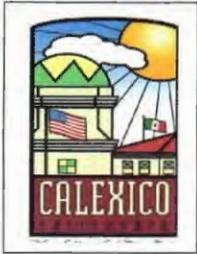


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# AGENDA STAFF REPORT

**DATE:** September 18, 2019

**TO:** Mayor and City Council

**APPROVED BY:** David Dale, City Manager

**PREPARED BY:** David Dale, City Manager

**SUBJECT:** Authorize the City Manager to Sign Agreement with Republic Services for the Collection and Disposal of Solid Waste, and Street Sweeping Services.

=====

## Recommendation:

Authorize the City Manager to Sign Agreement with Republic Services for the Collection and Disposal of Solid Waste, and Street Sweeping Services.

## Background:

On December 2, 1997, the City of Calexico entered into an agreement with Allied Waste Services (d.b.a. Republic Services of Imperial County, or Republic) for waste collection and disposal services. The term for this agreement was for seven years (January 1, 1998 through December 31, 2004). On March 15, 2005, the City of Calexico extended the contract with Allied Waste Services for an additional five years (January 1, 2005 through December 31, 2009) On November 21, 2007, the City of Calexico extended the contract with Allied Waste Services for an additional ten years. The existing agreement expires December 31, 2019.

## Discussion & Analysis:

On January 25, 2019, the City of Calexico Public Works Department solicited proposals from qualified consultants for the development of an RFP/RFQ for Solid Waste Collection, Hauling & Recycling. The city received three proposals from qualified consulting firms. After a detailed review of the proposals, the firm that ranked the highest of the evaluation committee was R3 Consulting Group, Inc. In a Council meeting on March 6, 2019, the City Council rejected staff's recommendation to solicit proposals for a competitive bidding process for these services and directed staff to negotiate a new contract with Republic.

Staff proceeded per Council direction and enlisted R3 to assist the city with the process. R3 reviewed the city's existing agreement and services, evaluated the feasibility of new programs, and assisted the City in identifying solid waste collection services enhancements that best meet

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the city's solid waste and recycling needs. R3 assisted the City in negotiations with Republic and helped develop the agreement to help the City meet its goals, especially related to AB 939, SB 1383 as required by Federal, State and local agencies.

This new agreement is for a (10) year period, with options for two (5) year extensions. In addition to the standard weekly collection of garbage, recyclables, bulky waste and organics, the agreement negotiated with Republic includes the following salient items:

1. Republic will provide downtown cleaning services, four hours a day, Monday through Friday at no cost to the City.
2. Republic will provide street sweeping services. Street sweeping services shall include (2) street sweepers, and (1) back up street sweeper. The downtown area will be swept Monday, Wednesday and Friday. Every street in the city will be swept twice monthly, both sides of the street. The cost of the street sweeping will be \$245,000 per year, to be paid from HUTA funds. Currently the city has only (1) street sweeper nearing the end of its life expectancy and is unable to sweep each city street even once monthly.
3. Republic will maintain community cleanup events within the city.
4. Future annual customer rate adjustments will be based on the Consumer Price Index for All Urban Consumers: Water and Sewer and Trash Collection Services, not to exceed 4.0%, or be less than 1.0%.
5. Republic will provide a monthly Franchise Fee to the city equal to 12% of the gross receipts for collection services.
6. To help the city to meet its obligations under applicable law, Republic will fund a one half (1/2) time City Staff position at \$60,000 a year starting January 1, 2020, and every January 1 for the length of this Agreement. This amount is to be adjusted at the same rate as the customer rate adjustment.
7. To offset direct impacts to the city roads and streets, Republic will pay a Vehicle Impact Fee to the city every year in the amount of \$50,000.
8. Republic will pay to the city every year a \$10,000 to benefit the downtown area. This amount is to be adjusted at the same rate as the customer rate adjustment.
9. Republic will award \$1,300 per year for the purpose of funding (3) scholarships.

### **Fiscal Impact:**

The General Fund will be positively affected. In addition to the 12% Franchise Fee that has not changed, the first year there will be \$70,000 benefit to the General Fund. This will increase each year per the annual rate adjustments.

The annual Vehicle Impact Fee has not changed.

Highway Users Tax Account (HUTA): \$245,000 per year for street sweeping.

**Coordinated With:**

Public Works Department.  
City Attorney.

**Attachment(s):**

1. Agreement of Professional Services between City of Calexico and Allied Waste Transportation, Inc., d.b.a. Republic Services of Imperial County

**COLLECTION SERVICES AGREEMENT  
FOR THE PROVISION OF**

**The Collection, Transportation, Recycling,  
Composting and Disposal of Solid Waste, Recyclable  
and Compostable Materials**

**Executed By and Between the  
City of Calexico and  
Allied Waste Transportation, Inc., d.b.a. Republic  
Services of Imperial County**

**Approval Date: XX, 2019**

**Effective Date: January 1, 2020**

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This Agreement for the Provision of Residential and Commercial Solid Waste, Recyclable Materials and Organics Collection Services ("Agreement") in entered into this \_\_\_ Day of \_\_\_, 2019 by and between the City of Calexico, a general law city and municipal corporation in the State of California, ("CITY") and Allied Waste Transportation, Inc., doing business as Republic Services of Imperial County, ("CONTRACTOR") on the terms and conditions set forth herein. CITY and CONTRACTOR may be referred to herein individually as a "Party" or collectively as the "Parties".

## RECITALS

A. Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

B. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("**AB 939**" or the "**Act**") (codified at Public Resources Code §§ 4000 *et seq.*) established a solid waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices for solid waste attributed to sources within their respective jurisdictions; and

C. The Act provides that aspects of solid waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services; and

D. The Act confers discretion on cities to provide for the delivery of solid waste services to its residents by the CITY itself providing the services or by the CITY conferring the authority to do so on private profit-making entities and when cities confer the authority to provide solid waste services on private profit-making entities; cities are authorized to do so by means which include the award of a nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise; and

E. The City of Calexico's Municipal Code implements Article XI, § 7 of the California Constitution and the Act in the City of Calexico and protects public health and safety by authorizing the City Council to provide solid waste service itself or to award one or more franchises, permits or licenses to provide that service; and

F. The City Council has determined, in the exercise of its legislative discretion, that it is in the best interests of the CITY and its residents for the CITY to franchise comprehensive solid waste service to a private enterprise with the special skills, knowledge, facilities and other capabilities to ensure a high level of service and compliance with the existing statutory and regulatory requirements; and

G. CITY and CONTRACTOR are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of residential and commercial Solid Waste, including AB 939, the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. §§ 9601 *et seq.*; the Electronic Waste Recycling Act of 2003 (SB 20, Sher, Chapter 526, Statutes of 2003; SB 50, Sher, Chapter 863, Statutes of 2004; AB 575, Wolke, Chapter 59, Statutes of 2011), laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices ("**UWED**"), non-empty aerosol cans,

fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries [burglar alarm and emergency light batteries] alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches; and

H. CITY and CONTRACTOR desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, CITY is not thereby becoming a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3) and that it is CONTRACTOR, an independent entity, not CITY, which will arrange to collect Solid Waste from SFD, MFD, CITY and Commercial Service Units in the City of Calexico, transport for recycling and disposal and dispose of Solid Wastes which may contain small amounts of household products with the characteristics of hazardous wastes, collect and compost Organic Waste and collect and recycle Recyclable Materials from SFD, MFD, CITY, and Commercial Service Units in the City of Calexico, and collect and recycle or dispose of Construction and Demolition Materials; and

I. CITY and CONTRACTOR agree that it is CONTRACTOR, and not CITY, which will select the landfill and recycling and organics diversion or processing facilities for all recyclable and non-recyclable residential, multi-family and commercial Solid Waste and Construction and Demolition Materials which Contractor will arrange to collect, that CITY has not, and by this Agreement does not, instruct CONTRACTOR on its collection methods, nor supervise CONTRACTOR in the collection of waste and nothing in this Agreement or other action of the CITY shall be construed to give rise to any inference that the CITY has any title, ownership or right of possession of such Solid Waste; and

J. CONTRACTOR represents and warrants to CITY that CONTRACTOR has the experience and qualifications to conduct recycling and waste diversion programs, to provide CITY with information sufficient to meet the CITY's reporting requirements to CalRecycle and other agencies under the Act, to meet CITY's other requirements under the Act, to arrange with persons in charge of day-to-day activities of Service Units in the City of Calexico for the collection, safe transport and disposal of Solid Wastes which may contain small amounts of household products with the characteristics of Hazardous Wastes, in a safe manner which shall minimize the adverse effects of collection vehicles on air quality and traffic, and that CONTRACTOR has the ability to indemnify CITY in accordance with this Agreement; and

K. The City Council of the City of Calexico determines and finds pursuant to California Public Resources Code § 40059(a)(1) that the public interest, health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles, the implementation of measures consistent with the City's Source Reduction and Recycling Component, and in an effort to reduce the CITY's potential CERCLA liability, would be served if CONTRACTOR were to be awarded an exclusive Franchise for collection, recycling, diversion and disposal of Solid Waste from Service Units in the City of Calexico; and

L. Previously, CITY and CONTRACTOR entered into that "Agreement between City of Calexico and Calexico Sanitation Service Company, doing business as Calexico Sanitation Service Company," with the term commencing November 26, 1997, for solid waste collection services, as amended on March 15, 2005 and November 21, 2007 (collectively "Prior Agreements"). The Parties agree that solid

waste collection services shall continue to be provided by CONTRACTOR under the Prior Agreements until 11:59 p.m. on December 31, 2019 and that solid waste collection services shall resume in accordance with the service levels and new rates for services as set forth in this Agreement as of 12:00 a.m. January 1, 2020 ("Effective Date") at which time the Parties agree that the Prior Agreement shall be superseded by this Agreement and this Agreement shall be controlling.

**M.** In recognition of the changes in State Law precluding diversion credit for the use of organics as Alternate Daily Cover ("ADC") at landfills effective as of January 1, 2020, CITY and CONTRACTOR desire to consider and potentially negotiate a new program for organics diversion in the CITY. If the parties agree on a new organics program for the CITY, this Agreement will be amended and such amendment will provide for implementation of the new organics program by CONTRACTOR and a new rate schedule for all of CONTRACTOR'S services that will supersede the rate schedule in Exhibit 1. The parties anticipate such negotiations will be concluded by December 31, 2019. Should the parties not reach agreement on a new organics diversion program, this Agreement will remain in full force and effect, and CONTRACTOR will continue to use organics collected in the CITY as ADC at the landfill used by CONTRACTOR. The CITY recognizes that without agreement with CONTRACTOR on a new organics diversion program, the CITY will no longer receive diversion credit for CONTRACTOR'S collection and disposal of organics collected by CONTRACTOR in the CITY.

## **OPERATIVE PROVISIONS**

Now, therefore, in consideration of the mutual covenants, agreements and consideration contained in this Agreement, CITY and CONTRACTOR agree as follows:

### **ARTICLE 1. Definitions**

For the purpose of this Agreement, the definitions contained in this Article apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender includes the feminine gender. The meaning of terms or words not defined in this Article will be as commonly understood in the solid waste collection services industry when the common understanding is uncertain.

1.01      AB 341. State of California Assembly Bill No. 341 approved October 5, 2011. AB 341 requires businesses, defined to include commercial or public entities that generate more than 4 cubic yards of commercial solid waste per week or multifamily residential dwellings of 5 units or more to arrange for recycling services, on and after July 1, 2012. AB 341 requires jurisdictions, on and after July 1, 2012, to implement a commercial solid waste recycling program.

1.02      AB 939. State of California Assembly Bill No. 939 approved September 29, 1989 enacting the California Integrated Waste Management Act of 1989, codified in part at Public Resources Code §§ 40000 and following, as it may be amended and as implemented by the regulations of the California Department of Resources Recycling and Recovery (CalRecycle), or its successor agency.

1.03      AB 939 Administrative Fee. Fee or assessment set by the CITY which is intended to offset the CITY'S expenses in administering this Agreement and to compensate CITY for the costs

associated with compliance with AB 939. Any fees or assessments imposed under this Agreement shall be those, which the City Council may from time to time hereafter approve by resolution.

1.04 AB 1594. State of California Assembly Bill No. 1594 approved September 28, 2014. AB 1594 provides that the use of green material as Alternative Daily Cover does not constitute diversion through recycling and would be considered disposal.

1.05 AB 1826. State of California Assembly Bill No. 1826 approved September 28, 2014. AB 1826 requires each jurisdiction, on and after January 1, 2016, to implement an organic waste recycling program to divert organic waste from businesses. Each business meeting specific organic waste or solid waste generation thresholds phased in from April 1, 2016 to January 1, 2020 is required to arrange for organic waste recycling services.

1.06 Act. Act means the Integrated Waste Management Act of 1989, as amended (California Public Resources Code Section 40000 *et. seq.*).

1.07 Agreement. This written document and all amendments, between CITY and CONTRACTOR, governing the provision of Collection Services.

1.08 Agreement Administrator. The City Manager, or his or her designee, designated to administer and monitor the provisions of this Agreement.

1.09 Agreement Year. Agreement year means each twelve (12) month period from January 1<sup>st</sup> to December 31<sup>st</sup> during the term of this Agreement.

1.10 Annual Diversion Report. The annual report submitted by CONTRACTOR to the CITY describing the previous Calendar Year's diversion activities, diversion percentages and associated calculations and the description of the diversion activity planned for the upcoming year, if applicable.

1.11 Appendix. Appendix means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

1.12 Applicable Law. All Federal, State, county, and local laws, regulations, rules, orders, judgments, decrees, rulings, permits, approvals, or other requirement of any governmental entity or regulatory or quasi-regulatory authority having jurisdiction over an aspect of the Collection Services, including judicial interpretations thereof, that are in force on the Effective Date including without limitation AB 341, AB 939, AB 1594, AB 1826 and SB 1383, and as may be enacted, issued or amended thereafter, until termination or expiration of this Agreement.

1.13 Best Management Practice. Best Management Practice means the collection of written activities, practices, policies and procedures prepared and proposed by a responsible party, and then approved by the Agreement Administrator, to prevent or reduce, to the maximum extent that is technologically and economically feasible, the discharge of pollutants to the storm drain system which might be generated from any site in the CITY.

1.14      Bins. A metal or plastic container, with a capacity of one (1) cubic yard up to and including six (6) cubic yards, designed or intended to be mechanically dumped into a loader packer type truck that is approved for Collection Services by CITY. Bins may also include Compactors that are owned by Commercial Service Units by which the Commercial Collection Service occurs. The specifications for CONTRACTOR-provided Bins are set forth in **Exhibit 4**.

1.15      Biohazardous or Biomedical Waste. Any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

1.16      Brown Goods. Electronic equipment such as stereos, televisions, computers, VCR's and other similar items collected from SFD Service Units.

1.17      Business. All retail, professional, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.

1.18      Business Days. Any Monday through Friday, excluding any holidays as defined in Section 3.06.

1.19      Calendar Year. Each twelve (12) month period from January 1 to December 31.

1.20      Carts. A heavy plastic receptacle with a rated capacity of at least twenty thirty-two (32) and not more than one-hundred (100) gallons, having a hinged tight-fitting lid and wheels, that is approved by the Agreement Administrator for use by Service Recipients for Collection Services under this Agreement. The specifications for CONTRACTOR-provided Carts are set forth in **Exhibit 4**.

1.21      CEQA. CEQA means the California Environmental Quality Act, codified at Cal. Pub. Res. Code 21000 et seq. as amended or superseded, and the regulations promulgated thereunder and as set forth in the California Code of Regulations.

1.22      CERCLA. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 and following, as may be amended and regulations promulgated thereunder.

1.23      Change in Law(s). Change in Law(s) means any of the following events or conditions which has a material and adverse effects on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management operation or maintenance of the operating assets or providing the franchise service or other matters to which Applicable Law applies:

(1)      the enactment, adoption, promulgation, issuance, modification, or written change of interpretation or enforcement in Applicable Law, including but not limited to new or increased fees and charges imposed by the State of California, the U.S. Federal government or in international law directly related to the collection, handling, processing, recycling or disposal of Solid Waste, or the enactment,

adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after Effective Date of any Applicable Law;

(2) the order or judgment of any Governmental Body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the CITY or of the CONTRACTOR, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, suspension, termination, interruption or imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Effective Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, of and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the CITY or of the CONTRACTOR, whichever is asserting the occurrence of a Change of Law; provided, however, that the contesting in good faith or failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

1.24 CITY. The City of Calexico, California.

1.25 City Collection Service. City Solid Waste Collection Service, City Organic Waste Collection Service, City Recycling Service, and Street Sweeping Services.

1.26 City Facility. City Facility(ies) means any building or other site owned, leased or used regularly and significantly and the space therein occupied by more than seventy-five percent (75%) by employees or contractors of the CITY, and excludes those portions of such facilities used by others.

1.27 City Manager. City Manager means the City Manager of the City of Calexico, or his or her designated representative, or any employee of the CITY who succeeds to the duties and responsibilities of the City Manager.

1.28 Code. Code means the City of Calexico Municipal Code.

1.29 Collection. The process whereby Residential, Commercial, and City Solid Waste are removed and transported to a Disposal Facility, Organic Waste Processing Facility or Materials Recycling Facility as appropriate.

1.30 Collection Services. SFD Collection Service, MFD Collection Service, Commercial Collection Service, City Collection Service, and Construction and Demolition Debris and Other Temporary Collection Service.

1.31 Commercial Collection Service. Commercial Solid Waste Collection Service, Commercial Organic Waste Collection Service, and Commercial Recycling Service. Commercial Collection Service shall also include Collection from MFD Service Units and City Service Units. Commercial Collection Service specifically includes the following:

- A. Commercial Garbage Collection Service. The Collection of Commercial Garbage by CONTRACTOR, from Commercial Service Units in the Service Area and the delivery of that Commercial Solid Waste to a Disposal Facility.
- B. Commercial Organic Waste Collection Service. The Collection of Organic Waste, by CONTRACTOR, from Commercial Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing and marketing of those Organic Waste materials, and the disposal of all Commercial Organic Waste Processing Residue.
- C. Commercial Recycling Collection Service. The Collection of Recyclable Materials, by CONTRACTOR, from Commercial Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all Commercial Recyclable Materials Processing Residue.

1.32 Compactor. Any Bin or Roll-Off Container that has a compaction mechanism, whether stationary or mobile.

1.33 CONTRACTOR. Republic Services of Imperial County, doing business as Allied Waste Transportation, Inc. the entity that has obtained from the CITY this Agreement to provide Collection Services.

1.34 CONTRACTOR Representative. The person, or designee, designated by the CONTRACTOR to manage the provisions of this Agreement.

1.35 Construction and Demolition Debris and Other Temporary Collection Service. Temporary Collection and processing of Construction and Demolition Debris and other Solid Waste, and which is placed in a Bin or Roll-Off Container.

1.36 Consumer Price Index Adjustment (CPI). The annual adjustment in CONTRACTOR'S rates based on the percentage increase, year over year, in the Consumer Price Index for All Urban Consumers: Water and Sewer and Trash Collection Services (CUSR0000SEHG), as published by the U.S. Bureau of Labor Statistics.

1.37 County. Imperial County, California.

1.38 Dispose or Disposal. The final disposition of Garbage collected.

1.39 Disposal Facility. The facility(ies) utilized by CONTRACTOR for the disposal, or processing as appropriate, of Garbage and other materials as appropriate and acceptable.

1.40      Dwelling Unit. Any individual living unit in a single-family dwelling, condominium, or town home (SFD), or MFD Units, or building intended for, or capable of being utilized for, residential living.

1.41      Effective Date. Effective date has the meaning specified in Section 2.1 of this Agreement.

1.42      Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, dead animals, and those wastes under the control of the Nuclear Regulatory Commission.

1.43      Franchised Diversion. Franchise Diversion means the rate of diversion that CONTRACTOR achieves as defined and calculated to achieve in Section 5.02.1.

1.44      Garbage Collection Service. The Collection and disposal of Garbage from City Service Units, Commercial Service Units, MFD Service Units, SFD Service Units.

1.45      Gross Receipts. All revenue amounts received by CONTRACTOR for the provision of Collection Services pursuant to this Agreement, calculated in accordance with Generally Accepted Accounting Procedures (GAAP). The term Gross Receipts, for purposes of this Agreement, does not include: (a) any revenues generated from the sale of Recyclable Material, compost product or energy; (b) other receipts from state and local government accounts (e.g. grants, cash awards and rebates) resulting from the performance of this Agreement; or (c) CITY franchise fees and other fees collected and paid by CONTRACTOR to CITY pursuant to this Agreement.

1.46      Household Hazardous Waste (HHW). Household products that can catch fire, react, or explode under certain circumstances, or that are corrosive or toxic as household hazardous waste. Products, such as paints, cleaners, oils, batteries, and pesticides can contain hazardous ingredients and require special care when you dispose of them.

1.47      Hazardous Waste. Any material that is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such law or regulations may be amended from time to time.

1.48      Materials Recycling Facility (MRF). Any facility designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale.

1.49      Maximum Service Rate. The maximum amount that CONTRACTOR may charge Service Recipients for Collection Services, as listed in **Exhibit 1**, and as may be adjusted in accordance with the provisions of this Agreement.

1.50      Mixed Use Dwelling. A building or structure which contains at least one (1) Business Service Unit and at least one (1) Dwelling Unit and utilizes a common Garbage Bin or Garbage Cart for the accumulation and Collection of Commercial Solid Waste.

1.51      MFD Collection Service. MFD Solid Waste Collection Service, MFD Recycling Service, MFD Organic Waste Collection Service, and MFD Large Item Collection Service. MFD Collection Service specifically includes the following:

- A.      MFD Garbage Collection Service. The Collection of Residential Garbage, by CONTRACTOR, from MFD Service Units in the Service Area and the delivery of that Residential Garbage to a Disposal Facility.
- B.      MFD Large Item Collection Service. The periodic on-call Collection of Large Items, by CONTRACTOR, from MFD Service Units in the Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate under the terms of this Agreement. MFD Large Item Collection Service may include the Collection of Large Items through the use of Roll-Off Containers.
- C.      MFD Organic Waste Collection Service. The Collection of Organic Waste, by CONTRACTOR, from MFD Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing and marketing of those Organic Waste materials, and the disposal of all MFD Organic Waste Processing Residue.
- D.      MFD Recycling Service. The Collection of Recyclable Materials by the CONTRACTOR from MFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all MFD Recyclable Materials Processing Residue.

1.52      Non-Collection Notice. A form developed and used by CONTRACTOR, as approved by CITY, to notify Service Recipients of the reason for non-collection of materials set out by the Service Recipient for Collection by CONTRACTOR pursuant to this Agreement.

1.53      Organic Waste Collection Service. The collection, processing and marketing of Organic Waste from City Service Units, Commercial Service Units, MFD Service Units, SFD Service Units (in the Service Area and the disposal of all Organic Waste Processing Residual.

1.54      Organic Waste Processing Facility. Any facility designed, operated and legally permitted for the purpose of receiving, and processing Food Waste, Green Waste, Large Green Waste, and Other Organics.

1.55      Organic Waste Processing Residual. Materials Collected pursuant to this Agreement, including both Organic Waste, and Contaminants, that is delivered to an Organic Waste Processing Facility but is Residual as defined in Section 1.58.

1.56      Overage. Overage means excess Garbage, Organic Waste and Recyclable Materials (i) placed inside a Container that prevents the lid on the Container from being closed so that the lid remains

open greater than 45-degrees or (ii) that could potentially result in excess materials spilling/dislodging during collection activity by CONTRACTOR's vehicles or require cleanup of the area around the Container.

1.57 Prohibited Waste. Any and all material, including but not limited to Hazardous Waste, the acceptance or handling of which by CONTRACTOR would cause a violation of any permit condition or legal or regulatory requirement, or 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, that *di 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 Prohibited Waste. Waste or material that is otherwise permitted may be considered Prohibited Waste or Material when commingled with Prohibited Waste or Material.

