walnut @ Bus Stop
1	North side of Beacon by State St @ Bus Stop
2	Each side of Beacon just east of Fremont Blvd @ Bus Stops
2	State St between Capital & Beacon
<b>Total 7</b>	

# of Cans	BART Station
1	Civic Center @ Bart Way
<b>Total 1</b>	

# of Cans	Downtown Area
20	Capital Avenue
<b>Total 20</b>	

## EXHIBIT H

### SCHEDULE OF LIQUIDATED DAMAGES

January 1, 2016 – December 31, 2017

The City Manager or designee, may impose the following liquidated damages upon Company, in addition to any other available remedies City may have.

	Occurrence	Payment per Occurrence
a.	For each failure to collect MSW, Recyclables, or Organic Waste which has been properly delivered for Collection on the scheduled Collection day:	\$66.33
b.	For each occurrence of excessive noise in violation of Section C.9.2 of Exhibit C:	\$66.33
c.	For each occurrence of discourteous behavior:	\$132.65
d.	For each occurrence of collecting MSW, Recyclables or Organic Waste during unauthorized hours:	\$265.31
e.	For each failure to respond to a Customer complaint in a timely manner:	\$66.33
f.	For each failure to have Collection workers dressed in suitable and acceptable uniform clothing and badge (per employee per day):	\$66.33
g.	For each failure to notify the City Manager of material operation changes (each day):	\$265.31
h.	Failure to submit timely reports. Any report shall be considered late until such time City receives a materially correct and complete report. For each business day a report is late:	\$132.65
i.	Late Franchise Fee	\$1,000.00/day
j.	Failure To Compost (fee per ton)	\$11.99



Exhibit I  
Service Center Drop-off Operations

Contractor shall operate a Drop-off Program for Fremont residents with the following guidelines:

**Service Center Hours:** Monday through Friday from 8:00 am to 4:00 pm

**Accepted Items**

**Item Limit**

Misc. Electronic Waste:  
computer equipment, TV's,  
stereos, microwave ovens,  
VCR and DVD players,  
answering machines, other  
electronic waste identified as  
universal waste

8 Items per Visit

Fluorescent Light Tubes

Residential Quantities

Household Batteries

No limit

Cell Phones

No limit

A \$10.00 fee will apply for each electronic item over the limit of 8 per visit.  
Fremont residential customers are limited to two visits per year.

## **EXHIBIT J**

### **PROPOSAL FROM REPUBLIC SERVICES – TERMS AND CONDITIONS FOR 10 YEAR OPTION**

#### **1. NEW AND EXPANDED SERVICES**

- CNG (compressed natural gas) fleet conversion- pending approval of CNG station-4-year phase in period
- Custom services for hard to service residential areas
- Customer services for Mixed Use High Density customers
- Mail-in Sharps program
- Continued expansion of Organics program to MFD and commercial customers
- Increase Commercial Organics monthly tonnage limits
- Continued expansion of Recycling programs to all business segments

#### **2. RATES**

In addition to the current biennial rate adjustments, the following adjustments will be made to the existing maximum service rates net of franchise and integrated waste management fees:

- 2% in rate year 2018
- 2% in rate year 2020
- 1.75% in rate year 2022

City and Contractor to discuss alternative biennial adjustment index(s) or revised floor to certain indexes to more accurately reflect rates of increase for certain costs (i.e. labor, fuel).

#### **3. PUBLIC EDUCATION AND SUPPORT**

- Additional entry level/intern Recycling Coordinator
- Cascadia Eco-Diversion Calculator (s) for use by Republic Services and City

#### **4. CONTAINER REPLACEMENT**

- Convert all plastic containers to StopWaste colors-4-year phase in period
  - Split City into 4 segments for replacement
- Replace all metal FL containers over extension period
  - Year 1 through 5- replace 15% each year
  - Year 6 through 10- replace 5% each year