1.58 Rebuilt Vehicle. For purposes of this Agreement, "rebuilt," means, at a minimum, replacement of worn parts and reconditioning or replacement of hydraulic systems, transmissions, differentials, electrical systems, engines, and brake systems. In addition, the rebuilt vehicle must be repainted, and its tires must have at least eighty-five percent (85%) of tread remaining.

1.59 Recyclable Materials Collection Service. The collection, processing and marketing of Recyclable Material from City Service Units, Commercial Service Units, MFD Service Units, SFD Service Units and the disposal of all Recyclable Materials Processing Residual.

1.60 Residual or Residuals. Residual or Residuals means Garbage that is not diverted from landfill disposal after it has been delivered to an Organic Waste Processing Facility or a Recyclables Processing Facility for processing for diversion from landfill disposal. For determining the amount of Residuals in Recyclable Materials, CONTRACTOR shall conduct a characterization study of inbound Recyclable Materials by January 1<sup>st</sup> of each year to be used for the subsequent twelve (12) month period.

1.61 Roll-Off Collection Service. The collection of Roll-Off Containers containing Solid Waste from SFD Service Units, MFD service Units, City Service Units, or Commercial Service Units on a permanent or temporary basis.

1.62 Roll-Off Container. A metal container with a capacity of ten (10) or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility.

1.63 SB 1016. State of California Senate Bill 1016, approved September 16, 2008 adopted a per capita disposal based accounting system for diversion reporting in meeting the mandated 50 percent diversion requirement as set by AB 939. SB 1016 also changed reporting and review process so that jurisdictions meeting the 50 percent diversion requirement would be subject CalRecycle (formally referred to as the CIWMB) review every four years, while those jurisdictions not meeting the 50 percent diversion requirement would continue to be reviewed by CalRecycle every two years.

1.64 SB 1383. State of California Senate Bill 1383, approved September 19, 2016 mandates a fifty percent (50%) reduction in disposal of Organic Materials from the 2014 levels by 2020 and seventy-

five percent (75%) by 2025. According to CalRecycle's 2014 Waste Characterization Study, approximately 20 million tons of organics were disposed in 2014. For the SB 1383 mandates, this translates to a requirement to limit disposal of organics to roughly 10 million tons by January 1, 2020. A seventy-five percent (75%) reduction from the 2014 level requires California to limit disposal to roughly five (5) million tons of organics annually on and after 2025. Further, SB 1383 requires CalRecycle's regulations to include requirements designed to improve the recovery of edible food that is currently landfilled by twenty percent (20%) by 2025.

1.65 Service Area. That area within the city limits of the City of Calexico designated by CITY as the Service Area as those limits may be adjusted from time to time by annexation or similar process as allowed under California law.

1.66 Service Recipient. An individual, Business, or the CITY receiving SFD, MFD, Commercial, or CITY Collection Services.

1.67 Service Unit. SFD Service Units, MFD Service Units, City Service Units, or Commercial Service Units. Service Unit specifically includes the following:

- A. City Service Unit. City Facility(ies) that utilize a Bin, Cart, or Roll-Off Container(s) for the accumulation and setout of Solid Waste. City Service Units are listed in **Exhibit 3**, and as may be modified by written notice to CONTRACTOR by the CITY.
- B. Commercial Service Unit. Business Service Units, City Service Units and Mixed-Use Dwellings that utilize a Garbage Bin, Cart, Compactor, Roll-Off Container for the accumulation and set-out of Commercial Solid Waste.
- C. Multi-Family Dwelling Service Unit (MFD). Five (5) or greater Dwelling Units in the Service Area utilizing a Cart or Bin, or any combination of MFD Dwelling Units sharing Carts, Bins, or Roll-off Containers for the accumulation and set out of Residential Solid Waste.
- D. SFD Service Unit. Any Single-Family Dwelling Unit (SFD) in the Service Area utilizing a Cart, or any combination of 1 – 4 Dwelling Units sharing Carts, for the accumulation and set out of Residential Solid Waste.

1.68 SFD Collection Service. SFD Garbage Collection Service, SFD Recycling Service, SFD Organic Waste Collection Service, SFD Large Item Collection Service, and SFD Used Oil Collection Service. SFD Collection Service specifically includes the following:

- A. SFD Garbage Collection Service. The Collection of Residential Garbage, by CONTRACTOR, from SFD Service Units in the Service Area and the delivery of that Residential Garbage to a Disposal Facility.
- B. SFD Large Item Collection Service. The periodic on-call Collection of Large Items, by CONTRACTOR, from SFD Service Units in the Service Area and the delivery

of those Large Items to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate under the terms of this Agreement. SFD Large Item Collection Service does not include the Collection of Large Items through the use of Roll-Off Containers.

- C. SFD Organic Waste Collection Service. The Collection of Organic Waste, by CONTRACTOR, from SFD Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing and marketing of those Organic Waste materials, and the disposal of all SFD Organic Waste Processing Residual.
- D. SFD Recycling Service. The Collection of Recyclable Materials by the CONTRACTOR from SFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all SFD Recyclable Materials Processing Residual.

1.69 Sharps. Medical devices that have acute rigid corners, edges or protuberances capable of cutting or piercing, including but not limited to hypodermic needles, hypodermic needles with syringes, needles with attached tubing, or acupuncture needles.

1.70 Sludge. The accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

1.71 Solid Waste. The materials described in Public Resources Code Section 40191, including Garbage, Recyclable Materials, Organic Waste, Construction and Demolition Debris, and Large Items. Solid Waste does not include Exempt Waste. Solid Waste specifically includes the following:

- A. Construction and Demolition Debris. Used or discarded materials resulting from construction, remodeling, repair or demolition operations on any type of structure.
- B. Food Waste. Food scraps and trimmings and other putrescible waste that results from food production, preparation, storage, consumption or handling. Food Waste includes but is not limited to meat, fish and dairy waste, fruit and vegetable waste, grain waste, and compostable food contaminated paper products. Food Waste does not include Exempt Waste.
- C. Garbage. All putrescible and non-putrescible solid, semi-solid and associated liquid waste. Garbage does not include Recyclable Materials, Organic Waste, Construction and Demolition Debris, Bulky Waste, or Exempt Waste. Garbage must be generated by and at the Service Unit where the Garbage is collected.
- D. Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than five (5) feet in its longest dimension or six (6)

inches in diameter or weighs more than fifty (50) pounds. Green Waste includes plant debris, such as grass clippings, leaves, pruning, weeds, branches, brush, Holiday trees, and other forms of organic waste and must be generated by and at the SFD Service Unit where the Green Waste is Collected, but does not include palm fronds or cactus. Green Waste does not include items defined as Exempt Waste.

- E. Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than five (5) feet in its longest dimension, which are attributed to the normal activities of an SFD Service Unit. Large Green Waste must be generated by and at the SFD Service Unit where the Large Green Waste is Collected, and is Collected by means of Large Item Collection.
- F. Large Items. Those materials including furniture; carpets; mattresses; E-Waste, White Goods; Brown Goods; clothing; Large Green Waste which are attributed to the normal activities of an SFD Service Unit. Large Items must be generated by and at the SFD Service Unit wherein the Large Items are Collected. Large Items do not include items defined as Exempt Waste, Prohibited Waste or Construction and Demolition Debris.
- G. Organic Waste. Food Waste, Green Waste, and Other Organics, either separately or commingled with each other, that has been separated at the source of generation from Garbage and Recyclable Materials.
- H. Other Organics. Other Organics includes food-soiled paper and paper products, compostable food wares and compostable food packaging, stable materials, manure, and natural fiber textiles, and other compostable materials as may be required by the CITY or CalRecycle.
- I. Recyclable Materials. Those materials which are capable of being recycled using available processes and markets and which would otherwise be processed or disposed of as Residential Garbage or Commercial Garbage. These materials will be as defined by CITY. Recyclable Materials currently being Collected include: newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, Kraft brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding ten (10) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin" cans and small scrap (not exceeding ten (10) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; mixed plastics such as empty plastic containers and empty bottles made of HDPE and PET.. CITY and CONTRACTOR agree to meet from time to time as needed to discuss additions or deletions from the list of Recyclable

Materials. CONTRACTOR may request removal of Recyclable Materials due to market limitations, which request will be decided by the Agreement Administrator.

- J. White Goods. Inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

1.72 Work Day. Any day, Monday through Friday, that is not a holiday as set forth in Section 3.07 of this Agreement.

## **ARTICLE 2. Award of Exclusive Franchise, Term of Agreement and Considerations**

2.01 Exclusive Franchise Awarded to Contractor. CITY hereby grants to CONTRACTOR for the Term of this Agreement the exclusive franchise, right and obligation to collect, transport, handle, process, Recycle, sell and Dispose of all Solid Waste generated by residential, multi-family, commercial, industrial, institutional and all other generators of Solid Waste in the CITY's limits. Without limiting the foregoing, this exclusive franchise includes Garbage, Recyclable Materials, Organic Materials, Construction and Demolition Debris, and materials placed in Roll-Off containers. Provided, however, that this exclusive franchise does not apply to: (1) Solid Waste self-hauled by generators of such Solid Waste who transport their own Solid Waste by themselves or their direct employees using the generator's own vehicles in order to deliver such Solid Waste to permitted processing or Disposal facilities; (2) Recyclable Materials sold to third parties for a total net profit or donated by the generator to a 401(c)(3) charitable organization; and (3) landscapers and other contractors who haul Solid Waste using their own vehicles and employees as a necessary and incidental (but not primary) part of their contracting businesses.. For purposes of clarity, this exclusive franchise prohibits other persons or entities from collecting, transporting, handling, Recycling and/or Disposing of Solid Waste in the CITY for a fee, charge or other consideration.

2.02 Initial Term. Subject to the provisions of this Agreement related Termination, the initial term of this Agreement will be for a ten (10) year period beginning midnight January 1, 2020 ("Effective Date") and terminating on 11:59 pm December 31, 2030.

2.03 Extension of Term Option. Provided that CONTRACTOR is not then in default of any material term or condition of the Agreement or has been previously designated as a "habitual violator" as provided in Article 23 and that the Extension Term Option has not been voided as provided in Section 2.04 below, CONTRACTOR may request no more than two (2) separate and sequential five (5) year term extensions to the Initial Term ("Extended Term") by providing CITY with written notice of the request at least eighteen (18) months prior to the expiration of the Initial Term or any Extended Term. CITY shall meet and confer with CONTRACTOR at least two (2) times prior to expiration of the Initial Term or any Extended Term, but under no circumstances will CITY be obligated to extend the term, and CITY may extend the Term in the exercise of the CITY's sole and absolute discretion.

2.04 Performance Review Prior to Five (5) Year Extension. If CONTRACTOR requests a term extension as described in Section 2.02 above, then CITY may initiate a billing audit and performance review to be conducted as described in Section 11.02. Regardless of the outcome of this billing audit and performance review, CITY will have no obligation to extend the term of the Agreement.

2.05 Voiding of Term Extension Option. In the event CONTRACTOR materially fails to meet the minimum service and/or diversion requirements set forth in Section 5.01, during the Initial Term or any Extended Term, CONTRACTOR understands and agrees that its option to request an Extended Term from CITY shall be voided that this Agreement will terminate on December 31, 2030 as set forth in Section 2.01 of this Agreement or at the end of the first Extended Term as the case may be.

2.06 Other Provisions. The CITY may, at the end of the Initial Term or any Extended Term renegotiate the terms and conditions of the Agreement with the CONTRACTOR, excluding the negotiation of a payment to CITY, for an Extended Term and / or request proposals from qualified contractors to provide Collection Services. CITY retains the right to both negotiate with CONTRACTOR while concurrently conducting as request for proposal process.

2.07 Consideration for Franchise. In consideration for CITY's grant of the exclusive franchise, for negotiation of this Agreement, and for retention of the longstanding relationship with CITY, CONTRACTOR shall make when due the payments described in this Article, and as may otherwise be set forth in this Agreement, to CITY. All of CONTRACTOR's payments to CITY, whether described in this Article or otherwise in the Agreement, are general funds of the CITY subject to characterization, appropriation and expenditures at the sole discretion of the City Council.

2.07.1 Franchise Fee (Monthly). Throughout the term of this Agreement, CONTRACTOR shall pay CITY an amount equal to, twelve percent (12%) of CONTRACTOR's Gross Receipts for Collection Services provided. CONTRACTOR will deduct this amount from the monthly billing presented to the CITY for payment. Franchise Fee payments are due on the 20<sup>th</sup> day of the month for services provided for the prior month. This Franchise Fee is the result of an arms' length negotiation between the Parties and represents a reasonable value of the rights granted to CONTRACTOR under this Agreement.

2.07.2 AB 939 Administrative Fee. Throughout the term of this Agreement, CONTRACTOR shall pay the CITY an amount equal to two percent (2%) of CONTRACTOR's Gross Receipts for Collection Services provided. CONTRACTOR agrees to pay or collect, as the case may be, an AB 939 Fee as may be established by separate resolution of the City Council and from time to time amended hereafter. These payments are due on the 20<sup>th</sup> day of the month for services provided for the prior month.

2.07.3 Solid Waste Enforcement / 1383 Support Fee. To help permit City to meet its obligations under Applicable Law, CONTRACTOR to fund a one half (1/2) time City Staff position at \$60,000 a year starting January 1, 2020, and every January 1 for the length of this Agreement. This amount is to be adjusted at the same rate as the customer rate adjustment as calculated in Section 4.05.

2.07.4 Vehicle Impact Fee. To offset direct impacts to City roads and streets, CONTRACTOR to pay Vehicle Impact Fee to CITY, starting January 1, 2020, and every January 1 for the length of this Agreement. This payment shall be adjusted at same level as the customer rate adjustment as calculated in Section 4.05. The initial amount will be in the amount of \$50,000.

2.07.5      Downtown Clean-Up Fee. CONTRACTOR to pay City, starting January 1, 2020 and every January 1 for the length of this Agreement, \$10,000. This amount is to be adjusted at the same rate as the customer rate adjustment as calculated in Section 4.05.

2.07.6      Landfill Royalty Fee. CONTRACTOR will pay to the CITY a fee of \$1.50 per ton collected by CONTRACTOR only for the material collected for residential and commercial subscribers and special services within the CITY's Service Area. The Landfill Royalty Fee shall not apply to tonnage collected as part of CONTRACTOR'S free CITY services. These payments are due on the 20<sup>th</sup> day of the month for services provided for the prior month.

2.07.7      Recycling Rebate. Effective January 1, 2019 CONTRACTOR shall pay the CITY a rebate from the sale of commodities collected within the CITY. CONTRACTOR shall pay the CITY fifty percent (50%) of the net revenue received by CONTRACTOR after deducting the cost of processing all recyclable materials collected within the CITY. The CITY will be paid on the 20<sup>th</sup> on a quarterly basis in arrears.

2.07.8      Vocational Scholarships. Through the term of this Agreement, beginning January 1, 2020 and so on annually, CONTRACTOR shall award the amount of \$1,300 per year for the purpose of funding three (3) scholarships.

### **ARTICLE 3. Services Provided by Contractor**

3.01      Grant of Exclusive Agreement. Subject to the exceptions stated in Section 3.02, CITY hereby grants to CONTRACTOR, on the terms and conditions set forth herein, the exclusive franchise, right and privilege to collect, remove and dispose of, in a lawful manner, Solid Waste accumulating in the CITY's Service Area, as may be adjusted from time to time by approved annexations, that are required to be accumulated and offered for collection to the CONTRACTOR in accordance with the CITY's Municipal Code, for the Term of and within the scope set forth in this Agreement.

3.02      Recyclable Materials, Organic Waste, and Large Item Disposal by Service Recipients. Service Recipients may dispose of Recyclable Materials, Organic Waste, and Large Items by taking Recyclable Materials, Organic Waste, or Large Items by donating or selling such items to any third party, non-profit 402(c)(3) charitable organizations or by availing themselves of the Self-Haul provisions of CITY's Solid Waste Ordinance 2.01. This Agreement shall also not apply to those person or entities that CITY is unable lawfully to require to use CONTRACTOR's services.

3.03      Service Standards. CONTRACTOR must perform all Collection Services under this Agreement in a thorough and professional manner.

3.04      Labor and Equipment. CONTRACTOR must provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of CONTRACTOR's obligations under this Agreement. CONTRACTOR must at all times have sufficient backup equipment and labor to fulfill CONTRACTOR's obligations under this Agreement. No compensation for CONTRACTOR's services or for CONTRACTOR's supply of labor, equipment, tools, facilities or supervision will be provided or paid to CONTRACTOR by CITY or by any Service Recipient except as expressly provided by this Agreement.

3.05      Holiday Service. The CITY observes New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day as legal holidays. CONTRACTOR is not required to provide Collection Services or maintain office hours on the designated holidays. In any week in which one of these holidays falls on a Work Day, SFD Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday SFD Collection Services being performed on Saturday. Commercial Collection Services will be adjusted as set forth in Article 8 but must meet the minimum frequency requirements of one (1) time per week.

3.06      Inspections. The CITY has the right to inspect CONTRACTOR's facilities or Collection vehicles and their contents at any reasonable time while operating inside or outside the CITY.

3.07      Commingling of Materials.

3.07.1      Materials Collected from Other Waste Streams. CONTRACTOR may not at any time commingle any customer source-separated materials Collected pursuant to this Agreement with any other material Collected by CONTRACTOR from other waste streams, whether inside or outside the CITY, without at least thirty (30) days prior to the proposed commingling providing the Agreement Administrator with written justification of need to commingle materials, to the reasonable satisfaction of the Agreement Administrator. If commingling is approved and takes place, CONTRACTOR agrees to indemnify, defend and hold CITY harmless from any claims, demands, fines or penalties arising from CONTRACTOR's commingling.

3.07.2      Recyclable Materials. Subject to Section 3.09, CONTRACTOR must not at any time commingle customer source-separated SFD or Commercial Recyclable Materials Collected pursuant to this Agreement with any other material type Collected by CONTRACTOR without the express prior written authorization of the Agreement Administrator.

3.07.3      Organic Waste. Subject to Section 3.09, CONTRACTOR must not at any time commingle customer source-separated SFD or Commercial Organic Waste Collected pursuant to this Agreement with any other material type Collected by CONTRACTOR, without the express prior written authorization of the Agreement Administrator.

3.08      New Organics Diversion Program. In recognition of the changes in State Law precluding diversion credit for the use of organics as Alternate Daily Cover ("ADC") at landfills effective as of January 1, 2020, CITY and CONTRACTOR desire to consider and potentially negotiate a new program for organics diversion in the CITY. If the parties agree on a new organics program for the CITY, this Agreement will be amended and such amendment will provide for implementation of the new organics program by CONTRACTOR and a new rate schedule for all of CONTRACTOR'S services that will supersede the rate schedule in Exhibit 1. The parties anticipate such negotiations will be concluded by December 31, 2019. Should the parties not reach agreement on a new organics diversion program, this Agreement will remain in full force and effect AS IS, and CONTRACTOR will continue to use organics collected in the CITY as ADC at the landfill used by CONTRACTOR. The CITY recognizes that without agreement with CONTRACTOR on a new organics diversion program, the CITY will no longer receive diversion credit for CONTRACTOR'S collection and disposal of organics collected by CONTRACTOR in the CITY.

3.09 Recyclable Materials and Organic Waste Contamination. CONTRACTOR must offer the Service Recipients the correct combination of Cart, Bin and Roll-Off Container sizes and collection frequency that matches their unique service needs to reduce contamination of Recyclable Materials and Organic Waste. To support CITY'S diversion goals and CONTRACTOR'S Diversion Requirements as set forth in Section 5.01, CONTRACTOR is only required to collect Recyclable Materials if they have been separated by the Service Recipient from Garbage and Organic Waste, and is only be required to collect Organic Waste if it has been separated by the Service Recipient from Garbage and Recyclable Materials.

As part of CONTRACTOR'S Public Education Services under Section 14.01, CONTRACTOR agrees to provide outreach and support to SFD Service Recipients. Additionally, CONTRACTOR'S route collection personnel will report to CONTRACTOR'S supervisors if they observe potential contamination problems, and/or insufficient collection capacity. For purposes of determining if Recyclable Materials or Organic Waste are deemed to be contaminated, if, by visual or digital inspection, Recyclable Materials are commingled with ten percent (10%) by weight or volume of Garbage or Organic Waste, or if, by visual inspection, Organic Waste is commingled with three percent (3%) by volume of Garbage or Recyclable Materials, then Recyclable Materials and/or Organic Waste will be deemed to be contaminated and CONTRACTOR may take the following steps:

3.09.1 SFD Service Recipients.

3.09.1.1 First and Second Occurrence. For the first and second occurrence within any one Calendar Year of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated container (as Solid Waste) and must affix a Contamination Violation Notice to the contaminated container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste, and must notify the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the third and subsequent incidents of excess contamination, the Service Recipient may be charged a contamination fee for the contaminated container, and for the fifth or subsequent occurrence of contamination, CONTRACTOR may increase the Cart size, or require an additional Cart. CONTRACTOR'S representative must also contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Waste. CONTRACTOR must also provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient'S on-going contamination problems.

3.09.1.2 Third and Fourth Occurrence. For the third and fourth occurrence within any one Calendar Year of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste, and CONTRACTOR must collect the contaminated Container (as Solid Waste) and may charge the Service Recipient a contamination fee as set forth in **Exhibit 1**. For any contamination fee charge being assessed, CONTRACTOR must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient'S on-going contamination problems.

3.09.1.3 Fifth and Subsequent Occurrence. For the fifth or subsequent occurrence within any one Calendar Year of contamination for a particular container (i.e., Recyclable

Materials or Organic Waste), CONTRACTOR must collect the contaminated Container (as Solid Waste) and must charge the Service Recipient a contamination fee as set forth in **Exhibit 1**. CONTRACTOR must continue providing the Recyclable Materials or Organic Waste Collection Services. CONTRACTOR must provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems and written Notices of contamination as described above. CONTRACTOR must notify CITY within five (5) Business Days if CONTRACTOR increases in the Cart size or requires an additional Cart for excessive contamination or imposes a contamination surcharge to the account for a period of six months or until the Service Recipient has demonstrated no contamination for a period of three consecutive months. CITY will consult with CONTRACTOR and consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the contamination. All CITY costs of such action shall be recoverable from the offending Service Recipients.

3.09.2 Commercial and MFD Service Recipients. The following provisions will apply to all Commercial and MDF Service Recipients.

3.09.2.1 First and Second Occurrence. For the first and second occurrence within any one Calendar Year of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated container (as Solid Waste) and must affix a Contamination Violation Notice to the contaminated container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste, and must notify the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the third and subsequent incidents of excess contamination, the Service Recipient may be charged a contamination fee for the contaminated container, and for the fifth or subsequent occurrence of excess contamination, CONTRACTOR may increase the Cart or Bin size or collection frequency or impose a contamination surcharge as provide in Section 3.09.2 CONTRACTOR's representative must also contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Waste. CONTRACTOR must also provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems.

3.09.2.2 Third and Fourth Occurrence. For the third and fourth occurrence within any one Calendar Year of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTACTOR will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste, and CONTRACTOR must collect the contaminated Container (as Solid Waste) and may charge the Service Recipient a contamination fee as set forth in **Exhibit 1**. For any contamination fee charge being assessed, CONTRACTOR must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems.

3.09.2.3 Fifth and Subsequent Occurrence. For the fifth or subsequent occurrence within any one Calendar Year of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated Container (as Solid Waste) and must charge the Service Recipient a contamination fee as set forth in **Exhibit 1**. CONTRACTOR must continue providing the Recyclable Materials or Organic Waste Collection Services. CONTRACTOR must

provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems and written Notices of contamination as described above. CONTRACTOR must notify CITY within five (5) Business Days if CONTRACTOR increases in the Cart or Bin or size for excessive contamination or imposes a contamination surcharge to the account as provided in Section 3.09.2. CITY will consult with CONTRACTOR and consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the contamination. All CITY costs of such action shall be recoverable from the offending Service Recipients.

3.09.3      Tracking Occurrences of Contamination. Regarding Sections 3.09.1 – 3.09.3, each Contamination occurrence is tracked annually per Calendar Year, and resets at the start of each Calendar Year.

3.09.4      Disputes Over Excess Contamination Charges. If Service Recipient disputes a contamination charge (which must be within 30 days of them being assessed), CONTRACTOR shall temporarily halt any contamination charge and/or increased Maximum Service Rate resulting from increasing the Cart or Bin size or collection frequency, and CONTRACTOR may request a ruling by the City Manager to resolve the dispute. A request by CONTRACTOR to the City Manager to rule on any such dispute must be filed within ten (10) Business Days of CONTRACTOR's halting of contamination charge, or increased Maximum Rate, and must include written documentation and digital/visual evidence of ongoing overall problems. The City Manager may request a meeting (in person or phone) with both the Service Recipient and CONTRACTOR to resolve the dispute. Following such a meeting, the City Manager will rule on the dispute within ten (10) Business Days, and the City Manager's decision on resolving the dispute between and Service Recipient will be final. If the City Manager rules in favor of the Service Recipient, CONTRACTOR will credit the disputed contamination charges or increased Maximum Service Rate. If the City Manager rules in favor of CONTRACTOR, CONTRACTOR may charge Service Recipient the prior halted contamination charge and/or increased Maximum Service Rate resulting from increasing the Cart or Bin size or collection frequency and may follow the steps in Section 4.04 for collection of delinquent accounts.

3.10      Container Overage and Correction Procedures.

3.10.1      Overage and Correction Procedures.

CONTRACTOR shall offer the Service Recipients the correct combination of Cart, Bin and Roll-Off Container sizes and collection frequency that matches each Service Recipient's unique service needs to enable clean, efficient, and cost-effective collection of Solid Waste. CITY and CONTRACTOR agree that overflow of Solid Waste that is not properly in the Service Recipient's Cart(s), Bin(s) or Roll-Off Container(s) may negatively impact public health and safety. CONTRACTOR has also agreed to conduct recycling audits and provide outreach and support to Service Recipient accounts receiving the correct service level. However, in the event that Service Recipients are found to habitually overflow their Solid Waste Cart(s), Bin(s) or Roll-Off Container(s), CONTRACTOR may take the steps as listed below to correct Service Recipient's on-going overflow of Solid Waste.

3.10.1.1      Prior Arrangements for Collection. If the Service Recipient has made prior arrangements with CONTRACTOR for collection of Solid Waste Overages, CONTRACTOR

must collect such overages as arranged, and may charge the Service Recipient the Solid Waste Overage fee (prior arrangement) rate set forth in **Exhibit 1**.

3.10.1.2      No Prior Arrangements. If the Service Recipient has not made prior arrangements with CONTRACTOR for collection of Solid Waste Overage, (i) CONTRACTOR may collect such Solid Waste Overage at no additional charge as a courtesy, (ii) CONTRACTOR may not collect the Solid Waste Overage and leave a Non-Collection Notice explaining the reason for non-collection of the Solid Waste Overage, (c) CONTRACTOR may collect the Solid Waste Overage and charge the Service Recipient the Solid Waste Overage fee (no prior arrangement) rate set forth in **Exhibit 1** as provided below, or increase the capacity or frequency of collection of the existing Cart(s), Bin(s) and Roll-Off Container(s) to match documented service needs as provided below. In managing Solid Waste Overages, the following apply:

3.10.2      SFD Service Recipients.

3.10.2.1      Each Occurrence. For each occurrence CONTRACTOR will not collect the Solid Waste Overage and CONTRACTOR must provide the following written notice (via e-mail, U.S. mail, or in person (which may be by Non-Collection Notice) to the Service Recipient: (i) the date, description and, at the request of Customer, the photograph of the Solid Waste Overage. CONTRACTOR's Non-Collection Notice for SFD Service Recipients shall also contain instructions on (a) how to schedule a Large Item Collection or (b) request an additional Cart to eliminate future Overages.

3.10.3      Commercial and MFD Service Recipients.

3.10.3.1      Each Occurrence. CONTRACTOR must provide a written notice on the Container, and may provide a copy of the notice via e-mail, U.S. mail, or in person (which may be by Non-Collection Notice) to the Service Recipient with the date, description and photograph of the Solid Waste Overage. CONTRACTOR may collect the Solid Waste Overage and may charge the Service Recipient a Solid Waste Overage fee as set forth in **Exhibit 1**, and increase the capacity or collection frequency of the Cart, Bin or Roll-Off Container to match documented service needs. At least ten (10) Business Days prior to increasing the Cart, Bin or Roll-Off Container size or frequency of Collection, CONTRACTOR's representative must also contact the Service Recipient by phone, U.S. mail, e-mail or in person (which may be by Non-Collection Notice) to ensure that Service Recipient has the appropriate level of service. CONTRACTOR must notify CITY within ten (10) Business Days of any changes in Service Recipient's Cart, Bin or Roll-Off Container size or collection frequency. The increased capacity or collection frequency will remain in effect until CONTRACTOR determines that it is no longer needed to prevent overages, which may be longer than the one Calendar Year stated above. Such determination will be in CONTRACTOR's sole but reasonable discretion and will be subject to the dispute resolution procedure set forth below. CITY will consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the overages. All CITY costs of such action shall be recoverable from the offending Service Recipients.

3.10.4      Tracking Occurrences of Solid Waste Overage. Regarding Sections 3.10.2 – 3.10.3, each Solid Waste Overage occurrence is tracked annually per Calendar Year, and resets at the start of each Calendar Year.

3.10.5 Disputes Over Container Overage Charges. If Service Recipient disputes Solid Waste Overage charge or size or collection frequency change (must be within 30 days of the disputed action), CONTRACTOR must temporarily halt Solid Waste Overage charge and/or increased Maximum Service Rate resulting from increasing the Solid Waste Cart, Bin or Roll-Off Container size or collection frequency, and CONTRACTOR may request a ruling by the City Manager to resolve the dispute. A request by CONTRACTOR to the City Manager to rule on any such dispute must be filed within ten (10) Business Days of CONTRACTOR's halting of Solid Waste Overage charge, or increased Maximum Rate, and must include written documentation and digital/visual evidence of ongoing overall problems. The City Manager may request a meeting (in person or phone) with both the Service Recipient and CONTRACTOR to resolve the dispute. Following such a meeting, the City Manager will rule on the dispute within ten (10) Business Days, and the City Manager's decision on resolving the dispute between and Service Recipient will be final. If the City Manager rules in favor of the Service Recipient, CONTRACTOR must credit the disputed charge or increased Maximum Service Rate. If the City Manager rules in favor of CONTRACTOR, CONTRACTOR may charge Service Recipient the prior halted Solid Waste Overage charge and/or increased Maximum Service Rate resulting from increasing the Solid Waste Cart, Bin or Roll-Off Container size or collection frequency and may follow the steps in Section 4.04 for collection of delinquent accounts.

3.11 Ownership of Materials. Except as provided otherwise under Applicable Law, title to Solid Waste will pass to CONTRACTOR at such time as said materials are placed in CONTRACTOR's Collection vehicle; provided, however, that ownership of and title to Prohibited Waste shall at all times remain with the generator of such Prohibited Waste.

3.12 No Obligation to Collect Prohibited Waste. Notwithstanding any other provision in this Agreement, under no circumstances shall CONTRACTOR be required to collect, transport, handle, process or Dispose of Prohibited Waste. Further, should any customer place Prohibited Waste in a container or bin for collection by CONTRACTOR, and should CONTRACTOR inadvertently collect and transport such Prohibited Waste, the generator of such Prohibited Waste shall be and remain the owner of such Prohibited Waste and shall be fully responsible to reimburse CONTRACTOR for all of CONTRACTOR'S costs in collecting, transporting, handling, processing and disposing of such Prohibited Waste. If CONTRACTOR inadvertently collects Prohibited Waste and if the generator cannot be determined, CONTRACTOR shall properly collect, transport, handle, process and dispose of Prohibited Waste at its cost and expense.

3.13 Spillage and Litter. CONTRACTOR shall not litter premises in the process of providing Collection Services or while its vehicles are on the road. CONTRACTOR must transport all materials Collected under the terms of this Agreement in such a manner as to minimize the spilling or blowing of such materials from CONTRACTOR's vehicles. CONTRACTOR must exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Solid Waste and must immediately, at the time of occurrence, clean up such spilled or dropped Solid Waste.

3.13.1 Except as provided in Section 8.02.3, CONTRACTOR is not responsible for cleaning up sanitary conditions caused by the carelessness of the Service Recipient; however, CONTRACTOR must clean up any material or residue that is spilled or scattered by CONTRACTOR or its employees and report such instances in writing to the CITY by the close business within one (1) working day of the occurrence.

3.13.2      Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from CONTRACTOR's operations or equipment repair must be covered immediately with an absorptive material and removed from the street surface. If such fluid leakage or spillage results in staining the street or sidewalk surface, CONTRACTOR must apply a suitable cleaning agent to the street surface to provide adequate cleaning.

3.13.3      The above paragraphs notwithstanding, CONTRACTOR must clean up any spillage or litter caused by CONTRACTOR within the same Work Day upon notice from the CITY.

3.13.4      To facilitate such cleanup, CONTRACTOR's vehicles must at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

3.14      Regulations and Record Keeping. CONTRACTOR must comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by regulations must be maintained at CONTRACTOR's facility. These records must include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

## ARTICLE 4. Charges and Rates

4.01      Billings by CITY. CITY shall, strictly as a billing agent for CONTRACTOR, bill all SFD Service Units, including mobile home parks receiving Cart service, for SFD Collection Service at the Maximum Service Rates set forth in EXHIBIT 1 and as such rates are adjusted as provided for under this Agreement. At the City's discretion, bills to SFD Service Units may not designate that portion of a Service Recipient's bill attributable to the Franchise Fee or AB 939 Fee as a separate item. Billings shall be made monthly or bi-monthly for Service Recipients. CITY shall include in its bills to Service Recipients any applicable fees imposed by action of the City Council and as authorized by this Agreement. Bills shall be prepared by CITY on or about the first business day of each monthly billing cycle.

4.02      Billings by CONTRACTOR. CONTRACTOR shall have the right and responsibility to bill all customers, other than SFD Service Units billed by CITY as described in Section 4.01.1 and shall assume all responsibility and expense for such billings and Collection, subject to the terms and conditions of this Article. CONTRACTOR's bills shall not if requested by CITY, designate that portion of a Service Recipient's bill attributable to the Franchise Fee or AB 939 Fee as a separate item. CONTRACTOR must charge MFD and Commercial Service Recipients not more than the service rates established in **Exhibit 1** and such rates may only be adjusted as provided for under this Agreement. CONTRACTOR will not charge for Collection Services provided to City Service Units. Billings may be made monthly or bimonthly for Service Recipients billed by CONTRACTOR. The CONTRACTOR shall include in its bills to Service Recipients any applicable City Fees.

4.03      Payment to CONTRACTOR by CITY. CITY shall pay CONTRACTOR the amounts collected by CITY, less the Franchise and AB 939 Fees pertaining to SFD Service Units described herein and any other CITY Fees. CONTRACTOR shall notify CITY of any additional charges for special hauls for residential Collections and/or any other adjustments to amounts billed, inclusive of credits for absences, on

a daily basis as occurs. Such charges received prior to fifteen (15) days before the first business day of each month shall be billed by CITY at the time of the next billing date. Such charges received after such time shall be billed as part of the next regular billing cycle.

4.03.1      Partial Month Service. If, during a month, a Service Unit is added to or deleted from CONTRACTOR's Service Area, CONTRACTOR's Billing will be pro-rated based on the daily service rate (daily service rate is the service rate established in **Exhibit 1**, or as they may be adjusted as provided in this Agreement, divided by the number of actual days in the month that service was provided to the Service Unit).

4.03.2      Production of Invoices. CONTRACTOR must produce an invoice, in a form approved by the Agreement Administrator, for services received under this Agreement in advance. SFD Service Recipients shall be invoiced on monthly or bi-monthly billing cycle, and MFD and Commercial Service Recipients shall be invoiced monthly. CONTRACTOR's invoice must be remitted to the Service Recipient no later than the twentieth (20<sup>th</sup>) day of the month preceding the period for which service is being billed. Invoices may be submitted by mail or electronically, and payment methods may include by check, credit card or ACH debit. Where it has been determined that a Service Recipient has overpaid for service, for any reason, CONTRACTOR must provide the Service Recipient a credit against future invoices or a refund (as selected by the Service Recipient, and where the refund amount exceeds the regular invoicing amount) within thirty (30) days of the next-scheduled invoicing.

4.04      Delinquent SFD Service Accounts. In consideration for CONTRACTOR's agreement to not discontinue Collection Service from delinquent SFD Service Units, CITY agrees to place and collect qualifying delinquencies, including late fees and interest in the amounts set forth in **Exhibit 1**, on the property tax roll in accordance with Health & Safety Code Section 5473a *et seq.* from delinquent SFD Service Recipients. CONTRACTOR shall pay for fifty percent (50%) of all bad debt for up to but not to exceed a total bad debt amount of \$8,000 per each agreement year for the length of this Agreement, subject to reimbursement by CITY should CITY collect any such amounts through the tax lien process. Thus, CONTRACTOR'S maximum liability for bad debt will be \$4,000 per year. This amount is to be adjusted annually with the customer rate adjustment as calculated in Section 4.05 of this Agreement.

4.04.1      Account Verification. CITY shall verify new service starts, holds, or terminations in Service Units based on the CITY's Business license System, Water Billing and Waste Billing data, and notify CONTRACTOR of all service starts, holds or terminations on a weekly basis. If there are service starts, holds, or terminations that are not listed on the CITY provided data, CONTRACTOR shall notify the CITY of any discrepancies within ten (10) Business Days of receipt of the CITY data.

4.04.2      Report of Delinquencies. In addition to, and to facilitate the foregoing, but not in lieu of any requirement stated above, CONTRACTOR may report to the Agreement Administrator, on a quarterly basis, all Service Recipients billed by CONTRACTOR who have received Collection Service and whose account is over ninety (90) days past due. The CITY shall assist CONTRACTOR in placing delinquent accounts on the Imperial County property tax roll, and shall pay CONTRACTOR money collected from payment of the delinquency, less the CITY's cost to administer the tax roll lien process.

4.05 Delinquent Service Accounts Billed by CONTRACTOR. CONTRACTOR may, by September 1<sup>st</sup> of each year or at such other time as CITY and CONTRACTOR shall agree upon, notify CITY in writing as to whether CONTRACTOR will seek to have CITY place and collect qualifying delinquencies for MDF and Commercial Service Recipients on the tax roll. In such event, CONTRACTOR shall be responsible for timely preparing, at no cost to CITY, all required information, reports, notices, and materials including without limitation, the report required by Health & Safety Code section 5473, the notices required by Health & Safety Code section 5473.1, and paying for any publication costs. In addition, should CITY's City Attorney or special counsel, determine that placement of eligible delinquencies on the tax roll also required CITY to comply with the requirements of Proposition 218 and implementing legislation and court decisions (hereinafter "PROP 218), then CONTRACTOR shall timely prepare, at no cost to CITY, all required information, report, notices and materials necessary to comply with PROP 218. CITY agrees that it shall within sixty (60) days after the Effective Date of this Agreement consider the adoption of the necessary ordinance authorizing collection of eligible delinquent Service Recipients on the tax roll, and to hold all hearings, timely publish all notices, and timely make all filings, required under the above sections, provided CONTRACTOR has timely provided the required information, reports, notices and materials to CITY. For the purposes of this section, a "qualifying delinquency" is a Service Recipient that is at least sixty (60) days in arrears and for which the billing party has provided at least one written notice delivered to the Service Recipient by mail or other reasonable means.

4.05.1 CONTRACTOR's Reservation of Legal Rights and Remedies. Notwithstanding the foregoing, CONTRACTOR reserves its right to, and may take such action as is legally available to collect or cause collection of such past due amounts. CONTRACTOR must not discontinue Collection Services on any SFD Service Unit. CONTRACTOR may cease provision of Collection Services to any MFD Service Unit or Commercial Service Unit due to non-payment, including late fees and interest in the amounts set forth in **Exhibit 1**, upon thirty (30) days prior written notice to the Service Recipient.

4.06 Audit and Payment Disputes. CONTRACTOR may request the right to audit the CITY's records regarding billings and the amounts collected by the CITY under this Agreement. CONTRACTOR shall choose its own independent auditor and shall pay for the costs of the audit of the CITY's billings and collections. Should any audit reveal an under or over payment of amounts due to the other party, the party owing additional money to the other party shall pay such amount within thirty (30) days of receipt of the final audit report. Should any disputes arise between the parties regarding such audit, the matter shall be referred to non-binding mediation and, if the mediation is unsuccessful, to a final decision of the City Council which will be subject to judicial review.

4.07 Limitations Period on Billing and Fee Payment Disputes. Any billing collection payments owned by CITY to CONTRACTOR and any CITY fees owned by CONTRACTOR to CITY that have been due and owing at any time more than twelve prior months, and as to which neither party has previously requested and commenced an audit, shall no longer be subject to audit, challenge or claim by one party against the other, but instead shall at that point be conclusively deemed correct, and no suit or claim may thereafter be made by either party against the other relating to such billing collection or CITY fee amounts.

4.08 Adjustments to Maximum Service Rates using the Consumer Price Index (CPI).

4.08.1 Adjustments to SFD, MFD, and Commercial Maximum Service Rates January 1, 2021 – December 31, 2029.

4.08.1.1 Adjustments Using the Consumer Price Index (CPI). Beginning on January 1, 2021 for SFD, MFD and Commercial Service Units, and annually thereafter, CONTRACTOR shall, subject to compliance with all provisions of this Section, receive an annual CPI adjustment to all Maximum Service Rates set forth in **Exhibit 1** to this Agreement based on the year-over-year percentage increase in the CPI. The maximum CPI increase in any one year shall not exceed four percent (4.0%) over the prior reporting period as indicated by the CPI and the minimum increase shall not be less than one percent (1.0%) over the prior reporting period as indicated by the CPI. In any year in which the CPI indicates an increase of more than four percent (4%) ("overage") over the last reporting period, the amount of overage due to the CPI will not be included in the CPI adjustment for the subject year; however, the amount of overage shall be carried over into and added to the next succeeding year CPI calculation to increase CONTRACTOR'S rates up to the 4.0% overall cap on CPI adjustments. Any unused overage from a given year shall only be used one time, for the next succeeding year only. The foregoing four percent (4.0%) cap shall not apply to other factors justifying a rate increase, such as a Change in Law, or a CITY requested Change in Scope of CONTRACTOR'S services or factors warranting an Extraordinary Rate Adjustment.

4.08.1.2 The annual CPI index increase shall be calculated using increases in the CPI pursuant to the process described below:

- A. CPI Financial Information. On or before November 1, 2020, and annually thereafter on November 1<sup>st</sup> during the Term of this Agreement, CONTRACTOR shall deliver to CITY financial information and all calculations sufficient to allow the CITY to verify the accuracy of CONTRACTOR'S CPI adjustment.
- B. Rounding. Adjustments to the overall Maximum Service Rates shall be made only in units of one cent (\$0.01). Fractions of less than one cent (\$0.01) shall not be considered in making CPI adjustments. All CPI increases shall be rounded at two (2) decimal places for the adjustment calculations.

4.09 CITY Verify Calculation of Maximum Service Rates. On or before November 1, 2020, and annually thereafter during the term of this Agreement, CONTRACTOR shall notify CITY'S Agreement Administrator in writing of the CPI adjustments to the affected Maximum Service rates to take place on the subsequent January 1<sup>st</sup> and the calculations such adjustments are derived from. The Agreement Administrator shall verify the calculations and the adjustment and shall resolve discrepancies in the calculation or adjustment with CONTRACTOR. The Parties agree that verification of the calculation and adjustment by CITY'S Agreement Administrator shall constitute an amendment of rate sheets as reflected in **Exhibit 1** of the Agreement. This process shall not apply to Extraordinary Adjustments as provided in Section 4.10. To assist the CITY in providing Proposition 218 notifications, CITY and CONTRACTOR shall confer on an appropriate 12-month period to use in determining any annual CPI adjustment subject to the Proposition 218 notification process.

4.10 Recyclable Materials Processing and Marketing Adjustment. From January 1, 2020 through December 31, 2020 CONTRACTOR shall determine baseline values for collection, processing and

return to market for recyclable materials collected from CITY for SFD, MFD and Commercial in the aggregate, will meet and confer with CITY with regard to these calculations and CITY and CONTRACTOR will mutually agree to the SFD, MFD and Commercial baseline values ("Baseline Values"). After January 1, 2020, if CONTRACTOR experiences a positive or negative change of more than 10% in the Baseline Values, CONTRACTOR may request to meet and confer with CITY to discuss possible adjustments to the Maximum Service Rates not covered under Section 4.05 above. CONTRACTOR must provide verifiable documentation to the CITY's satisfaction of the change in Baseline Values if the CITY is to consider any adjustments to the Maximum Service Rates not covered under Section 4.05. Any such adjustment under this Section 4.07 shall be considered as an Extraordinary Adjustment to Maximum Service Rates as provided for in Section 4.68.

4.11      Extraordinary Adjustment to Maximum Service Rates. In addition to adjustments to the Maximum Service Rates made in accordance with Section 4.05, CONTRACTOR may petition CITY in writing in conjunction with the annual rate adjustment application, or at such other times as are reasonably necessary, but not more often than once during any Agreement Year for an adjustment in the Maximum Service Rates in the event of a Change in Law or a negative 10% or more change in the Baseline Values under section 4.07 above, resulting or reasonably anticipated to result in a material increase in the cost of services provided under this Agreement or the revenue received from such services ("Extraordinary Adjustment"). However, such changes shall not include circumstances within the control of CONTRACTOR, such as changes in the purchase price of new equipment, amounts reimbursed by insurance companies, rebates of any type, or inaccurate estimates by CONTRACTOR of its cost of operations.

Extraordinary Adjustments will only be effective after approval by City Council, including the completion of PROP. 218 proceedings if applicable.

CONTRACTOR's request for an Extraordinary Adjustment must contain substantial proof and justification to support the need for the adjustment including a description of the Change in Law and how the Change affects costs of service or revenue. For each request brought pursuant to this section, CONTRACTOR must prepare a schedule documenting the costs and how they are necessitated by the Change in Law. Such request must be prepared in a form acceptable to CITY with support for assumptions made by CONTRACTOR in preparing the estimate.

CITY may request from CONTRACTOR such further information, as it deems reasonably necessary to fully evaluate the request and make its determination. CITY is entitled to a reimbursement of its costs in reviewing a request for an Extraordinary Adjustment. CITY will review CONTRACTOR's request and, in CITY's reasonable judgment, make the final determination as to whether an adjustment will be made, and if an adjustment is permitted, the appropriate amount of the adjustment. CONTRACTOR's request for an Extraordinary Adjustment, if supported by CONTRACTOR'S application and the information made available to the CITY, shall not be unreasonably refused by the CITY.

4.12      Performance Standards for Adjustments to Rates. In order to be eligible for a CPI adjustment under Section 4.05 or an Extraordinary Adjustment under Section 4.08, CONTRACTOR must not then be in default of the Agreement, but CONTRACTOR may be in the process of curing a default if prosecuting timely, as provided under Article 23 of this Agreement.

4.13 Adjustments Due to Changes in Fees, Payments, or CITY Services. In the event that CITY elects to increase or decrease the amount of fees or payments beyond those amounts provided for in Section 2.6, or City Services, the CITY and CONTRACTOR shall meet and confer to determine the appropriate adjustment in the Maximum Service Rates in accordance with Section 24.01.

4.14 Procedures in Event of Invalidation of Rate Adjustment. In the event that CITY is unable by operation of Applicable Law to approve or implement an Extraordinary Adjustment, CONTRACTOR will have the right, within thirty (30) days after notice of any such inability to approve or validate an approved Extraordinary Adjustment, or to request, in writing, that CITY negotiate in good faith regarding reductions in programs, services, or fees to compensate for any negative impact from the unapproved or invalidated rate increase. If CITY fails to commence negotiations in good faith or negotiations are not completed within forty-five (45) days following the date of receipt of CONTRACTOR's request, CONTRACTOR may terminate this Agreement no earlier than eighteen (18) months after written notice to the other.

## ARTICLE 5. Diversion Requirements

5.01 Diversion Requirements. CONTRACTOR shall perform the services described in Article 3 in an effort to achieve the CITY's diversion goals under existing Law. However, the parties acknowledge that: (1) new Laws, including new regulations under SB 1383, are in the process of being promulgated and/or may be promulgated in the future that may materially increase the CITY's diversion requirements. Further, (2) CITY and CONTRACTOR are aware of the significant adverse impact that China's "National Sword" policy has had on the markets for Recyclable Materials, which in turn has made it more difficult and more costly for CONTRACTOR to comply with the CITY'S existing diversion requirements, let alone increased diversion requirements. In recognition of the foregoing factors, CITY and CONTRACTOR acknowledge that new diversion services and programs will likely be needed during the Term of this Agreement to enable CITY to maintain and increase its diversion of Municipal Solid Waste from Disposal. Therefore, CITY and CONTRACTOR shall meet and confer in good faith from time to time to consider new diversion services and programs that may enable the CITY to better meet its diversion requirements, and to agree on such new services and programs and to adjust CONTRACTOR'S compensation and rates to reflect any increased costs that CONTRACTOR is projected to incur or has incurred as a result of implementing such new services and programs. Subject to the foregoing, CONTRACTOR agrees to use its best efforts to achieve a minimum annual CITY's Franchised Diversion rate and assist CITY in complying with CalRecycle diversion standards as described in Section 5.02 and 5.03 below. CONTRACTOR must provide documentation to CITY within forty-five (45) days of the end of each calendar year stating and supporting that calendar year's diversion rate as set forth in Section 5.03. CONTRACTOR's Diversion Plan is outlined in **Exhibit 7**.

### 5.02 Diversion Rate Calculation.

5.02.1 Franchised Diversion Rate Calculation. For purposes of determining whether CONTRACTOR should implement additional programs and services to achieve the CITY'S requested Diversion requirements, CITY and CONTRACTOR agree the annual Franchised Diversion rate will be calculated using the following formula: *"the tons of materials Collected by CONTRACTOR from Collection Services in CITY that are delivered to a Materials Recovery Facility, Organic Waste Processing Facility, or any other processing facility, or that are otherwise handled in a manner that counts as diversion under*

*applicable CalRecycle regulations (in each case, net of all residue from processing), divided by the total tons of materials Collected in the CITY by CONTRACTOR from the provision of Collection Services in each Calendar Year.”*

5.03 Mutual Cooperation. CITY and CONTRACTOR will reasonably cooperate in good faith to consider new services and programs as needed and desired by CITY to meet CITY's diversion and other compliance requirements imposed by the Applicable Laws, including without limitation, AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383. In this regard, CITY's obligations include, without limitation, making such petitions and applications as may be reasonably requested by CONTRACTOR for time extensions in meeting diversion goals, or other exceptions from the terms of Applicable Laws, and to agree to authorize such changes to CONTRACTOR's Solid Waste Collection Services, or Collection Service programs as may be reasonably requested by CONTRACTOR in order to achieve the minimum requirements of this Article 5.

5.04 CONTRACTOR Assistance to CITY During the Term, CONTRACTOR will:

5.04.1 Assist CITY in responding to inquiries from CalRecycle or any other regulatory agency;

5.04.2 Assist CITY in preparing for, and participating in, CalRecycle's biannual review of CITY's SRRE pursuant to Public Resources Code section 41825;

5.04.3 Assist CITY in applying for any extension, including under Public Resources Code section 41820.5, if so directed by CITY;

5.04.4 Assist CITY in any hearing conducted by CalRecycle, or any other regulatory agency, relating to CITY's compliance with the Applicable Laws including without limitation AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383;

5.04.5 Assist CITY with the development of and implement a public awareness and education program that is consistent with CITY's SRRE and Household Hazardous Waste Element, as well as any related requirements of the Applicable Laws; and

5.04.6 Provide CITY with Recycling, source reduction, and other technical assistance as may be needed to comply with the Applicable Laws including without limitation AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383.

## ARTICLE 6. Service Units

6.01 Service Units. Service Units include all the following categories of premises which are in the Service Area as of January 1, 2020 and all such premises which may be added to the Service Area by means of annexation, new construction, or as otherwise set forth in this Agreement during term of this Agreement:

6.01.1 SFD Service Units,

6.01.2      Commercial Service Units (includes MFD and Roll-Off),

6.01.3      City Service Units

6.01.4      Any question as to whether a premise falls within one of these categories will be determined by the Agreement Administrator and the determination of the Agreement Administrator will be final.

6.02      Service Unit Changes. CITY and CONTRACTOR acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete Service Units for which CONTRACTOR will provide Service.

6.02.1      Additions and Deletions. CONTRACTOR must provide services described in this Agreement to new Service Units in CONTRACTOR's Service Area within five (5) Work Days of receipt of notice from CITY or the new Service Unit to begin such Service.

6.03      Annexation. If during term of the Agreement, additional territory within or adjacent to the CONTRACTOR's Service Area is acquired by CITY through annexation, subject to the requirements of Public Resources Code section 49520, CONTRACTOR agrees to provide Collection Services in such annexed area in accordance with the provisions and service rates set forth in this Agreement. Such Collection Services must begin within five (5) Work Days of receipt of written notice from CITY. CONTRACTOR may not begin Collection Service without written authorization from CITY.

6.04      Route Map Update. CONTRACTOR must revise the Service Unit route maps to show the addition of Service Units added due to annexation and must provide such revised maps to the Agreement Administrator as requested.

## **ARTICLE 7. SFD Collection Services**

7.01      SFD Collection Services. The SFD Collection Services are governed by the following terms and conditions:

7.01.1      Conditions of Service. CONTRACTOR must provide SFD Collection Service to all SFD Service Units in the Service Area whose SFD Garbage is properly containerized in Garbage Carts, Recyclable Materials are properly containerized in Recycling Carts, except as set forth in Section 7.09; Organic Wastes are properly containerized in Organic Waste Carts, except as set forth in Sections 7.08 or 7.09, where the Solid Waste carts have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to CONTRACTOR's Collection crew and vehicle.

7.02      On-Premises Service. Notwithstanding any term or definition set forth in this Agreement, CONTRACTOR must provide on-premises Collection of SFD Solid Waste to an SFD Service Unit as follows:

7.02.1      At no additional cost to the SFD Service Unit:

7.02.1.1 SFD Service Units where all adult Service Recipients residing therein have disabilities that prevent them from setting their Solid Waste Cart at the curb for Collection, and if a request for on-premises service has been made.

7.02.2 Collection Day. CONTRACTOR must provide On-Premises Service Collection on the same Work Day that curbside Collection would otherwise be provided to the SFD Service Unit.

7.03 Frequency and Scheduling of Service. Except as set forth in Section 7.09, SFD Collection Service must be provided one (1) time per week on a scheduled route basis. SFD Collection Service must be scheduled so that SFD Service Units receive SFD Garbage Collection Service, SFD Recyclable Material Collection Service, and SFD Organic Waste Collection Service on the same Work Day.

7.04 Hour and Days of Collection. SFD Collection Service must be provided, commencing no earlier than 5:00 a.m. and terminating no later than 8:00 p.m. The hours, day, or both of Collection may be extended due to extraordinary circumstances or conditions with the prior verbal or written consent of the Agreement Administrator.

7.05 Manner of Collection. The CONTRACTOR must provide SFD Collection Service with as little disturbance as possible and must leave any Solid Waste Cart(s) in an upright position at the same point it was Collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

7.05.1 Replacement of Carts. CONTRACTOR's employees must take care to prevent damage to Carts by unnecessary rough treatment. However, CONTRACTOR must replace any Cart damaged by the CONTRACTOR at CONTRACTOR's expense, within five (5) Work Days at no cost or inconvenience to the Service Recipient.

7.05.1.1 Upon notification to CONTRACTOR by CITY or a Service Recipient that the Service Recipient's Cart(s) has been stolen or damaged beyond repair through no fault of CONTRACTOR, CONTRACTOR must deliver a replacement Cart(s) to such Service Recipient within five (5) Work Days. CONTRACTOR must maintain records documenting all Cart replacements occurring on a monthly basis.

7.05.1.2 Each Service Recipient is entitled to the replacement of one (1) damaged cart through no fault of Service Recipient, lost, destroyed, or stolen Cart every ten (10) years during the life of this Agreement at no cost to the Service Recipient. Except in the case of a Cart that must be replaced because of damage caused by CONTRACTOR or in the case where CONTRACTOR elects to replace a Cart rather than repair it on-site, CONTRACTOR will be compensated for the cost of those replacements in excess of one (1) per type of Cart per Service Recipient every ten (10) years during the term of the Agreement, in accordance with the "Cart Exchange" Service Rate set forth in **Exhibit 1**, or as may be adjusted by the CITY from time to time as provided under this Agreement.

7.05.1.3 CONTRACTOR understands and agrees that this provision is intended to be applied on a per Cart type, individual Service Recipient basis and accordingly each Service Recipient could receive up to three (3) replacement Carts, one (1) of each type, every ten (10) years during the term of the Agreement.

7.05.1.4 CONTRACTOR must comply with CalRecycle container requirements as they may apply during the term of this Agreement. If any such changes are adopted after the Effective Date that results in CONTRACTOR being required to replace containers before they have been fully depreciated, CONTRACTOR will be eligible for additional compensation in accordance with Section 24.01.1.

7.05.2 Repair of Garbage, Recycling and Organic Waste Carts. CONTRACTOR is responsible for the repair of Carts, including but not be limited to, hinged lids, wheels and axles. Within five (5) Work Days of notification by the CITY or a Service Recipient of the need for such repairs, CONTRACTOR must repair the Cart or if necessary, remove the Cart for repairs and deliver a replacement Cart to the Service Recipient.

7.05.3 Additional Garbage Cart Request. Upon notification to the CONTRACTOR by CITY or a Service Recipient that additional Carts for Garbage are requested, CONTRACTOR must deliver such Carts to such Service Recipient within five (5) Work Days, at the rate set forth in **Exhibit 1**.

7.05.4 Additional Recyclable Materials or Organic Waste Carts. For those Service Recipients utilizing 96 gallon Recyclable Materials Carts or 96 gallon Organic Waste Carts, CONTRACTOR must provide additional Recyclable Materials Carts and/or additional Organic Waste Carts to SFD Service Recipients within five (5) days of request. CONTRACTOR will be compensated for the cost of additional Recyclable Materials or Organic Waste Carts as set forth in **Exhibit 1** or as may be adjusted under this Agreement.

7.05.5 Ownership of Carts. Ownership of Carts is vested in the CONTRACTOR.

7.06 SFD Garbage Collection Service. This service is governed by the following terms and conditions:

7.06.1 Non-Collection. CONTRACTOR is not required to Collect any Residential Garbage that is not placed in a Garbage Cart. In the event of non-collection, CONTRACTOR will follow the steps set forth in Section 3.10.

7.06.2 Disposal Facility. Except as set forth below, all Residential Garbage Collected as a result of performing SFD Garbage Collection Services must be transported to, and disposed of, at the Disposal Facility.

7.07 SFD Recycling Service. This service is governed by the following terms and conditions:

7.07.1 Overages. Corrugated cardboard that will not fit inside the Recyclable Materials Cart may be placed beside the Recycling Cart during the two-week period beginning December 26<sup>th</sup> each year during the term of this Agreement.

7.07.2 Material Recycling Facility. Subject to 3.09, all Recyclable Materials Collected as a result of performing recycling services must be delivered to the Material Recycling Facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

7.07.2.1 Recycling - Changes to Services. Should changes in Applicable Law arise that necessitate any additions or deletions to the services described in this Section 7.07, including the type of items included as Recyclable Materials, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the services to be performed and the compensation to be paid before undertaking any changes or revisions to such services.

7.08 SFD Organic Waste Collection Service. This service is governed by the following terms and conditions:

7.08.1 Starting January 1, 2020 CONTRACTOR's SFD Organic Waste Collection Service is required to include only Green Waste to comply with AB 1594. However, CONTRACTOR must expand the SFD Organic Waste Collection Service to include Food Waste and Other Organics as part of the SFD Organic Waste Collection Services by January 1, 2022, or as may be required by CalRecycle to comply with SB 1383. Collected Organic Waste shall be processed at a properly permitted Organic Waste Processing Facility.

7.08.2 CONTRACTOR must comply with CalRecycle collection frequency requirements as they may apply during the term of this Agreement. In the event such required changes to collection frequency that cause CONTRACTOR to incur additional collection costs, CONTRACTOR is entitled to receive additional compensation in accordance with Section 24.01.1.

7.08.3 Organic Waste Processing Services. CONTRACTOR must ensure that all Organic Waste Collected pursuant to this Agreement is diverted from the landfill in accordance with AB 939, AB 1826, AB 1594, SB 1016 and SB 1383, and any subsequent or other Applicable Law.

7.08.4 CONTRACTOR must ensure that the Organic Waste Collected pursuant to this Agreement is not disposed of in a landfill, except for residue resulting from processing.

7.08.5 Organic Waste Processing Facility. CONTRACTOR must deliver all Collected Organic Waste to a fully permitted Organic Waste Processing Facility or a fully permitted Organic Waste transfer station. All expenses related to Organic Waste processing and marketing will be the sole responsibility of CONTRACTOR.

7.08.6 Holiday Tree Collection. CONTRACTOR must Collect Holiday Trees set out at the curb for Collection during the two-week period beginning December 26<sup>th</sup> each year during the term of this Agreement. CONTRACTOR must deliver the Collected Holiday Trees to an appropriate facility for processing. This annual service will be provided at no additional charge to the SFD Service Recipient. CONTRACTOR is not required to divert Holiday Trees with tinsel, flocking or ornaments.

7.09 SFD Large Item Collection Service. This service is governed by the following terms and conditions:

7.09.1 Conditions of Service. CONTRACTOR must provide SFD Large Item Collection Service to all SFD Service Units in the Service Area whose Large Items have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and Service Recipient, that will provide safe and efficient

accessibility to CONTRACTOR's Collection crew and vehicle. Up to three items per collection week will be collected. The free program is intended to collect only those items generated from the dwelling units as part of normal residential use. CONTRACTOR shall provide up to one free service stop per week for non-hazardous, non-infectious materials such as a sofa, chair mattress, law furniture, barbecue, or appliances that can be easily and safely moved by hand or hand truck. Free collection does not include construction and demolition debris. For subsequent collection in any collection week, the CONTRACTOR shall receive compensation from the Service Recipient at the rate for such service as set in **Exhibit 1**.

7.09.2 Frequency of Service. SFD Large Item Collection Service must be provided on the customer's regular collection day so long as customer gives CONTRACTOR at least on full Work Day's advance notice. The Service Recipient may not intentionally commingle residential Large Items with other Solid Waste.

7.09.3 Large Items Containing Freon. In the event CONTRACTOR Collects Large Items that contain Freon, CONTRACTOR must handle such Large Items in a manner such that the Large Items are not subject to regulation as hazardous waste under applicable state and federal laws or regulations.

7.09.4 Maximum Reuse and Recycling. CONTRACTOR must dispose of Large Items collected from Service Units pursuant to this Agreement in accordance with the following hierarchy:

7.09.4.1 Recycle.

7.09.4.2 Disposal.

7.10 Used Motor Oil and Motor Oil Filter Collection.

7.10.1 CONTRACTOR shall provide collection of used motor oil motor oil filters as part of CONTRACTOR's SFD Collection Services, at no charge to SFD Service Recipients. The CONTRACTOR will provide SFD Service Units with oil collection containers.

7.10.2 CONTRACTOR shall provide SFD Service Recipients upon request with used motor oil containers and heavy-duty zip lock bags for used motor oil filters provided CONTRACTOR continues to receive such containers and bags pursuant to grant programs at no cost to CONTRACTOR. SFD Service Recipient's will be allowed to recycle up to two (2) gallons of used motor oil per month using this service. Used motor oil must be properly containerized and bagged in accordance with CONTRACTOR's instructions and set out next the Garbage Cart. Used motor oil must be recycled and/or lawfully disposed. Service Recipients must call CONTRACTOR at least twenty-four (24) hours (excluding weekends) prior to their regularly scheduled collection day if they wish CONTRACTOR to collect used motor oil containers and/or filters.

7.11 Construction and Demolition Debris and Other Temporary Collection Service. This service is governed by the following terms and conditions:

7.11.1 Conditions of Service. Upon request of an SFD Service Unit, CONTRACTOR must provide Construction and Demolition Debris and Other Temporary Collection Service on a temporary on-call basis.

7.11.2 Charges for Bins or Roll-off Containers will be in accordance with **Exhibit 1**.

7.11.3 Frequency of Service. Construction and Demolition Debris and Other Temporary Collection Service must be provided within seven (7) Work Days of receipt of the request.

7.11.4 CONTRACTOR must provide SFD Service Units with Construction and Demolition Debris and Other Temporary Collection Service with as little disturbance as possible and without obstructing alleys, roadways, driveways, sidewalks, or mailboxes. CONTRACTOR may only place Roll-off Containers in strict adherence with CITY's right-of-way requirements and Municipal Code.

7.12 Free Landfill Use for CITY residents. Upon showing proof of residency, CITY residents may use the Allied Imperial Landfill, or another landfill designated by CONTRACTOR and approved by the CITY, such approval not to be unreasonably withheld, up to four (4) times per year free of charge and dispose of a maximum of one (1) ton solid waste per trip of non-Commercial, and non- Prohibited Waste material that the landfill currently accepts. For example, White Goods are not accepted for Disposal at the landfill.

## ARTICLE 8. Commercial Collection Services

8.01 Commercial Collection Service. Except as set forth below, CONTRACTOR must provide Commercial Collection Services to all Commercial Service Units in the Service Area, including those City Service Units listed in **Exhibit 3**. All provisions of this Article 8 shall also apply to MFD Service Units and MFD Collection Service. This service is governed by the following terms and conditions:

8.01.1 Provision of Service. CONTRACTOR must provide Commercial Collection Service to all Commercial Service Units in the Service Area whose Solid Waste are properly containerized in Bins, Carts, or Roll-off Containers as appropriate where the Carts, Bins, or Roll-off Containers are accessible as set forth in Section 8.01.4. The size of the container and the frequency (above the minimum) of collection will be determined between the Service Recipient and CONTRACTOR. However, the size and frequency must be sufficient to provide that no Solid Waste need be placed outside the Cart, Bin, or Roll-off Container.

8.01.2 Required Capacity. CONTRACTOR must provide Commercial Recycling Service and Commercial Organic Waste Collection Service to all Commercial Service Units in the Service Area. For those Commercial Units that need more capacity than the minimum standard, CONTRACTOR may charge the Collection Service Rates as defined in **Exhibit 1**.

8.01.3 Hours of Collection. Commercial Collection Service must be provided, commencing no earlier than 5:00 a.m., and terminating no later than 8:00 p.m., Monday through Friday with service on Saturday starting no earlier than 4:00 a.m. The hours of Collection may be extended due to extraordinary circumstances or conditions with the prior consent of the Agreement Administrator.

8.01.4      Accessibility.      CONTRACTOR must Collect all Carts, Bins or Roll-Off Containers that are readily accessible to CONTRACTOR's crew and vehicles and not blocked. However, CONTRACTOR must provide "push services" as necessary during the provision of Commercial Collection Services for the Service Rate set forth in **Exhibit 1**. Push services include, but are not limited to, dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location. CONTRACTOR may charge an extra pickup fee for the Service Rate set forth in **Exhibit 1** where it is required to return to the Customer location to service the Cart, Bin or Roll-off Container because access was blocked.

8.01.5      Manner of Collection.      CONTRACTOR must provide Commercial Collection Service with as little disturbance as possible and must leave any Bin, Cart, or Roll-Off Container at the same point it originally located without obstructing alleys, roadways, driveways, sidewalks or mailboxes.

8.01.5.1      Purchase and Distribution of Bins and Carts for New Commercial Service Units.      CONTRACTOR must also distribute Bins, Carts or Roll-off Containers to new Commercial Service Units that are added to CONTRACTOR's Service Area during the term of this Agreement. The size of the Bins, Carts or Roll-Off Containers and the combination of Bins, Carts or Roll-Off Containers to be distributed will be in accordance with the service agreement obtained by CONTRACTOR as set forth in this Agreement and the distribution must be completed within five (5) Work Days of receipt of the request for service.

8.01.6      Replacement of Bins and Carts.      CONTRACTOR's employees must avoid damage to Bins or Carts by unnecessary rough treatment. CONTRACTOR must replace any Bin or Cart damaged by the CONTRACTOR at CONTRACTOR's expense, within five (5) Work Days at no cost or inconvenience to the Service Recipient.

8.01.6.1      Each Commercial Service Unit is entitled to the replacement of one (1) lost, destroyed, or stolen Bin or Cart once each ten (10) years of the term of this Agreement at no cost to the Service Unit, except where loss or damage is caused by the Service Recipient. Accordingly, CONTRACTOR will be compensated for the cost of those replacements in excess of one (1) Bin or Cart per Commercial Service Unit during each ten (10) years of the term Agreement, in accordance with the "Cart or Bin Exchange" Service Rate, as appropriate, set forth in **Exhibit 1**. CONTRACTOR must deliver a replacement Bin or Cart to such Service Unit within five (5) Work Days.

8.01.6.2      CONTRACTOR must comply with CalRecycle container requirements as they may apply during the term of this Agreement. If any such changes are adopted after the Effective Date that results in CONTRACTOR being required to replace containers before they have been fully depreciated, CONTRACTOR will be eligible for additional compensation in accordance with Section 24.01.1.

8.01.7      Repair of Bins and Carts.      CONTRACTOR is responsible for repair of Bins and Carts. Within five (5) Work Days of notification by CITY or a Service Recipient of the need for such repairs, CONTRACTOR must repair the Bin or Cart or if necessary, remove the Bin or Cart for repairs and deliver a replacement Bin or Cart to the Service Recipient. Bin or Cart repair also includes the removal of graffiti from the Bin or Cart.

8.01.8 Bin and Cart Exchange. Upon notification to CONTRACTOR by CITY or a Service Recipient that a change in the size, or number of the Bins or Carts is required, CONTRACTOR must deliver such Bins or Carts to such Service Recipient within five (5) Work Days. Each Commercial Service Unit is eligible to receive one (1) free Bin or Cart exchange per Calendar Year during the term of this Agreement. CONTRACTOR is allowed to charge the Commercial Service Unit for the cost of those exchanges in excess of one (1) Bin or Cart exchange per Calendar Year, in accordance with the appropriate "Bin or Cart Exchange" service rate set forth in **Exhibit 1** as may be adjusted by CITY under this Agreement. Additional Carts or Bins or different size Carts and Bins are subject to the applicable Service Rate set forth in **Exhibit 1**.

8.01.9 Ownership of Bins. Ownership of Carts, Bins, and Roll-off Containers distributed by CONTRACTOR is vested in CONTRACTOR.

8.01.10 Ownership of Carts. Ownership of Carts distributed by the CONTRACTOR is vested in CONTRACTOR.

8.01.11 Cleaning of Bins and Carts. Once each Calendar Year, if requested by the Commercial Service Unit or if CITY requests to have a Bin or Cart cleaned or repaired, CONTRACTOR must clean all Bins and Carts at the Commercial Service Unit's premises, or must replace the dirty Bins and Carts with clean Bins and Carts. This service must be provided at no charge to the Commercial Service Unit, so long as the service is not requested more than once per Calendar Year. In addition, regardless of whether or not this cleaning is requested by the Service Unit, CONTRACTOR will ensure that all Carts and Bins are cleaned on an as-needed basis so as to maintain a clean appearance and proper function. Any Bin or Cart cleanings cannot be done in a manner that results in water entering the CITY's storm drain system. Additional cleanings beyond once each Calendar Year will be subject to the Service Rate set forth in **Exhibit 1**.

8.02 Commercial Garbage Collection Service.

8.02.1 Conditions of Service. CONTRACTOR must provide Commercial Garbage Collection Service to all Commercial Service Units in the Service Area who's Commercial Garbage is properly containerized in Garbage Carts, Bins, or Roll-off Containers, where the Garbage Carts, Bins, or Roll-off Containers are accessible.

8.02.2 Size and Frequency of Service. This service must be provided as deemed necessary and determined between CONTRACTOR and the Commercial Service Unit, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Commercial Service Unit and CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Garbage Bin, Cart, or Roll-off Container at the option of the Commercial Service Unit. The size of the container and the frequency of Collection will be determined between the Commercial Service Unit and CONTRACTOR. However, size and frequency must be sufficient to provide that no Commercial Garbage need be placed outside the Bin, Cart or Roll-Off Container. CONTRACTOR must provide containers as part of the Commercial Collection Service rates set forth in **Exhibit 1**.

8.02.3 Overage. CONTRACTOR is not required to Collect any Commercial Solid Waste that is not placed in a Cart, Bin, or Roll-off. In the event of Overage, CONTRACTOR must follow the steps as set forth in Section 3.10.

8.02.4 Disposal Facility. All Commercial Garbage collected as a result of performing Commercial Garbage Collection Services must be transported to, and disposed of, at the Disposal Facility.

8.03 Commercial Recycling Service. This service is governed by the following terms and conditions:

8.03.1 Conditions of Service. CONTRACTOR must provide Commercial Recycling Service to all Commercial Service Units in the Service Area whose Recyclable Materials are properly containerized in Recycling Bins, Recycling Carts, or Recycling Roll-off Containers except as set forth below, where the Recycling Bins or Carts are accessible. CONTRACTOR will charge for collection of Recyclable Materials collected in Carts, Bins, or Roll-off Containers at the rates set forth in **Exhibit 1**.

8.03.2 Size and Frequency of Service. This service will be provided as deemed necessary and determined between CONTRACTOR and the Service Recipient, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Service Recipient and CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin, Cart, or Roll-off Container at the option of the Service Recipient. The size of the container and the frequency (above the minimum) of Collection will be determined between the Service Recipient and CONTRACTOR. However, size and frequency must be sufficient to provide that no Recyclable Materials need be placed outside the Bin, Cart, or Roll-off Container.

8.03.3 Material Recovery Facility. All Recyclable Materials Collected as a result of performing Recycling Services must be delivered to the Material Recovery Facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

8.03.4 Recycling - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable Materials, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be paid before undertaking any changes or revisions to such work.

8.03.5 Compliance with AB 341. CONTRACTOR will provide Commercial Recycling Service in a manner consistent with AB 341. Starting January 1, 2020 and each January 1<sup>st</sup> thereafter, CONTRACTOR will notify all Commercial Service Units of the requirements to comply with the law. CONTRACTOR must provide the volume of collection service that all Commercial Service Units in order to be in full compliance with the law. In conjunction with the CITY's ordinance supporting full compliance with AB 341 by Commercial Service Units (i.e., "generators"), CONTRACTOR will conduct in-person outreach to all non-participating commercial covered generators a minimum of once per calendar year.

8.04 Commercial Organic Waste Collection Service. This service is governed by the following terms and conditions:

8.04.1 Conditions of Service. CONTRACTOR must provide Commercial Organic Waste Collection Service to all Commercial Service Units in the Service Area whose Organic Waste is properly containerized in Organic Waste Bins or Organic Waste Carts, except as set forth below, where the Organic Waste Bins or Carts are accessible. CONTRACTOR will charge for collection of Organic Waste collected in Carts or Bins at the rate set forth in **Exhibit 1**. CONTRACTOR agrees that not all Commercial Service Units will elect to receive Organic Waste Collection Service in Carts, and that CONTRACTOR will provide Organic Waste Collection Bins upon request and as necessary. CONTRACTOR will provide a sufficient number of Carts or Bins and at a collection frequency to allow for any such Commercial Service Unit to utilize the collection of Organic Waste.

CONTRACTOR must comply with CalRecycle collection frequency requirements as they may apply during the term of this Agreement. If any such changes to collection frequency are adopted after January 1, 2020 that results in CONTRACTOR being allowed to reduce the frequency of Garbage or Organic Waste Collection, or otherwise cause CONTRACTOR to reduce its collection costs as a result in a change in Garbage or Organic Waste collection frequency, CONTRACTOR must provide CITY with its estimate of reduced its costs and shall make adjustments to the Maximum Service Rates.

8.04.2 Size and Frequency of Service. This service will be provided as deemed necessary and determined between CONTRACTOR and the Service Recipient, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Service Recipient and CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin or Cart at the option of the Service Recipient. The size of the container and the frequency of Collection will be determined between the Service Recipient and CONTRACTOR. However, size and frequency must be sufficient to provide that no Organic Waste needs be placed outside the Bin or Cart.

8.04.3 Organic Waste Processing Facility. All Organic Waste Collected as a result of performing Organic Waste Collection Services must be delivered to the Organic Waste Processing Facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

8.04.4 Organic Waste - Changes to Services. Should changes in law arise that necessitate any additions or deletions to the services described in this Section 8.04 including the type of items included as Organic Waste, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the services to be performed and the compensation to be paid before undertaking any changes or revisions to such services.

8.04.5 Compliance with AB 1826 and SB 1383. CONTRACTOR will provide Commercial Recycling Service in a manner consistent with AB 1826 and SB 1383. Starting January 1, 2020 and each January 1st thereafter, CONTRACTOR will notify all Commercial Service Units of the requirements to comply with the law. CONTRACTOR must provide the volume of collection service that all Commercial Service Units in order to be in full compliance with the law. In conjunction with the CITY's

ordinance supporting full compliance with AB 341 by Commercial Service Units (i.e., “generators”), CONTRACTOR will conduct in-person outreach to all non-participating commercial covered generators a minimum of once per calendar year.

8.05 Construction and Demolition Debris and Other Temporary Collection Service. This service is governed by the following terms and conditions:

8.05.1 Conditions of Service. Upon request of a Commercial Service Unit, CONTRACTOR must provide Construction and Demolition Debris and Other Temporary Collection Service on a temporary on-call basis.

8.05.2 Charges for Bin or Roll-off Containers must be in accordance with **Exhibit 1** of this Agreement.

8.05.3 Frequency of Service. Construction and Demolition Debris and Other Temporary Collection Service must be provided within seven (7) Work Days of receipt of the request.

8.05.4 CONTRACTOR must provide Commercial Service Units with Construction and Demolition Debris and Other Temporary Collection Service with as little disturbance as possible and without obstructing alleys, roadways, driveways, sidewalks, or mailboxes. CONTRACTOR may only place Roll-off Containers in strict adherence with CITY’s right-of-way requirements and Municipal Code.

8.06 MFD Large Item Collection Services. CONTRACTOR shall provide Large Item Collection Services to MFD complexes in a manner and frequency as may be requested by the MFD complex management. Any such MFD Large Item Collection Services must be arranged directly between CONTRACTOR and the MFD complex management or ownership. No individual MFD Service Unit may request or arrange for MFD Large Item Collection Services. CONTRACTOR may charge for MFD Large Item Collection Services in accordance with the Maximum Service Rates as listed in **Exhibit 1**.

## **ARTICLE 9. City Services Provided by Contractor**

9.01 CITY Collection Services. CITY Collection Services shall be provided at no cost to the CITY and shall be governed by the following terms and conditions:

9.01.1 Conditions of Service. CONTRACTOR shall provide Solid Waste Collection Services to all CITY Service Units as set forth in **Exhibit 3**, and as may be modified by written notice by the CITY as a CITY-directed change under Section 24.01, where the Containers are not blocked and are accessible by CONTRACTOR’s collection vehicles. CONTRACTOR must provide CITY Collection Services in the same manner as service provided to Commercial Service Units in Article 8.

9.01.2 Construction and Demolition Debris and Other Temporary Collection Service related to CITY construction or public works projects undertaken on force account solely by CITY employees, shall be provided by CONTRACTOR at no cost to the CITY, up to a maximum cost of \$5,000 annually.

9.01.3      CONTRACTOR shall receive written permission from the CITY before placing any containers on CITY owned property for service, except that no such permission shall be needed to place Containers at locations specified in **Exhibit 3**.

9.01.4      CONTRACTOR shall limit the number of trips and the path of travel for collection vehicles in CITY parking lots.

9.02      CITY Code Enforcement Clean-Up Services.

9.02.1      Within one (1) Work Day of a request from the Agreement Administrator, CONTRACTOR shall provide Bins or Roll-off Containers to support CITY's code enforcement Clean-Up operations within the Service Area. Within one (1) Work Day of request by the Agreement Administrator, CONTRACTOR shall Collect the Bin or Roll-off Container and transport and deliver the Bin or Roll-off Container to a Disposal Facility, the Materials Recovery Facility, or Organics Processing Facility as appropriate given the characteristics of the load. CITY shall be responsible for loading all Solid Waste into CONTRACTOR's Bin or Roll-off Container. CONTRACTOR shall issue an invoice to the property owner and to the CITY for each incidence and reflect the property address on the invoice. CITY shall pay CONTRACTOR for all such services.

9.03      City-Sponsored Events Service. Upon request by the CITY, CONTRACTOR shall provide Containers, Collection Services, and Street Sweeping Services in accordance with Section 9.05.4 at up to ten (10) events that are sponsored, organized, or substantially supported by the CITY, including but not limited to those specified in **Exhibit 2**, and as may be modified by written notice by the CITY at no cost to the CITY, but subject to the limitation in the last sentence of this Section 9.03. The Solid Waste collection and disposal plan for each event shall be developed by Agreement Administrator in consultation with and subject to agreement of the CONTRACTOR. Current events are set forth on **Exhibit 2**, and as may be modified by written notice by the CITY. CITY may change or increase the number of the City-Sponsored Event receiving services, and the service levels provided at any City-Sponsored Events, by written notice to CONTRACTOR, as a CITY-directed change under Section 24.01. Neighborhood Clean-up Events. CONTRACTOR shall provide Collection Services at Neighborhood Clean-up Events at a maximum of two (2) per calendar year upon request by CITY. Each event shall occur on a Saturday between the hours of 8:00 a.m. and 12:00 p.m. at a location selected by the CITY and shall be limited to SFD and MFD Service Recipients within the CITY who must show proof that they reside in the City prior to participating in the Neighborhood Clean-up Events, and no commercial or industrial user shall be allowed to participate in the Neighborhood Clean-up Events. The Agreement Administrator shall notify CONTRACTOR in writing or e-mail not less than eight (8) weeks prior to the date of the Neighborhood Clean-up Event. The services shall be provided in a manner that meets all needs of the Neighborhood Clean-up Collection Event. CONTRACTOR shall conduct the events at no cost of any kind to the CITY. CONTRACTOR shall provide staffing to support CITY management at all times during the Neighborhood Clean-up Events.

9.03.1      CONTRACTOR shall prepare and distribute to SFD and MFD Service Recipients Neighborhood Clean-up Event notice through the CITY website and provide flyers to the CITY for distribution at City Hall notices no later than six (6) weeks prior to each event. At a minimum, the dates

and hours of operation, locations of the collection sites, and acceptable materials for collection shall be included in the notices. CONTRACTOR shall provide Spanish-translated notices upon request by the CITY.

9.03.2 CONTRACTOR shall require that each SFD and MFD Service Recipient show their driver's license and a water bill for proof of residency at the collection site as proof of CITY residency as a condition to collection.

9.03.3 On the first (1) Working Day following each Neighborhood Clean-up Event, CONTRACTOR shall remove and clean up any remaining materials left for collection, and at the request of the Agreement Administrator provide street sweeping services in accordance with Section 9.05.4 at the paved collection locations.

9.04 Street Sweeping Services.

9.04.1 CONTRACTOR shall provide Street Sweeping Services during the Term to CITY or Service Recipients, in accordance with the **Exhibit 8**, commencing on January 1, 2020. CITY to reimburse CONTRACTOR on a monthly basis, up to \$245,000.00 annually and adjusted at same level as the customer rate adjustment as calculated in Section 4.05.

9.05 Downtown Street and Alley Clean Up. CONTRACTOR will provide one employee to perform the downtown street and alley clean up services described in **Exhibit 10**.

## ARTICLE 10. Collection Routes

10.01 Service Routes. CONTRACTOR must provide CITY with maps precisely defining Collection routes, together with the days and the times at which Collection will regularly commence.

10.02 Service Route Changes. CONTRACTOR must submit to CITY, in writing, any proposed route change (including maps thereof) not less than forty-five (45) calendar days prior to the proposed date of implementation. CONTRACTOR may not implement any route changes without the prior review of the Agreement Administrator. If the change will change the Collection day for a Service Recipient, CONTRACTOR must notify those Service Recipients in writing of route changes not less than fifteen (15) days before the proposed date of implementation.

10.02.1 Collection Route Audits. CITY reserves the right to conduct audits of CONTRACTOR's Collection routes. CONTRACTOR must cooperate with CITY in connection therewith, including permitting CITY employees or agents, designated by the Agreement Administrator, to ride in the Collection vehicles in order to conduct the audits. CONTRACTOR has no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by the Agreement Administrator to conduct such audits.

## ARTICLE 11. Minimum Performance and Diversion Standards

11.01 Agreement Term Extension. In order to receive the Agreement term extension offer set forth in Article 2 of this Agreement, CONTRACTOR must meet or exceed the following annual minimum performance and diversion standards in each Calendar Year beginning January 1, 2020.

11.01.1      Performance Standards.      CONTRACTOR must not have received assessment of Administrative Charges, as set forth in this Agreement more than \$50,000 in any one (1) Agreement Year. This amount to be annually adjusted at same level as the customer rate adjustment as calculated in Section 4.05.

11.01.2      Minimum Diversion Standards.      CONTRACTOR must have exercised commercially reasonable best efforts to meet the requirements set forth in Article 5.

11.01.3      No Current Default.      CONTRACTOR is not currently in default of the Agreement.

11.02      Billing Audit and Performance Reviews.

11.02.1      Selection and Cost.      CITY may conduct billing audit and performance reviews (“reviews”) of CONTRACTOR’s performance during the term of this Agreement. A qualified firm will perform the reviews under Agreement to CITY. CITY will have the final responsibility for the selection of the firm but may seek and accept comments and recommendations from CONTRACTOR. CITY may conduct reviews at any time during the term of the Agreement, of the reviews described in Sections 11.02.1.1 through 11.02.1.2 below, and only if such reviews are conducted at the sole option of the CITY. CITY and CONTRACTOR agree to each pay fifty-percent (50%) of the reasonable cost of the audits and performance reviews provided for under Section 11.02, up to a maximum total cost of Ten Thousand Dollars (\$10,000.00).

11.02.1.1      Full Reviews During Initial Term.      CITY may conduct three (3) full reviews during the Initial Term of this Agreement. The purpose of these full reviews will be as described in Section 11.02.2 below, and one of these reviews may be conducted prior to CITY approving an extension to the term of this Agreement as described in Sections 2.02 and 2.03. For each of these full reviews, CONTRACTOR will be responsible for fifty-percent (50%) of the reasonable cost.

11.02.1.2      Full Review During Extension Period.      In the event that CONTRACTOR is granted an extension to the term of this Agreement as described in Section 2.02, CITY may conduct one (1) additional full review at CONTRACTOR’s expense during the five (5) year extension period. The purpose of these full reviews is described in Section 11.02.2. For each of these full reviews, CONTRACTOR will be responsible for fifty-percent (50%) of the reasonable cost.

11.02.2      Purpose.      The reviews will be designed to verify that Service Recipient billing rates have been properly calculated and they correspond to the level of service received by the Service Recipient, verify that Franchise Fees, and other fees required under this Agreement have been properly calculated and paid to CITY, verify CONTRACTOR’s compliance with the reporting requirements and performance standards of the Collection Service Agreement, and verify the diversion percentages reported by CONTRACTOR. CITY (or its designated consultant) may utilize a variety of methods in the execution of the performance review and billing audit, including analysis of relevant documents, on-site and field observations, and interviews. CITY (or its designated consultant) will review and document the items in the Agreement that require CONTRACTOR to meet specific performance standards, submit information or reports, perform additional services, or document operating procedures, that can be objectively evaluated.

This information will be formatted in a "compliance checklist" with supporting documentation and findings tracked for each of the identified items. The review will specifically include a determination of CONTRACTOR's compliance with the diversion requirements of Article 5, and the public outreach and education requirements of Article 14. CITY (or its designated consultant) may review the Service Recipient's service functions and structure utilized by CONTRACTOR. This may include CONTRACTOR's protocol for addressing Service Recipient's complaints and service interruption procedures. Complaint logs may be reviewed, along with procedures and systems for tracking and addressing complaints. On-site and field observations by CITY (or its designated consultant) may include, but are not necessarily limited to:

11.02.2.1 Interviews and discussions with CONTRACTOR's administration and management personnel;

11.02.2.2 Review and observation of CONTRACTOR's customer service functions and structure;

11.02.2.3 Review of public education and outreach materials;

11.02.2.4 Interviews and discussions with CONTRACTOR's financial and accounting personnel;

11.02.2.5 Interviews with route dispatchers, field supervisors and managers;

11.02.2.6 Interviews with route drivers;

11.02.2.7 Interviews with vehicle maintenance staff and observation of maintenance practices; and

11.02.2.8 Review of on-route collection services, including observation of driver performance and collection productivity and visual inspection of residential routes before and after collection to evaluate Cart placement and cleanliness of streets.

11.02.3 CONTRACTOR's Cooperation. CONTRACTOR must cooperate fully with the review and provide all requested data, including operational data, financial data of the type described in Section 16.01, and other data reasonably requested by CITY within thirty (30) Work Days.

11.02.4 Additional Billing Audit and Performance Review. In the event that the Billing Audit and Performance Review concludes that CONTRACTOR is not in compliance with all terms and conditions of this Agreement and such non-compliance is material, CITY may conduct an Additional Billing Audit and Performance Review to ensure that CONTRACTOR has cured any such area of non-compliance. CONTRACTOR will be responsible for the cost of any such Additional Billing Audit and Performance Review, for a maximum cost of **Twenty Thousand Dollars (\$20,000)** starting on January 1, 2022 and each January 1<sup>st</sup> thereafter, the maximum cost for the review will be adjusted at same level as the customer rate adjustment as calculated in Section 4.05.

11.03 City Requested Program Review. CITY reserves the right to require CONTRACTOR to periodically conduct reviews of the Collection Services programs, provided that such reviews are

reasonable and can be accomplished at no additional cost to CONTRACTOR and without interfering with CONTRACTOR's operations. Such reviews could assess one or more of the following performance indicators: average volume of Recyclable Materials per setout per Service Recipient, average volume of Green Waste and/or Food Waste per setout per Service Recipients, participation level, contamination levels, etc. Prior to the program evaluation review, CITY and CONTRACTOR will meet and discuss the purpose of the review and agree on the method, scope, and data to be provided by CONTRACTOR.

11.04      Cooperation with Other Program Reviews. If CITY wants to collect program data, perform field work, conduct route audits to investigate Service Recipient participation levels and setout volumes and/or evaluate and monitor program results related to Garbage, Recyclable Materials and Organic Waste collected in CITY by CONTRACTOR, CONTRACTOR must cooperate with CITY or its agent(s) as reasonably requested by CITY, provided that such cooperation can be accomplished at no additional cost to CONTRACTOR and without interfering with CONTRACTOR's operations.

## **ARTICLE 12. Collection Equipment**

### 12.01      Equipment Specifications.

12.01.1      General Provisions. All equipment used by CONTRACTOR in the performance of services under this Agreement must be of a high quality and comply with all Applicable Laws and meet or exceed all applicable air quality standards, including all applicable provisions of Imperial County Air Pollution Control District. The vehicles must be designed and operated so as to prevent Collected materials from escaping from the vehicles. Hoppers must be closed on top and on all sides with screening material to minimize Collected materials from leaking, blowing or falling from the vehicles. All trucks and containers must be leak resistant and must be operated to minimize spillage of liquids during Collection or in transit.

12.01.2      Large Items. Vehicles used for Collection of Large Items may not use compactor mechanisms or mechanical handling equipment in situations where it may damage reusable goods or release Freon or other gases from pressurized appliances.

12.01.3      Collection Vehicles. CONTRACTOR may not use any Collection vehicle that is more than twelve (12) years old unless such vehicle is a Rebuilt Vehicle.

12.01.4      Collection Vehicle Size Limitations / Overweight Vehicle Charge. CONTRACTOR may not use any Collection vehicle for in violation of weight limitations set forth in Applicable Law. CONTRACTOR must report all instances of overweight vehicles to CITY upon request of the CITY. CONTRACTOR may be assessed administrative charges as set forth Section 19.04 as a result of exceeding an overweight vehicle rate of ten percent (10%) in any quarter during the term of the Agreement. The overweight vehicle rate will be calculated as the total number of overweight collection vehicle instances during each month, divided by the total number of collection vehicle loads transported during the same corresponding month. Prior to collecting administrative charges for overweight vehicles, the CITY shall afford CONTRACTOR a reasonable opportunity to provide the Agreement Administrator documentation of the extraordinary circumstance that caused the overweight vehicles. Extraordinary circumstances in this particular case include, but may be limited to, heavy rains or high winds that caused

excess Green Waste to be generated, rain to accumulate in open Collection Containers, or normal Collection routes to be delayed or shortened to extreme weather conditions. The Agreement Administrator shall have authority to consider CONTRACTOR's documentation and uphold and collect the assessed charge, to reduce the charge, or waive and dismiss the charge. The Agreement Administrator shall also have the authority to waive charges in advance of an anticipated, or in response to and actual, emergency event.

12.01.5 Registration; Inspection. All vehicles used by CONTRACTOR in providing Collection Services under this Agreement, except those vehicles used solely on CONTRACTOR's premises, are to be registered with the California Department of Motor Vehicles. In addition, each such vehicle must be inspected by the California Highway Patrol in accordance with Applicable Law. Within two (2) Work Days of a request from the Agreement Administrator, CONTRACTOR must provide CITY a copy of its vehicle maintenance log and any safety compliance report, including, but not limited to, any report issued under California Vehicle Code sections 34500 and following, as well as the biennial "BIT" inspections conducted by the California Highway Patrol.

12.01.6 Safety Markings. All Collection equipment used by CONTRACTOR must have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, and clearance lights. All such safety markings must be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.

12.01.7 Vehicle Signage and Painting. Collection vehicles must be painted and numbered without repetition and must have CONTRACTOR's name, CONTRACTOR's customer service telephone number, and the number of the vehicle painted in letters of contrasting color, at least four (4) inches high, on each side and the rear of each vehicle. No advertising is permitted other than the name of CONTRACTOR, its logo and registered service marks except promotional advertisement of the Recyclable Materials and Organic Waste programs. CONTRACTOR must repaint all vehicles (including vehicles striping) during the term of this Agreement on a frequency as necessary to maintain a positive public image as reasonably determined by the Agreement Administrator.

12.01.8 Bin Signage, Painting, and Cleaning. All metal or plastic Bins of any service type furnished by CONTRACTOR must be either painted or galvanized. All metal or plastic Bins must display CONTRACTOR's name, CONTRACTOR's customer service telephone number, and the number of the Bin and must be kept in a clean and sanitary condition. The Bins provided by CONTRACTOR must be steam cleaned by CONTRACTOR as frequently as necessary so as to maintain them in a sanitary condition. Bins may be subject to periodic, unscheduled inspections by CITY and determination as to sanitary condition will be made by CITY. Bin cleanings beyond once each Calendar Year will be subject to the Service Rate set forth in **Exhibit 1**. Any and all washing of Bins, Carts, Compactors, or Roll-Off Containers by CONTRACTOR is not allowed within the CITY limits, unless approved by the Agreement Administrator.

12.02 Vehicle Certification. For each Collection vehicle used in the performance of services under this Agreement, CONTRACTOR must obtain a certificate of compliance (smog check) issued pursuant to Part 5 of Division 26 of the California Health and Safety Code (Section 43000 and following) and regulations promulgated thereunder and/or a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code (Section 34500 and following) and the regulations promulgated thereunder,

as applicable to the vehicle. CONTRACTOR must maintain copies of such certificates and reports and must make such certificates and reports available for inspection upon request by the Agreement Administrator.

12.03      Equipment Maintenance. CONTRACTOR must maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment must operate properly and be maintained in a condition satisfactory to CITY. CONTRACTOR must wash all Collection vehicles at least once a week.

12.04      Maintenance Log. CONTRACTOR must maintain a maintenance log for all Collection vehicles. The log must at all times be accessible to CITY by physical inspection upon request of Agreement Administrator, and must show, at a minimum, each vehicles CONTRACTOR assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

12.05      Equipment Inventory. Upon request by the CITY, CONTRACTOR shall provide to CITY an inventory of Collection vehicles and major equipment used by CONTRACTOR for Collection or transportation and performance of services under this Agreement. The inventory must indicate each Collection vehicle by CONTRACTOR assigned identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, and the date of acquisition. Each inventory must also include the tare weight of each vehicle. Each vehicle inventory must be accompanied by a certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this Agreement.

12.06      Reserve Equipment. CONTRACTOR must have available to it, at all times, reserve Collection equipment which can be put into service and operation within one (1) hour of any breakdown. Such reserve equipment must correspond in size and capacity to the equipment used by the CONTRACTOR to perform the contractual duties.

### **ARTICLE 13. Contractor's Office**

13.01      CONTRACTOR's Office. CONTRACTOR must maintain an office where complaints can be received. Contractor shall have a customer service capability to receive calls from customers and assist in resolution of needs or issues and must be open during business hours, 7:00a.m. to 7:00p.m. on Monday through Friday. CONTRACTOR must provide either a local or toll-free telephone number, and provide web-based platform for after hour inquiries. CONTRACTOR shall keep records of all Service Recipient's calls for at least three (3) years, collected on a Calendar Year cycle. The CONTRACTOR must include the type of call (Complaint, compliment, Other), a summary of the call the time and date of the call, and if a complaint was made, the resolution to the complaint. These records will be made available to the CITY upon request, as pursuant to Section 16.01.3 of this Agreement.

13.01.1      Emergency Contact. CONTRACTOR must provide the Agreement Administrator with an emergency phone number where the CONTRACTOR can be reached outside of the required office hours.

13.01.2 Multilingual/TDD Service. CONTRACTOR must at all times maintain the capability of responding to telephone calls in English and Spanish. CONTRACTOR must at all times maintain the capability or responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

13.01.3 Service Recipient Calls. During office hours, CONTRACTOR must maintain a telephone answering system capable of accepting at least fifteen (15) incoming calls at one time. CONTRACTOR must record all calls including any inquiries, service requests and complaints electronically.

13.02 All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of two (2) minutes must have the option to remain "on-hold" or request a "call-back" from a customer service representative. CONTRACTOR's customer service representatives must return Service Recipient calls. For all messages left before 3:00 p.m., all "call backs" must be attempted a minimum of one time prior to 7:00 p.m. on the day of the call.

## ARTICLE 14. CONTRACTOR Support Services

14.01 Public Outreach and Education Services. CONTRACTOR, at its own expense, must prepare, submit and implement an annual (Calendar Year) Public Education and Outreach Program beyond CITY's Public Education and Outreach Program. CONTRACTOR's initial Sustainability Plan is outlined in **Exhibit 6**. The proposed action plan must be submitted annually for CITY approval no later than August 1<sup>st</sup> for the next Calendar Year.

14.01.1 Sustainability Representative. The CONTRACTOR will collaborate with CITY staff to make available reasonable use of one or more CONTRACTOR representatives to assist CITY in meeting requirements of the California Integrated Waste Management Act (IWMA) of 1989. On an annual basis, CONTRACTOR will make an individual available as needed to implement, in cooperation with the CITY, Recycling programs in the Service Area on an average of approximately two days a week.

14.01.2 Diversion and Sustainability Work Plan. Collaboratively, CONTRACTOR and CITY staff will develop an annual Waste Diversion and Sustainability Work Plan to help guide CONTRACTOR's staff's work efforts. This program must be designed to increase diversion and Service Recipients participation and should target certain Recyclable Materials or "problem" areas of CONTRACTOR's Service Area where improvements can be maximized. Targets of outreach should be based on local trends and recycling patterns based on information obtained by both the Agreement Administrator and CONTRACTOR staff. To the extent commercially reasonable, CONTRACTOR will work to modernize its public outreach and education services throughout the term of this Agreement by providing outreach materials to Service Recipient electronically (e.g., via email). The parties will make good faith efforts to complete each annual Work Plan by August 1<sup>st</sup>. CONTRACTOR will not be required to expend more than **Five Thousand Dollars (\$5,000)** per year (adjusted at same level as the customer rate adjustment as calculated in Section 4.05), for matters described in this Article 14.

14.01.3 Website. CONTRACTOR will maintain a website that describes and promotes the use of the available Recycling services. The CONTRACTOR will consult, collaborate and

coordinate its activities with the CITY regarding Recycling programs so that the CITY is fully informed and provided as opportunity for input to the CONTRACTOR's Recycling programs.

14.01.4 Annual Recycling Awards. CONTRACTOR will recognize outstanding participation in Recycling and/or Organic Waste programs by identifying "recycling all-stars" for recognition at a City Council meeting during each November, beginning November 2020.

14.01.5 Outreach Activities. On an annual basis the CONTRACTOR will coordinate Recycling and Organics education and outreach programs for Residential and Commercial Service Recipients, in conformance with Applicable Laws including without limitation SB 1383, AB 1826, AB 939, AB 341, in coordination with the CITY. This program will consist of the following:

14.01.5.1 CONTRACTOR will attend public events and host booths to promote recycling education and awareness. CONTRACTOR will work with CITY to identify which special events will be attended.

14.01.5.2 CONTRACTOR to distribute educational material to Service Recipients on an annual basis. Examples include recycling tips, battery and bulb education, proper Cart placement, resource information, and HHW education. This material will be mailed or electronically transmitted to Service Recipients.

14.01.5.3 Service Recipients will have access to CONTRACTOR's website. The CONTRACTOR will ensure that information provided on the website is maintained and up-to-date. Service Recipients will also have the ability to use CONTRACTOR's web-based service request system.

14.01.5.4 CONTRACTOR with CITY and will work with local media to ensure information is communicated to the community (new programs, events, recycling information, etc.).

14.01.5.5 CONTRACTOR to use options, such as; local Paper, News, Websites, Home Owners Associations (HOA), and Civic Groups.

14.01.5.6 CONTRACTOR will assist the CITY in supporting Food Waste and Green Waste diversion surveys and programs.

14.01.5.7 CONTRACTOR will complete Garbage, Organic Waste, and Recycling audits for Commercial Service Recipients and provide recommendations to Commercial Service Recipients on how to improve overall resource efficiency.

14.01.6 News Media Requests. CONTRACTOR will notify the Agreement Administrator by fax, e-mail or phone of all requests for news media interviews related to the services covered under this Franchise Agreement within twenty-four (24) hours of CONTRACTOR's receipt of the request. When practicable, before responding to any inquiries involving controversial issues or any issues likely to affect participation or Service Recipient's perception of services, CONTRACTOR will discuss CONTRACTOR's proposed response with the Agreement Administrator.

14.01.6.1 Copies of draft news releases or proposed trade journal articles that use the name of CITY or relate to the services provided hereunder must be submitted to the Agreement Administrator for prior review and approval at least five (5) working days in advance of release, except where CONTRACTOR is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case CONTRACTOR must submit such materials to CITY simultaneously with CONTRACTOR's submittal to such regulatory agency.

14.01.6.2 Copies of articles resulting from media interviews or news releases that use the name of CITY or relate to the services provided hereunder must be provided to the CITY within five (5) days after publication.

14.02 Annual Collection Service Notice. Each year during the term of this Agreement, CONTRACTOR must publish and distribute (by mail or electronically) a notice to all Service Units regarding the Collection Service programs. The notice must contain at a minimum; definitions of the materials to be Collected, procedures for setting out the materials, the days when Garbage Collection Services, Recycling Services, and Organic Waste Collection Services will be provided, CITY customer service phone number; and instructions on the proper filling of Containers, and instructions as to what materials may or may not be placed in Recyclable Materials or Organic Waste Containers. The notice must also advertise the availability of on-premises Collection Services, SFD Large Items Collection Services and Temporary Construction and Demolition Debris Collection Services, and specifically the availability of no-charge on-premises Collection Services for specific qualified Service Recipients as described in Section 7.02.1. The notice must be provided in English, and other languages as directed by the CITY and must be distributed by CONTRACTOR no later than March 31 of each year.

14.03 Mulch or Compost Delivery. At no cost to the CITY, CONTRACTOR must provide CITY with mulch or compost materials (i.e., "Recovered Organic Materials") to assist the CITY in complying with SB 1383, up to an annual maximum of ten (10) twenty (20) cubic yard roll-off containers. CONTRACTOR must deliver mulch or compost materials at a time and location mutually agreeable between the CITY and CONTRACTOR.

14.04 Edible Food Recovery Support. At no cost to the CITY, CONTRACTOR must provide support to the CITY's Edible Food Recovery program as required under SB 1383. CONTRACTOR support may include educating commercial edible food generators, and providing records of site visits, conducting education efforts, and listing food recovery organizations.

14.05 Additional Outreach Programs and Services. CONTRACTOR will provide additional public outreach services and programs as requested by CITY at a price to be mutually agreed upon between the CONTRACTOR and the Agreement Administrator. This agreement will ultimately take the form of a standard CONTRACTOR personal services Agreement. In the event the CONTRACTOR and Agreement Administrator cannot reach a mutually agreed upon price for the requested service or program, CITY shall have the right to procure the service of other vendors or contractors to provide the requested public outreach services

## ARTICLE 15. Emergency Service

15.01 Revised Services During an Emergency. In the event of a natural disaster or Act of God, the Agreement Administrator may grant the CONTRACTOR a variance from regular routes and schedules, which will not be withheld unreasonably. As soon as practicable after such event, CONTRACTOR must advise the Agreement Administrator when it is anticipated that normal routes and schedules can be resumed. The Agreement Administrator will make an effort through the local news media and in coordination with the CITY to inform the public when regular services may be resumed. The cleanup from a natural disaster or Act of God may require that CONTRACTOR hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the natural disaster or Act of God. CONTRACTOR will receive additional compensation for extraordinary cleanup directly in response to a natural disaster or Act of God above the normal compensation contained in this Agreement, to cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses based on the rates set forth in **Exhibit 1** provided CONTRACTOR has first secured written authorization and approval from CITY through the Agreement Administrator. CITY will be given equal priority and access to resources as with other franchise jurisdictions held by CONTRACTOR or its affiliates.

## ARTICLE 16. Record Keeping and Reporting Requirements

16.01 Record Keeping. Notwithstanding Article 41 herein:

16.01.1 Accounting Records. CONTRACTOR must maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records will be subject to audit, copy, and inspection. Gross receipts derived from provision of the Collection Services, whether such services are performed by CONTRACTOR or by a subcontractor or subcontractors, will be recorded as revenues in the accounts of CONTRACTOR. CONTRACTOR must maintain and preserve all cash, billing and disposal records for a period of not less than three (3) years following the close of each of CONTRACTOR's fiscal years.

16.01.1.1 CITY reserves the right to request audited, reviewed, or compiled financial statements prepared by an independent Certified Public Accountant, or as may be provided by CONTRACTOR's parent, Republic Services of Imperial County, Inc. In the event that CONTRACTOR does not maintain separate financial or accounting records prepared specifically for services provided under this Agreement, CONTRACTOR may use industry standard allocation methods to provide financial information as applicable to the service provided under this Agreement.

16.01.2 Agreement Materials Records. CONTRACTOR must maintain records of the quantities of Solid Waste collected, processed, and disposed under the terms of this Agreement, by type, Collected, purchased, processed, sold, donated or given for no compensation, and Residual disposed.

16.01.3 Other Records. CONTRACTOR must maintain all other records reasonably related to provision of Collection Services, whether or not specified in this the Agreement.

16.02 Monthly Reporting.

16.02.1 General. Monthly reports must be submitted no later than 5 p.m. PT on the fifteenth (15<sup>th</sup>) day of the following the close of the reporting period. If the fifteenth (15<sup>th</sup>) day falls on a day that CITY is closed or a holiday, then the payment will be due on the next business day.

16.02.1.1 Overweight Vehicle Reporting. If requested by the CITY, CONTRACTOR shall provide a summary total of all instances of overweight collection vehicles. This summary must include the number of overweight vehicle instances expressed as a percentage of the total number of collection vehicle loads transported during the reported month.

16.02.1.2 Contamination Reporting. If requested by the CITY, CONTRACTOR shall provide a summary of all instances of qualifying contamination under the procedures in Section 3.09. This summary must include the total number of accounts where contamination occurred, the total number of Contamination Violation Notices issued by CONTRACTOR to Service Recipients, and the total number of instances where Collection Cart or Bins size or Collection frequency was increased specifically due to contamination. Within twenty (20) work days of request by CITY, CONTRACTOR will provide copies of the Contamination Violation Notices and the digital documentation of contamination.

16.03 Quarterly Reporting.

16.03.1 General. Quarterly reports must be submitted no later than 5 p.m. PT on the fifteenth (15<sup>th</sup>) day following the last month of the quarter. If the fifteenth (15<sup>th</sup>) day falls on a day that CITY is closed or a holiday, then the report will be due on the next business day.

16.03.2 CITY Reports. Quarterly reports to CITY must include:

16.03.2.1 Gross Receipts Reporting. CONTRACTOR must include an accounting of CONTRACTOR's gross receipts collected during the preceding month.

16.03.2.2 Franchised Tonnage Data. CONTRACTOR must report the tonnage of Garbage, Recyclable Materials and Organic Waste collected, processed for diversion, Residual amounts and landfilled for broken down by SFD, MFD, Commercial, and Roll-Off Collection Services.

16.04 Annual Reporting.

16.04.1 General. An annual report must be submitted no later than 5:00 p.m. PT on April 1, 2020 and each April 1<sup>st</sup> thereafter for the previous Calendar Year. If April 1<sup>st</sup> falls on a day that CITY is closed, then the report will be due on the next business day. Annual reports must be provided electronically in software acceptable to the CITY.

16.04.2 CITY Reports. Annual reports to CITY must include:

16.04.2.1 Financial Reports. CONTRACTOR must prepare an annual Financial Report for submittal to the CITY. At a minimum, the Financial Report must include the number of SFD Service Units and Commercial Service Units provided with Collection Services, including any

additional services, the CONTRACTOR's gross billing and amount collected for each type of Service Unit, and the amount received for the sale of Recyclable Materials, cost of Recyclables Materials processing, and the cost of residual disposal.

16.04.2.2 Public Education Summary. Public education and information activities undertaken during the year, including distribution of bill inserts, collection notification tags, community information and events, tours and other activities related to the provision of Collection Services. This report will discuss the impact of these activities on Recycling program participation and include amounts Collected from SFD and Commercial Service Units.

16.04.2.3 Summary of Programs. An analysis of any Recycling and Organic Waste Collection, processing and marketing issues or conditions (such as participation, setouts, contamination, etc.) and possible solutions, discussed separately for SFD and Commercial programs.

16.04.2.4 Recycling Data. Gross tons Collected daily on average by material type by route for SFD and Commercial Recycling service. The average participation rates by quarter relative to the total number of Service Units by Service Unit type. Indicate, by material type (and grade where appropriate), quarterly totals of Recyclable Materials processed and sold including facility name and location, average price received per ton and total recycling revenue received for the Calendar Year, cost of Recyclables Materials processing, and the cost of residual disposal. Also provide quarterly totals and location for Residual disposed.

16.04.2.5 Organic Waste Data. Include average daily gross tons Collected by route. Include the total number of generators that receive each type of Organic Waste Collection Service provided by the CONTRACTOR. Provide totals and location for Residue Disposed.

16.04.2.6 Commercial Outreach Report. A complete list of all Commercial accounts, which includes each account's status as a "covered generator" under AB 341 and AB 1826, the date and status of CONTRACTOR's outreach efforts at each account, and the current level of Recycling and Organics program participation at each account.

16.04.2.7 Summary Narrative. A summary narrative of problems encountered with Collection and processing activities and actions taken. Indicate instances or numbers of property damage or injury, significant changes in operation, market factors, publicity conducted, or needs for publicity. Include description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

16.04.2.8 AB 341, AB 1826, and SB 1383 Compliance Data. CONTRACTOR must report the total number of Commercial Service Units serviced and the number of containers, container sizes and frequency of Collection for Garbage, Recyclable Materials and Organic Waste for each Commercial and MFD Service Unit. CONTRACTOR must also provide the following information separately for both AB 341, AB 1826 and SB 1383.

16.04.2.9 The total number of Commercial and MFD Service Units that fall under the AB 341 or AB 1826 thresholds, and the total number of those Commercial Service Units that are

not receiving CONTRACTOR's required services to Commercial and MFD Recycling Collection Service or Commercial and MFD Organics Collection Service.

16.04.2.10      A summary of the type of follow-up outreach that was provided to those Commercial Service Units that are not subscribed to Commercial and MFD Recycling Collection Service or Commercial and MFD Organics Collection Service.

16.05      Diversion Data. By 5:00 p.m. PT on March 31, 2020, and annually thereafter during the term of this Agreement, CONTRACTOR must deliver to CITY diversion data for the specific services performed under this Agreement in the format specified by CITY.

16.06      CalRecycle Reports. CONTRACTOR will provide reasonable assistance to CITY in preparing annual reports to CalRecycle, including but not limited to supplying required data for preparation of the reports,

16.06.1      In the event that CalRecycle requires CITY to submit an Implementation Schedule to comply with AB 341, AB 1826, SB 1383 and other Applicable Laws, CONTRACTOR will provide reasonable assistance to CITY in preparing a report, including CONTRACTOR's policies and procedures related to compliance with AB 341, AB 1826, SB 1383, and other Applicable Laws and how recycling or organics are collected, a description of the geographic area, routes, list of addresses served and a method for tracking contamination, copies of route audits, copies of notice of contamination, copies of notices, violations, education and enforcement actions issued, and copies of educational materials, flyers, brochures, newsletters, website, and social media.

16.07      Additional Reporting. CONTRACTOR must furnish CITY with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

## **ARTICLE 17. Nondiscrimination**

17.01      Nondiscrimination. In the performance of all work and services under this Agreement, CONTRACTOR may not discriminate against any person on the basis of such person's race, color, sex (including pregnancy, childbirth, and related medical conditions), age, ancestry, national origin, religion, marital status, or sexual orientation, gender identify and gender expression, disability (physical and mental), medical conditions, AIDS/HIV, citizenship status and genetic information, military or veteran status, political affiliations or activities, and status as a victim of domestic violence, assault or stalking. CONTRACTOR must comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

## **ARTICLE 18. Service Inquiries and Complaints**

18.01      CONTRACTOR's Customer Service. All service inquiries and complaints from Service Recipients will be directed to CONTRACTOR. A representative of CONTRACTOR must be available to receive the complaints during normal business hours. CONTRACTOR will handle all service complaints in a prompt and efficient manner. In the case of a dispute between CONTRACTOR and a Service Recipient, the matter will be reviewed, and a decision made by the Agreement Administrator.

18.01.1      CONTRACTOR will utilize the Customer Service Log to maintain a record of all inquiries and complaints. CONTRACTOR must maintain a record of all inquiries and complaints for a minimum of three (3) years, available upon CITY request.

18.01.2      For those complaints related to missed Collections, where Containers are properly and timely set out, that are received by 12:00 noon on a Work Day, CONTRACTOR will return to the Service Unit address and Collect the missed materials before leaving the Service Area for the day. For those complaints related to missed Collections that are received after 12:00 noon on a Work Day, CONTRACTOR will have until the end of the following Work Day to resolve the complaint. For those complaints related to repair or replacement of Carts or Bins, the appropriate Sections of this Agreement will apply.

18.01.3      CONTRACTOR agrees that it is in the best interest of CITY that all Solid Waste be Collected on the scheduled Collection day. Accordingly, missed Collections will normally be Collected as set forth above regardless of the reason that the Collection was missed. However, in the event a Service Recipient requests missed Collection service more than two (2) times in any consecutive two (2) month period the Agreement Administrator will work with CONTRACTOR to determine an appropriate resolution to that situation. In the event CONTRACTOR believes any complaint to be without merit, CONTRACTOR will notify the Agreement Administrator, either by fax or e-mail. The Agreement Administrator will investigate all disputed complaints and render a decision.

18.01.4      CONTRACTOR's service and emergency telephone numbers must be accessible by a local (CITY) phone number. The telephone number(s) must be listed in the area's telephone directories under CONTRACTOR's name in the White Pages and Yellow Pages.

## **ARTICLE 19. Quality of Performance of Contractor**

19.01      Intent. CONTRACTOR acknowledges and agrees that one of CITY's primary goals in entering into this Agreement is to ensure that the Collection Services are of the highest caliber, that Service Recipient satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials Collected are put to the highest and best use to the extent possible.

19.02      Service Supervisor. CONTRACTOR must assign a qualified supervisor to be in charge of the Collection Service within the Service Area and must provide the contact name of that person in writing to the Agreement Administrator within thirty (30) days of the execution of this Agreement, and annually by January 1<sup>st</sup> of each subsequent Calendar Year of the term of this Agreement, and any other time the person in that position changes. The supervisor must be physically located in the Service Area and available to the Agreement Administrator through the use of telecommunication equipment at all times that CONTRACTOR is providing Collection Services. In the event the supervisor is unavailable due to illness or vacation, CONTRACTOR must designate an acceptable substitute who will be available and who has the authority to act in the same capacity as the supervisor.

19.03      CONTRACTOR Representative. CONTRACTOR must designate a Representative (CONTRACTOR's Representative) and must provide the name of that person in writing to CITY within thirty (30) days of the execution of this Agreement and annually by January 1<sup>st</sup> of each subsequent Calendar

Year of this Agreement and any other time the person in that position changes. The CONTRACTOR's Representative must be available to the CITY through the use of telecommunications equipment at all times that CONTRACTOR is providing Collection Services in the Service Area. The CONTRACTOR's Representative must provide CITY with an emergency phone number where the CONTRACTOR's Representative can be reached outside of normal business hours.

19.04 Administrative Charges; Liquidated Damages. Should CONTRACTOR be in material breach of the requirements 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 to value and impractical to fix. CITY finds, and the CONTRACTOR agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages or the costs related thereto 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: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration and deprivation of the benefits of 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; (iii) 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 (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

<b>ADMINISTRATIVE Charges</b>			
<b>Item</b>		<b>Amount if Not Cured in 30 Days</b>	<b>If Cured in 15 Days</b>
a.	Failure to respond to each complaint within three (3) Work Days of receipt of complaint.	\$100 per day per incident per Service Recipient.	
b.	Failure to maintain call center hours as required by this Agreement.	\$100 per day.	-0-
c.	Failure to submit to CITY all reports by the deadlines required under the provisions of this Agreement.	\$100 per day.	-0-
d.	Failure to submit to CITY all payments by the deadlines required under the provisions of this Agreement.	\$500 per day.	-0-
e.	Failure to display CONTRACTOR's name and customer service phone number on collection vehicles.	\$100 per incident per day.	-0-

ADMINISTRATIVE Charges			
Item	Amount if Not Cured in 30 Days	If Cured in 15 Days	
f.	Failure to collect a missed collection by close of the next Work Day upon notice to CONTRACTOR, which exceeds twenty (20) in any Calendar Year.	\$1000 per Calendar year, plus \$10 per incident per day.	-0-
g.	Failure to repair or replace damaged Containers to deliver or exchange Containers within the time required by this Agreement, which exceeds twenty (20) in any Calendar year.	\$1000 per Calendar year, plus \$10 per incident per day.	
h.	Failure to maintain collection hours as required by this Agreement.	\$100 per day.	-0-
j.	Failure of CONTRACTOR to follow Recyclable Materials and Organic Waste Contamination procedures as set forth under Section 3.09.	Submit plan of correction to CITY	-0-
The following items Can Not Be Cured			
Item	Amount (cannot be cured)		
k.	Failure to clean up spillage or litter on public streets located within CITY caused by CONTRACTOR's collection vehicles within two (2) hours after notice by CITY to CONTRACTOR.	\$500 per incident per location and reimbursement to CITY for cleanup.	
l.	Disposal of separately collected Recyclable Materials or separately collected Organic Waste in the Disposal Facility without first obtaining the required permission of the CITY.	\$500 per load.	
m.	Failure to deliver Garbage collected under this Agreement to the Disposal Facility, except as otherwise expressly provided in this Agreement.	\$5,000 each failure.	
n.	Failure to submit a corrective action plan as set forth in Section 5.01.2.	The current disposal cost/ton for each ton under the diversion requirement.	

19.05 Procedure for Review of Administrative Charges. The Agreement Administrator may assess administrative charges pursuant to this Agreement on a monthly basis. However, for any violations that accrue on a daily basis, the Agreement Administrator shall give CONTRACTOR written notice of such violation and a ten \-calendar day period to cure such violation before liquidated damages begin to accrue. At the end of each month during the term of this Agreement, the Agreement Administrator will issue a written

notice to CONTRACTOR ("Notice of Assessment") of the administrative charges assessed and the basis for each assessment.

19.05.1      The assessment will become final unless, within ten (10) business days of the date of the notice of assessment, CONTRACTOR provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made, or the alleged deficiency has been cured.

19.05.2      The Agreement Administrator will schedule a meeting between CONTRACTOR and the City Manager as soon as reasonably possible after timely receipt of CONTRACTOR's request.

19.05.3      The City Manager will review CONTRACTOR's evidence and render a decision sustaining or reversing the administrative charges within ten (10) business days after the meeting. Written notice of the decision will be provided to CONTRACTOR. CONTRACTOR may appeal such decision to the City Council for final determination.

19.05.4      In the event CONTRACTOR does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment and the alleged deficiency is not cured, the Agreement Administrator's determination will be final.

19.05.5      CITY's assessment or collection of administrative charges will not prevent CITY from exercising any other right or remedy, including the right to terminate this Agreement, for CONTRACTOR's failure to perform the work and services in the manner set forth in this Agreement.

19.06      Acts of God and Natural Disasters.

19.06.1      If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, acts of the State of California or the U.S. Federal government, acts of God or natural disasters, strikes and labor unrest, and other causes whether of the kind enumerated or otherwise, that are not reasonably within the control of the affected party, then the affected party will be excused from performance hereunder during the period of such disability.

19.06.2      The party claiming excuse from performance must promptly notify the other party when it learns of the existence of such cause, including the facts constituting such cause, and when such cause has terminated.

19.06.3      The interruption or discontinuance of services by a party caused by circumstances outside of its control will not constitute a default under this Agreement.

**ARTICLE 20. Performance Bond**

20.01      Performance Bond. Within ten (10) business days from the date the City Council approves this Agreement, CONTRACTOR must furnish to CITY, and keep current, a performance bond, for the faithful performance of this Agreement and all obligations arising hereunder in an amount as follows:

20.01.1 From January 1, 2020 and so long as this Agreement or any extension thereof remains in force, CONTRACTOR must maintain a performance bond in the amount of **Two Hundred Fifty-Thousand Dollars (\$250,000)**.

## ARTICLE 21. Insurance

21.01 Insurance Policies. CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees, or subcontractors. With respect to General Liability and Contractors Pollution Liability, coverage should be maintained for a minimum of five (5) years after contract completion.

21.02 Minimum Scope and Limit of Insurance. If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown below in Sections 21.02.1 through 21.02.4, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY. Insurance coverage must be at least this broad.

21.02.1 Commercial General Liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

21.02.2 Automobile Liability. Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than **\$5,000,000** per accident for bodily injury and property damage.

21.02.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$3,000,000** per accident for bodily injury or disease.

21.02.4 Contractors Pollution Liability. Applicable to the work being performed, with a limit no less than **\$10,000,000** per claim or occurrence and **\$20,000,000** aggregate per policy period of one year.

21.03 Self-Insured Retentions. Any self-insured retentions must be declared to the Agreement Administrator.

21.04 Other Insurance Provisions.

21.04.1 The General Liability, Automobile Liability, and Contractors Pollution Liability, policies are to contain, or be endorsed to contain, the following provisions:

21.04.1.1 The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations. Such additional coverage insured coverage may be evidenced by a blanket endorsement to the CONTRACTOR's insurance.

21.04.1.2 For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

21.04.1.3 Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the CITY.

21.04.2 The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by CONTRACTOR pursuant to the Agreement. This coverage may also be provided on the Contractors Pollution Liability policy.

21.04.3 If General Liability and Contractors Pollution Liability coverages are written on a claims-made form:

21.04.3.1 The retroactive date must be shown, and must be before the date of the Agreement or the beginning of work under this Agreement.

21.04.3.2 Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

21.04.3.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONTRACTOR must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

21.04.3.4 A copy of the claims reporting requirements must be submitted to the CITY for review.

21.05 Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII if admitted in the State of California.

21.06 Verification of Coverage. CONTRACTOR shall furnish the CITY with original Certificates of Insurance including all required endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to CITY before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CITY reserves the right to review complete, certified copies of all insurance policy blanket

endorsements required by these specifications, at any time, at CONTRACTOR's address indicated for receipt of notices in this Agreement.

21.07      Waiver of Subrogation. CONTRACTOR hereby grants to CITY a waiver of subrogation that any insurer may acquire against CITY, its officers, officials, employees, and volunteers, from CONTRACTOR by virtue of the payment of any loss arising from CONTRACTOR's performance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its employees, agents, and subcontractors under this Agreement.

21.08      Subcontractors. CONTRACTOR shall require and verify that all subcontractors performing work in the CITY maintain insurance meeting all the requirements stated herein, except for the subcontractor who will be performing street sweeping services under this Agreement who carries lesser coverage and policy limits. As to such subcontractor, the CITY shall accept lesser coverage and policy limits as follows: \$5 million policy limits per occurrence and in the aggregate for Comprehensive General Liability and Automobile coverage, and \$1 million in workers compensation coverage. The subcontractor does not carry pollution liability insurance. CONTRACTOR shall ensure that CITY is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

## **ARTICLE 22. Indemnification**

22.01      General Indemnification. CONTRACTOR must indemnify, defend and hold harmless CITY, CITY's contractors, and the public officials, officers, directors, employees, agents and other contractors of each of them (collectively, "CITY Indemnitees"), from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), arising from or caused by the negligent performance of the services or CONTRACTOR'S breach of this Agreement. (collectively, "Claims") This indemnity includes but is not limited to Claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property. CONTRACTOR agrees, at CONTRACTOR's expense, after written notice from the CITY, to defend any action against the CITY Indemnitees that falls within the scope of this indemnity using counsel selected by CONTRACTOR and approved by CITY in its reasonable judgment.

Additionally, if CONTRACTOR, after receipt of written notice from the CITY, fails to make any payment due under this Agreement to CITY, CONTRACTOR must pay any reasonable attorneys' fees or costs incurred by CITY in securing any such payment from CONTRACTOR.

Payment of any amount due pursuant to the foregoing indemnity must, after receipt of written notice by CONTRACTOR from CITY that such amount is due, be made by CONTRACTOR prior to CITY being

required to pay same, or in the alternative, CITY, at CITY's option, may make payment of an amount so due and CONTRACTOR must promptly reimburse CITY for the same, together with interest thereon at the rate of 12% per annum simple interest from the date of receipt by CONTRACTOR of written notice from CITY that such payment is due.

22.02      Diversion Indemnification. Subject to the requirements of Public Resources Code section 40059.1, which will control in the event of any conflict with the provisions of this Section, CONTRACTOR agrees to protect and defend CITY Indemnitees, with counsel selected by CONTRACTOR and subject to the approval of the CITY, which shall not be unreasonably withheld, to pay all attorneys' fees, and to indemnify and hold CITY Indemnitees harmless from and against all fines or penalties imposed by the California Integrated Waste Management Board arising from CONTRACTOR'S failure to perform its obligations under this Agreement and as further limited by Public Resources Code § 40059.1 In the event CalRecycle provides an administrative process to challenge the imposition of a compliance order or a fine or fines, CONTRACTOR will be responsible for engaging any consultants or attorneys necessary to represent CITY in any challenge if CONTRACTOR is liable for such penalties within the limitations specified in Public Resources Code § 40059.1.

22.03      Hazardous Substances Indemnification. CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by CITY), protect and hold harmless the CITY Indemnitees from and against any and all Claims of any kind whatsoever paid, suffered or incurred by or against the CITY Indemnitees resulting from any repair, cleanup, removal action or response action undertaken pursuant to CERCLA, the Health & Safety Code or other similar federal, state or local law or regulation, with respect to Solid Waste Collected and Disposed of by CONTRACTOR. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA and Section 25364 of the Health & Safety Code to defend, protect, hold harmless and indemnify the CITY Indemnitees from all forms of liability under CERCLA, the Health & Safety Code or other similar federal, state or local law or regulation. Nothing in this section shall prohibit CONTRACTOR from seeking reimbursement from the generators of Prohibited Waste, for all costs incurred by CONTRACTOR in collecting, transporting, handling, processing and/or disposing of Prohibited Waste.

22.04      Propositions 218 and 26 Release. CITY intends to comply with all applicable laws concerning the Maximum Service Rates provided under this Agreement. Upon thorough analysis, the parties have made a good faith determination that the Maximum Service Rates for the Solid Waste Collection Services provided under this Agreement are NOT subject to California Constitution Articles XIII C and XIII D because, among other reasons, such services are provided by a private corporation and not by CITY pursuant to Article 4, CONTRACTOR independently establishes the rates for services within the limits established in this Agreement, the receipt of services is voluntary and not required of any property within CITY, and any owner or Service Recipient of property within CITY has the opportunity to avoid the services available under this Agreement either through self-hauling or use of property in such a manner that Solid Waste is not generated.

22.05      Challenge to Agreement. Should a legal challenge to this Agreement be brought by any third party or should a referendum petition challenging the City's grant of this franchise agreement qualify for the ballot, the Parties shall meet and confer to agree on an appropriate response. Should the CITY consider placing any referendum petition on the ballot for a vote by City residents, the parties will meet and

confer in advance to discuss the cost of such election and an appropriate sharing in the election costs by CONTRACTOR.

22.06      Consideration. It is specifically understood and agreed that the consideration inuring to CONTRACTOR for the execution of this Agreement consists of the promises, payments, covenants, rights and responsibilities contained in this Agreement.

22.07      Obligation. This Agreement obligates CONTRACTOR to comply with the foregoing indemnification and release provisions; however, the collateral obligation of providing insurance must also be complied with as set forth in this Agreement.

22.08      Exception. Notwithstanding other provisions of this Agreement, CONTRACTOR's obligation to indemnify, hold harmless and defend CITY, its officers and employees will not extend to any loss, liability, penalty, damage, action or suit arising or resulting from acts or omissions constituting the negligence, willful misconduct, material breach of this Agreement, or violation of any Laws on the part of CITY, its officers or employees.

22.09      Damage by CONTRACTOR. If CONTRACTOR's employees or subcontractors cause any injury, damage or loss to CITY property, including but not limited to CITY streets or curbs, excluding normal wear and tear, CONTRACTOR must reimburse CITY for CITY's cost of repairing such injury, damage or loss. Notwithstanding the foregoing, in delivering services under this Agreement, CITY shall not require CONTRACTOR to access or use any streets that are not designed and constructed to current CITY street standards and CONTRACTOR shall not be required to repair any damage to CITY street's resulting from the failure of such streets to meet such CITY design and construction standards. Such reimbursement is not in derogation of any right of CITY to be indemnified by CONTRACTOR for any such injury, damage or loss. With the prior written approval of CITY, CONTRACTOR may repair the damage at CONTRACTOR's sole cost and expense. Any injury, damage or loss to private property caused by the negligent or willful acts or omissions of CONTRACTOR to private property must be repaired or replaced by CONTRACTOR at CONTRACTOR's sole expense. Disputes between CONTRACTOR and its Service Recipients or private property owners as to damage to private property are civil matters and complaints of damage will be referred to CONTRACTOR as a matter within its sole responsibility and as a matter within the scope of Section 22.01 (Indemnification).

## **ARTICLE 23. Default of Agreement**

23.01      Termination. CITY may cancel this Agreement, except as otherwise provided below in this Section, by giving CONTRACTOR thirty (30) calendar days advance written notice to cure the alleged default, to be served as provided in this Agreement, and upon CONTRACTOR'S failure to cure such default as provided herein, upon the happening of any one of the following events:

23.01.1      CONTRACTOR seeks judicial relief for its bankruptcy or insolvency under any state or federal statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in U.S. bankruptcy court or files a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute

of the United States or any state thereof, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

23.01.2 By order or decree of a court, CONTRACTOR is adjudged bankrupt or an order is made approving a petition filed by any of its creditors or by any of the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default will be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, such default will be deemed immediate; or

23.01.2.1 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of CONTRACTOR, and such possession or control continues in effect for a period of sixty (60) calendar days; or

23.01.3 CONTRACTOR has defaulted, by failing or refusing to pay in a timely manner the administrative charges or other monies due CITY and such default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

23.01.4 CONTRACTOR has defaulted by allowing any final judgment for the payment of money owed to CITY to stand against it unsatisfied and such default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

23.01.5 In the event that the monies due CITY under Section 23.01.3 above or an unsatisfied final judgment under Section 23.01.4 above is the subject of a judicial proceeding, CONTRACTOR will not be in default if the sum of money is bonded. All bonds must be in the form acceptable to the CITY Attorney; or

23.01.6 CONTRACTOR has defaulted by failing or refusing to perform or observe the material terms, conditions or covenants in this Agreement and such default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so, or if by reason of the nature of such default, the same cannot reasonably be remedied within thirty (30) calendar days following receipt by CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the remedy of such default within such thirty (30) calendar days following such written notice or having so commenced fails thereafter to continue with diligence the curing thereof (with CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure such default, and such default will be cured within a reasonable period of time).

23.02 Effective Date of Termination. In the event of any the events specified above, and except as otherwise provided in such subsections, termination will be effective upon the date specified in CITY's written notice to CONTRACTOR subject to CONTRACTOR's right to a hearing before the City Council on the termination of this Agreement. Upon a final decision of the City Council to terminate this agreement, this Agreement will be deemed immediately terminated and upon such termination all liability

of CITY under this Agreement to CONTRACTOR and of CONTRACTOR to CITY, will cease except for liabilities of either party to the other accruing prior to the termination date and CITY will have the right to draw down on the Performance Bond to the extent of CITY'S actual damages, if any, and will be free to negotiate with other contractors for the operation of interim and long-term Collection Services. Nothing in this Agreement will prohibit CONTRACTOR from seeking judicial review of any decision by the CITY to terminate this Agreement.

23.03      Termination Cumulative. CITY's right to terminate this Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

23.04      Alternative Service. Should CONTRACTOR, for any reason, except the occurrence or existence of any of the events or conditions set forth in Section 19.06 [Uncontrollable Circumstances], refuse or be unable for a period of more than forty-eight (48) hours, to Collect a material portion or all of the Solid Waste which it is obligated under this Agreement to Collect, and as a result, Solid Waste should accumulate in CITY to such an extent, in such a manner, or for such a time that the City Manager, in the reasonable exercise of the City Manager's discretion, subject to CONTRACTOR'S right to appeal such decision to the City Council, should find that such accumulation endangers or menaces the public health, safety or welfare, then CITY will have the right to contract with another Solid Waste enterprise to Collect any or all Solid Waste which CONTRACTOR is obligated to Collect pursuant to this AGREEMENT. CITY must provide twenty-four (24) hours prior written notice to CONTRACTOR during the period of such emergency, before contracting with another Solid Waste enterprise to Collect any or all Solid Waste which CONTRACTOR would otherwise collect pursuant to this Agreement for the duration of period during which CONTRACTOR is unable to provide such services. In such event, CONTRACTOR must undertake commercially reasonable efforts to identify sources from which such substitute Solid Waste services are immediately available, and must reimburse CITY for all of its expenses for such substitute services during the period in which CONTRACTOR is unable to provide Collection services required by this Agreement provided that CONTRATOR continues to be compensated for such services pursuant to this Agreement.

23.05      Survival of Certain Contractor Obligation. Notwithstanding the termination of this Agreement by CONTRACTOR or CITY, CONTRACTOR's obligation to indemnify, defend and hold CITY and CITY Indemnitees harmless as provided in Article 22 shall survive termination for five (5) years from the date of termination. Notwithstanding the termination of this Agreement by CONTRACTOR or CITY, such act shall not automatically invalidate or cancel any insurance policy, performance bond or similar instruments provided by CONTRACTOR under this Agreement and such policies, performance bonds and other instruments shall remain in full force and effect for one full year after termination.

## **ARTICLE 24. Modifications to the Agreement**

24.01      City-Directed Change. CITY has the power to make changes in this Agreement as the result of Changes in Laws, changes in the City of Calxico Municipal Code, or both, to impose new rules and regulations on CONTRACTOR under this Agreement relative to the scope and methods of providing Collection Services as may from time-to-time be necessary and desirable for the public welfare ("Change in Scope"). CITY will give the CONTRACTOR notice of any proposed change and an opportunity to be heard by the City Council concerning those matters. The scope and method of providing Collection Services as referenced herein will be reasonably construed to include procedures, operations and

obligations, financial or otherwise, of CONTRACTOR. CITY and CONTRACTOR will negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of CONTRACTOR due to any modification in the Agreement under this Article. CITY and CONTRACTOR will not unreasonably withhold agreement to such compensation adjustment. Any such modifications will not become effective as to new services not provided for in this Agreement until and unless the CITY and CONTRACTOR agree on such new services and on rates to compensate CONTRACTOR for such new services.

24.01.1      Change in Law. CITY and CONTRACTOR understand and agree that the California Legislature has the authority to make changes in Solid Waste Collection legislation and that these and other Changes in Law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. CONTRACTOR agrees that the terms and provisions of the City of Calexico Municipal Code, as it now exists or as it may be amended in the future, will apply to all of the provisions of this Agreement and the Service Recipients of CONTRACTOR located within the Service Area. In the event any future Change in Law materially alters the obligations of CONTRACTOR, then the affected service rates, as established in **Exhibit 1** of this Agreement will be adjusted in accordance with Section 4.10. Nothing contained in this Agreement will require any party to perform any act or function contrary to law. CITY and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Agreement, CITY and CONTRACTOR will negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of CONTRACTOR due to any change in law or modification in the Agreement under this Article. CITY and CONTRACTOR will not unreasonably withhold agreement to such compensation adjustment.

## **ARTICLE 25. Legal Representation**

25.01      Acknowledgement. It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that an Agreement will be interpreted strictly against the party preparing the same will not apply due to the joint contributions of both parties.

## **ARTICLE 26. Financial Interest**

26.01      Representation. CONTRACTOR warrants and represents that no elected official, officer, agent or employee of CITY has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a "purchasing agent" as defined in the CITY's Municipal Code, nor any elected or appointed officer of CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material financial interest in CONTRACTOR or this Agreement under Applicable Law.

## ARTICLE 27. Contractor's Personnel

27.01 Personnel Requirements. CONTRACTOR must employ and assign qualified personnel to perform all services required under this Agreement. CONTRACTOR is responsible for ensuring that its employees comply with all Applicable Laws related to their employment and position.

27.01.1 CITY may request the transfer of any employee of CONTRACTOR who materially violates any provision of this Agreement, or who is wanton, negligent, or discourteous in the performance of his or her duties under this Agreement.

27.01.2 CONTRACTOR's field operations personnel are required to wear a clean uniform shirt bearing CONTRACTOR's name.

27.01.3 Each driver of a Collection vehicle must at all times carry a valid California driver's license and all other required licenses for the type of vehicle that is being operated.

27.01.4 Each driver of a Collection vehicle must at all times comply with all applicable state and federal laws, regulations and requirements.

27.01.5 CONTRACTOR's employees, officers, and agents may not identify themselves or in any way represent themselves as being employees or officials of CITY.

27.01.6 CONTRACTOR's name and the Customer Service telephone number must be properly displayed on all Collection vehicles.

## ARTICLE 28. Exempt Waste

28.01 CONTRACTOR is not required to Collect or dispose of Exempt Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not regulated under this Agreement, but if provided by CONTRACTOR must be in strict compliance with all Applicable Laws.

## ARTICLE 29. Independent Contractor

29.01 In the performance of services pursuant to this Agreement, CONTRACTOR is an independent contractor and not an officer, agent, servant or employee of CITY. CONTRACTOR will have exclusive control of the details of the services and work performed and over all persons performing such services and work. CONTRACTOR is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors or subcontractors will obtain any right to retirement benefits, Workers Compensation benefits, or any other benefits which accrued to CITY employees and CONTRACTOR expressly waives any claim to such benefits.

29.02 Subcontractors. CONTRACTOR will require all subcontractors performing work in the CITY to enter into an Agreement containing the provisions set forth Section 29.01 in which Agreement the subcontractor agrees that CONTRACTOR and subcontractor are independent contractors and have no other agency relationship with CITY.

**ARTICLE 30. Laws to Govern**

30.01      The law of the State of California governs the rights, obligations, duties and liabilities of CITY and CONTRACTOR under this Agreement and govern the interpretation of this Agreement.

**ARTICLE 31. Consent to Jurisdiction**

31.01      The parties agree that any litigation between CITY and CONTRACTOR concerning or arising out of this Agreement must be filed and maintained exclusively in the Municipal or Superior Courts of Imperial County, State of California, or in the United States District Court for the Central District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

**ARTICLE 32. Assignment**

32.01      No assignment of this Agreement or any right occurring under this Agreement may be made in whole or in part by CONTRACTOR without the express prior written consent of the CITY. CITY will have reasonable discretion to approve or deny any proposed or actual assignment by the CONTRACTOR. Any assignment of this Agreement made by CONTRACTOR without the express written consent of the CITY will be null and void and will be grounds for CITY to declare a default of this Agreement and immediately terminate this Agreement. In the event of any assignment approved by CITY, the assignee must fully assume all the liabilities of CONTRACTOR by way of an assignment and assumption agreement. Notwithstanding the above, an assignment to an affiliate of CONTRACTOR may be undertaken upon notice to CITY, but without the requirement for CITY's approval. For purposes of this provision, "affiliate" means any person or legal entity that, directly or indirectly, controls, is controlled by, or is under common control with CONTRACTOR. For any proposed assignment other than to an affiliate of CONTRACTOR, CONTRACTOR shall deposit with City the sum of \$10,000 to cover the CITY'S reasonable direct costs of retaining counsel and/or other third-party consultants to assist in CITY's consideration of such proposed assignment.

32.02      The use of a subcontractor to perform services under this Agreement will not constitute delegation of CONTRACTOR's duties provided that CONTRACTOR has received prior written authorization from the Agreement Administrator to subcontract such services and the Agreement Administrator has approved a subcontractor who will perform such services. CONTRACTOR will be responsible for directing the work of CONTRACTOR's subcontractors and any compensation due or payable to CONTRACTOR's subcontractor will be the sole responsibility of CONTRACTOR. The Agreement Administrator will have the right to require the removal of any approved subcontractor for reasonable cause. The subcontractors listed in **Exhibit 5**, if any, are hereby approved by the CITY.

**ARTICLE 33. Compliance with Laws**

33.01      In the performance of this Agreement, CITY and CONTRACTOR must comply with all Applicable Laws, including without limitation the Calexico Municipal Code.

33.02      CITY must provide written notice to CONTRACTOR of any planned amendment of the Calexico Municipal Code that would substantially affect the performance of CONTRACTOR's services

pursuant to this Agreement. Such notice must be provided at least thirty (30) calendar days prior to the City Council's approval of such an amendment.

### **ARTICLE 34. Permits and Licenses**

34.01 CONTRACTOR must obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. CONTRACTOR must provide proof of such permits, licenses or approvals and must demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the Agreement Administrator.

### **ARTICLE 35. Ownership of Written Materials**

35.01 CONTRACTOR hereby grants CITY a non-exclusive, transferrable license as to all reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by CONTRACTOR at the request of CITY or as required under this Agreement, without limitation or restrictions on the use of such materials by CITY. CONTRACTOR may not use such materials that specifically reference CITY for other purposes without the prior written consent of the Agreement Administrator. This Article 35 does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

### **ARTICLE 36. Waiver**

36.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term covenant or condition of this Agreement will not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies that may become due from CONTRACTOR to CITY will not be deemed to be a waiver by CITY of any breach for violation of any term, covenant or condition of this Agreement.

### **ARTICLE 37. Prohibition Against Gifts**

37.01 CONTRACTOR represents that CONTRACTOR is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee. CONTRACTOR may not offer any CITY officer or designated employee any gifts prohibited by the CITY.

### **ARTICLE 38. Point of Contact**

38.01 The day-to-day dealings between CONTRACTOR and CITY will be between CONTRACTOR Representative and the Agreement Administrator.

### **ARTICLE 39. Notices**

39.01 Except as provided in this Agreement, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last

specified and to the place for giving of notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the CITY:

Agreement Administrator  
City of Calexico  
608 Heber Avenue.  
Calexico, CA 92231

As to the CONTRACTOR:

Republic Services of Imperial County  
Attn: District Manager  
3354 Dogwood Road  
Imperial, California 92251

With copy to:

Law Offices of Michael L. Rood  
444 So. 8<sup>th</sup> Street  
El Centro, California 92251

39.02      Notices will be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice. Facsimile or e-mail transmission is acceptable notice, effective when received, however, facsimile transmissions received (i.e. printed) or mail transmissions received after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted by facsimile equipment or by email must also be mailed as required herein.

39.03      Notice by CITY to CONTRACTOR of a Collection or other Service Recipient problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR's local office with confirmation sent to CONTRACTOR through the Customer Service System by the end of the Work Day.

## **ARTICLE 40. Transition to Next Contractor**

40.01      In the event CONTRACTOR is not awarded a new Agreement to continue to provide Collection Services following the expiration or early termination of this Agreement, CONTRACTOR will cooperate fully with CITY and any subsequent contractors to assure a smooth transition of services described in this Agreement. Such cooperation will include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and list of Service Recipients; providing a complete inventory of all Carts, Bins and Roll-Off Containers; providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement; taking reasonable actions necessary to transfer ownership of Carts, Bins and Roll-Off Containers, as appropriate, to CITY; including transporting such containers to a location designated by the Agreement Administrator; coordinating Collection of materials set out in new containers if new containers are provided for a subsequent Agreements and providing other reports and data required by this Agreement.

## ARTICLE 41. Contractor's Records

41.01 CONTRACTOR must maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents described in Article 16 for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

41.02 CONTRACTOR must maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

41.03 Any records or documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the Agreement Administrator, the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Unless an alternative site is mutually agreed upon, the records will be available at CONTRACTOR's address indicated for receipt of notices in this Agreement.

41.03.1 CONTRACTOR acknowledges that CITY is legally obligated to comply with the California Public Records Act ("CPRA"). CITY acknowledges that CONTRACTOR may consider certain records, reports, or information contained therein, ("Records") which CONTRACTOR is required to provide to CITY under this AGREEMENT, to be of a proprietary or confidential nature. In such instances, CONTRACTOR will inform CITY in writing of which records are considered propriety or confidential and shall identify the statutory exceptions to disclosure provided under the CPRA that legally permit non-disclosure of the Records. At such time as CITY receives a request for records under the CPRA or Federal Freedom of Information Act ("FOIA") or a subpoena or other court order requesting disclosure of the Records, CITY will notify CONTRACTOR of the request, subpoena or order and of CITY's obligation and intent to provide a response within ten (10) calendar days. CONTRACTOR shall within five (5) calendar days either: (i) consent in writing to the disclosure of the Records; (ii) demand that CITY assert the CONTRACTOR identified exceptions to disclosure under the CPRA and agree in writing to indemnify, defend and hold CITY harmless from any litigation, orders or judgments arising from the non-disclosure; or (iii) seek and obtain, at CONTRACTOR's sole cost and expense, the order of a court of competent jurisdiction staying or enjoining the disclosure of the Records. If CONTRACTOR fails to timely respond, then CITY may proceed to disclose the Records in which event CONTRACTOR agrees waives and releases CITY of any liability for the disclosure of the Records.

41.04 Where CITY has reason to believe that such Records or documents may be lost or discarded due to the dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request or demand of any of the above-named officers, require that custody of the Records be given to CITY and that the Records and documents be maintained in City Hall. Access to such Records and documents will be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

## **ARTICLE 42. Entire Agreement**

42.01 This Agreement and the attached Exhibits constitute the entire Agreement and understanding between the parties, and the Agreement will not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties.

## **ARTICLE 43. Severability**

43.01 If any provision of this Agreement or the application of it to any person or situation is to any extent held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it is held invalid or unenforceable, will not be affected, will continue in full force and effect, and will be enforced to the fullest extent permitted by law.

## **ARTICLE 44. Right to Require Performance**

44.01 The failure of CITY at any time to require performance by CONTRACTOR of any provision of this Agreement will in no way affect the right of CITY thereafter to enforce same. Nor will waiver by CITY of any breach of any provision of this Agreement be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

## **ARTICLE 45. All Prior Agreements Superseded**

45.01 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement will be predicated upon any prior representations or agreements, whether oral or written.

## **ARTICLE 46. Headings**

46.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

## **ARTICLE 47. Exhibits**

47.01 Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this reference.

## **ARTICLE 48. Attorney's Fees**

48.01 In the event that litigation is brought by a party in connection with this Agreement, the prevailing party will be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies under this Agreement or the enforcement of any of the terms, conditions, or provisions of this Agreement.

**ARTICLE 49. Effective Date**

49.01      This Agreement will become effective at such time as it is properly executed by CITY and CONTRACTOR and CONTRACTOR will begin Services under this Agreement as of January 1, 2020.

**ARTICLE 50. Guarantee of CONTRACTOR's Performance**

50.01      Republic Services of Imperial County, doing business as Allied Waste Transportation, Inc., shall guaranty CONTRACTOR's performance of this Agreement, including any insurance obligation required under the Agreement that CONTRACTOR fulfills by means of self-insured retention. The guaranty, in substantially the form attached as **Exhibit 9**, will be provided within ten (10) business days of the effective date of this Agreement.

**Solid Waste Collection Services Agreement      Dated: September 11, 2019**

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**IN WITNESS WHEREOF**, CITY and CONTRACTOR have executed this Agreement on the respective date(s) below each signature.

CITY OF CALEXICO  
A General Law City

CONTRACTOR

By: \_\_\_\_\_  
[NAME]  
City Mayor

By: \_\_\_\_\_  
[NAME]  
  
Chairman of the Board,  
President, Vice President

ATTEST: \_\_\_\_\_  
[NAME]  
City Clerk

By: \_\_\_\_\_  
[NAME]

APPROVED AS TO FORM

By: \_\_\_\_\_  
[NAME]  
Secretary, Assistant Secretary,  
Financial Officer, Asst. Treasurer

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

**EXHIBIT 1**  
**Maximum Service Rates**

January 1, 2020 – December 31, 2020

[CONTRACTOR to provide]

# City of Calexico

## 2019 Solid Waste Rates

### MONTHLY SOLID WASTE RATES COMMERCIAL SERVICE RATES

	2 YD	3 YD	4 YD	5 YD	6 YD	8 YD
1 X WK	\$ 91.06	\$ 103.36	\$ 115.68	\$ 216.58	\$ 257.19	\$ 306.42
2 X WK	\$ 164.91	\$ 193.30	\$ 214.11	\$ 321.18	\$ 374.09	\$ 435.62
3 X WK	\$ 238.74	\$ 281.14	\$ 312.57	\$ 431.93	\$ 497.16	\$ 569.31
4 X WK	\$ 312.57	\$ 369.00	\$ 411.01	\$ 542.67	\$ 620.20	\$ 768.79
5 X WK	\$ 386.41	\$ 456.87	\$ 509.46	\$ 653.43	\$ 743.27	\$ 961.01
6 X WK	\$ 460.22	\$ 544.71	\$ 607.89	\$ 764.20	\$ 866.32	\$ 1,139.32
X DUMP	\$ 36.12	\$ 44.17	\$ 51.97	\$ 64.98	\$ 75.07	\$ 86.39

### RECYCLE CONTAINER RATES - CX 05

	2YD	3YD	4 YD	6 YD	8 YD
	\$ 68.29	\$ 77.51	\$ 86.78	\$ 192.89	\$ 229.80
Container Delivery Fee	\$ 33.80		(Pick Up Once A Week)		

Commercial Recycling will be discounted 25% from Monthly Solid Waste Services

### RESIDENTIAL SERVICE RATES

	\$ 20.30
Cart Delivery Fee	\$ 33.80
1 Refuse Can	Each Additional Refuse or Green Waste Can \$ 11.76
1 Recycle Can	
1 Green Waste Can	

South of Birch St. (Hwy 989) & East of Kloke Pick Up date is on Mondays

North of Birch St. (Hwy 98) & All West of Kloke pick up date is on Tuesdays

### ROLL-OFF & COMPACTOR / TRANSFER 40YD 30YD 20YD

Roll-Off's	Per Pull \$ 235.63
Roll-Off's	Per Ton \$ 56.78
Delivery Fee	\$ 33.80
Compactor	Per Pull \$ 382.60
Compactor	Per Ton \$ 56.78
Compactor Rental	\$ 458.56
Delivery Fee	\$ 33.80

(Customers must sign an agreement acknowledging the monthly minimum charges (either by fax, e-mail or walk-in))

### TEMPORARY CLEAN UP BINS (Minimum of one dump every 2 weeks)

3YD Bin Per Dump	\$ 83.01	6YD Bin Per Dump	\$ 147.31
Container Delivery Fee	\$ 33.80		

(Customers must sign an agreement acknowledging the monthly minimum charges (either by fax, e-mail or walk-in))

### MISCELLANEOUS

Restart Service	\$ 13.39	
Administrative Charges	\$ 6.69	
New Account Delivery	\$ 33.80	Residential & Commercial
Automatic Lock Bar	\$ 6.69	Per Month
Roll Out / Lock Charge	\$ 29.01	Per Month = 1 X Per Wk/ 6.70 each Time
Steam Clean Bin	\$ 66.96	Commercial
Replace Burned Bin	\$ 167.39	Commercial
Burned / Stolen Cart / Install Wheels	\$ 100.43	Residential

1/1/19 - 12/31/19 Reg Rates PI 2.9%

**EXHIBIT 2**  
**City Sponsored Events**

- 1.   Cinco de Mayo
- 2.   Fourth of July
- 3.   Sixteenth of September
- 4.   Mariachi Festival
- 5.   City Annual Celebration

**EXHIBIT 3 :List of City Properties**

1. City Hall-608 Heber Ave
  - 1-3yd FL 3/1 Week
  - 1-3yd FR 1/1 Week
- Police Department- 420 E 5<sup>th</sup> St
  - 1-3yd FL 2/1 Week
  - 1-3yd FR 1/1 Week
2. Library-850 Encinas Ave
  - 1-3yd FL 2/1 Week
  - 1-3yd FR 1/1 Week
3. Community Center-707 Dool Ave
  - 1-5yd FL 2/1 Week
4. Senior Citizen-707 Dool Ave
  - 1-3yd FL 1/1 Week
5. Airport- 805 E 2<sup>nd</sup> Street
  - 1-4yd FL 1/1 Week
  - 1-40 yd (on-call) \*\*
6. Wastewater Plant-298 Anza Rd
  - 3-3yd FL 3/1 Week
  - 2-40 yd (on call) \*\*
7. Water Plant-500 W 5<sup>th</sup> St
  - 2-40 yd (on call) \*\*
  - 3-20 yd (on call) \*\*
8. Shop-640 Pierce Ave
  - 4-4 yd 6/1 Week
  - 1-40 yd (on call) \*\*
9. Fire Station #2-900 Grant St
  - 1-4yd FL 2/1 Week
  - 1-90 gallon Recycle cart 1/1 Week

\*\* Maximum service of 2 Roll-Off Hauls per week, not to exceed 104 hauls per year.

## EXHIBIT 4 Cart and Bin Specifications

### 1. Cart Specifications.

- 1.1. Carts must be designed and manufactured with heavy plastic in accordance with standard industry specifications approved by CITY.
- 1.2. Carts must be constructed with material that resists deterioration from ultraviolet radiation, and be incapable of penetration by household pets or small wildlife when lids are fully closed.
- 1.3. Carts must include wheels and handles that accommodate ease of movement by able-bodied persons.
- 1.4. Carts must include lids that continuously overlap the Cart body so as to prevent the intrusion of rainwater and minimize odors. The lids would be of a design and weight so as to prevent the Cart body from tilting backward when flipping the lid open.
- 1.5. Carts must be capable of being lifted into the collection vehicle without damage or distortion under normal usage.
- 1.6. Carts must be labeled using hot stamp or labels, and at a minimum will include CONTRACTOR's name and graphics indicating what materials may and may not be placed in each Cart type.

### 2. Bin Specifications.

- 2.1. Bins must be constructed of heavy metal or heavy plastic, and must be watertight and well painted.
- 2.2. Wheels, forklift slots, and other appurtenances, which are designed for movement, loading, or unloading of the container, must be maintained in good repair.
- 2.3. Bins must have the name and phone number of CONTRACTOR on the exterior so as to be visible when the Bin is placed for use.
- 2.4. Each Bin must be labeled with a listing of materials that may and may not be placed in a particular Bin type.
- 2.5. Bid lids must be constructed of metal or heavy plastic, so as to minimize the intrusion of rainwater and minimize odors. Locking bins will be provided upon request at the rate set forth in **Exhibit 1**.
- 2.6. Bins must be capable of being lifted into the collection vehicle without damage under normal usage.

**EXHIBIT 5**  
**List of Approved Subcontractors**

1. R.L. Dickson & Company, Inc. for Street Sweeping Services-- see also section 21.08 re this Subcontractor's insurance limits.)

## EXHIBIT 6 Sustainability Plan

### ONGOING PROGRAMS

The following public education and outreach activities will be performed on an ongoing basis throughout the term of the contract.

#### Annual Sustainability Plan

Contractor will submit for review a comprehensive Sustainability plan. The plan will include proposed education focused on service information and recycling guidelines for both residential and commercial customers. Schedule of when education material will be disseminated throughout the year, social media post calendar, and community event participation.

- (1) Communication Collateral. Various forms of literature will be distributed to the community annually. The collateral will remind residents what is accepted for recycling, advise them of holiday schedules, bulky waste pickup, waste and recycling events, community events, and special waste handling topics.
- (2) Annual Assessment of Education & Outreach Efforts. Contractor staff will work cooperatively with the City to monitor the effectiveness of existing public education and outreach programs and to identify and develop new public education and outreach programs as might be necessary to meet diversion targets.
- (3) Community Events. Contractor will provide waste and recycling services per section 9.03, in a continuing effort to support City programs and events and to promote recycling awareness to the public.
- (4) Chamber, Civic Group Presentations. Contractor will reach out to the local Chamber of Commerce and service organizations to work with these organizations to complete presentations to the business community about available services and programs, education around state mandates (AB 341, AB1826) as well as the benefits of recycling services.

#### Additional Contractor Education Tools

- (1) Local Calexico Website. Contractor will update with new service offerings local Calexico website to inform the public about routing, services levels, program offerings (community cleanups, bulky waste collection, sharps program, etc.) proper cart usage, recyclable materials accepted, community events and information on environmental protection that will be updated on an on-going basis.
- (2) Residential & Commercial Invoice Inserts. Bill inserts provide a simple and effective method to educate residents and commercial customers about service changes, recycling and sustainability programs, or other important information.

#### Outreach Material for City Facilities

Communication Collateral. CONTRACTOR will make available copies of collateral material created for city staff distribution at CITY facilities for both residential and commercial customers.

## EXHIBIT 7 Diversion Plan

This Diversion Plan describes CONTRACTOR's strategic approach to increase the CITY's overall diversion rate.

### RESIDENTIAL SECTOR

Introductory Service Guidelines (annual collection service notice)

CONTRACTOR will update residential guideline kit that will be delivered to each home as part of the new contract. The service guideline will explain new programs, routing and proper cart usage (overage and contamination process and fees). The guideline will also communicate other services such as bulky item pick-ups, citywide cleanups, proper recycling services, and temporary bin services. Residential guideline will also be distributed to any new customers when a change in occupancy is noted.

Programs for Waste and Recycling Diversion. The following programs will be performed on an ongoing basis throughout the term of the agreement:

- a. Curbside Large Item Pick-up. Residents receive one (1) Large Item curbside pick-up services per collection week.
- b. Curbside Used Motor Oil Pick-up. Residents can receive up to two gallons per month of used motor oil pick-up curbside.
- c. Additional Residential Recycling Cart. Residents can receive one additional green waste or recycling cart in effort to continue to increase participation and diversion at the rates in Exhibit 1.
- d. Christmas Tree Recycling. Residents can dispose of their natural (no flocking, tinsel, decorations etc.) after two weeks commencing December 26 in effort to divert green waste.
- e. Additional Cardboard Curbside. Residents can leave flattened bundled secured cardboard curbside for pick-up after two weeks commencing December 26 in effort to increase recycling efforts of this material.

### Residential Program to increase recycling and minimize contamination

Residential Notices. Residential carts will be tagged if the cart is identified as contaminated, overfilled or unacceptable waste. The program highlights multiple educational opportunities (5 occurrences) before contamination penalties are incurred.

Cart Tags will contain the following information:

- a. A listing of reasons why garbage or recyclables were left or will be left in the future.
- b. A listing of materials that are acceptable.
- c. A listing of materials that are not acceptable.
- d. A customer service number for contractor.
- e. Household Hazardous Waste collection phone number.

Additional Community Wide Program to support Diversion Efforts

Community Clean-up Event. Residents can participate in two city-wide clean-up events in effort to divert waste and reduce illegal dumping.

Residential Recycling Rewards Program. Annually in celebration of America Recycles Day- Contractor with work with city staff to recognize a residential customer at a council meeting for

## EXHIBIT 7 Diversion Plan

being a model citizen by Recycling Often. Recycling Right. CONTRACTOR will provide a gift basket along with a Recycling All Star Certificate.

### COMMERCIAL SECTOR

#### Annual communication notice

An annual communication notice will be sent to all commercial accounts providing information regarding waste and recycling services, recycling compliance support (site audits), and communication regarding overage and contamination reduction efforts to support increase recycling practices. Communication notice will also be distributed to any new commercial customer.

#### Contractor proposes to increase diversion from Commercial sources by:

- (1) Customized Commercial Recycling Programs and Consultative Services. CONTRACTOR's Sustainability Representative (SR) serves as a business and environmental consultant to commercial customers to develop customized plans to improve recycling and waste education. In addition to completing free waste audits upon request, our SR provides a customized commercial recycling options to participating commercial customers to ensure compliance with state recycling mandates.
- (2) Additional efforts by Sustainability Representative. In each customer's customized commercial recycling options, CONTRACTOR's SR will make practical recommendations with consideration to space constraints, refuse collection practices and other factors. They will also evaluate the appropriate type, size and placement of recycling containers based on individual needs.
- (3) AB 341 Recycling Programs. CONTRACTOR will identify and report to the CITY annually on the AB 341 compliance status of each business. CONTRACTOR's SR along with City Staff will work with each non-compliant business to establish programs. *(AB 341 defines "business" as any commercial entity, public entity such as a school or hospital, and multi-family dwelling of five (5) units or more.)*
- (4) Organic Materials / AB 1826 Compliance. CONTRACTOR will identify and report to the CITY on the businesses impacted by AB 1826. CONTRACTOR's SR along with Staff will work with affected businesses to establish services that comply with the law.
- (5) Commercial Outreach and Engagement Messages on Invoices. CONTRACTOR will send recycling education messages in the invoices in effort to establish awareness and participation in recycling right and diverting from the landfill.
- (6) Key Accounts. As a part of Mandatory Commercial Recycling (AB 341) and Mandatory Commercial Organics Recycling (AB 1826) programs, City Staff in collaboration with Sustainability Representative will identify key accounts such as property managers, multi-family site managers, and major commercial and industrial properties and develop outreach efforts designed to engage greater participation in these State-mandated programs. These accounts will be representative of the top 10% waste generators in the CITY.

**EXHIBIT 7  
Diversion Plan**

**Commercial Program to increase recycling practices and minimize contamination**

- (1) Contamination Program. CONTRACTOR will provide educational information to commercial businesses that are contaminating their recycling streams. Program is aimed to reduce contamination in commercial services by identifying contaminated bin and placing a notice with contaminants and serving the container as trash with a charge implemented. Sustainable Representative will perform education outreach by following up with customer, site visit (if requested) and providing educational material to on site staff to improve recycling practices and minimize contamination.
- (2) Overage Program. CONTRACTOR will identify commercial businesses that dispose of excess material on service day. Customer will receive notification of right sizing program in effort to reduce waste and identify potential recycling diversion. If practice continues, customer will receive overage fee.
- (3) Commercial Recycling Rewards Program. Annually in celebration of America Recycles Day- CONTRACTOR with work with city staff to recognize a commercial customer at a council meeting for being a model business owner by Recycling Often. Recycling Right. CONTRACTOR will provide a gift basket along with a Recycling All Star Certificate.

**INDUSTRIAL SECTOR**

CONTRACTOR will to increase diversion from the Industrial sector by:

- (4) AB 341 Recycling Programs. (Previously described.)
- (5) Organic Materials / Mandatory Commercial Organics Recycling Law. (Previously described.)
- (6) Construction & Demolition Waste. All New Construction Accounts have access to our Builders Direct Program. This program is tailored to meet the needs of all contractors offering DART Reporting, Representative and direct operations contact.
  - a. Source-Separated Collection. CONTRACTOR will provide multiple containers on large job sites to enable developer/contractors to source-separate materials. Job sites with limited space might also source-separate material using containers phased to match the construction progress, i.e., rock, inerts, concrete & wood for demolition and flatwork phases, wood for framing phases, plastics & metals for plumbing, electrical & ducting phases, carpet remnants, cardboard for HVAC, appliance and finish fases.

**Below are CITY's Diversion Targets by Date**

Year	2021	2022	2023	2024	2025	2026	2027
Target %	40%	40%	40%	45%	45%	50%	50%

**EXHIBIT 8**  
**CITY OF CALEXICO STREET SWEEPING SERVICES**

As used herein, CONTRACTOR means CONTRACTOR or, if applicable, its approved Subcontractor.

1. General Provisions Regarding Removal of Debris from Streets.

CONTRACTOR shall furnish all tools equipment, apparatus, facilities, expertise, labor, and materials, and perform all work necessary to sweep all City-owned streets and byways (the "Street System") in the City so as to remove debris therefrom in a good and workmanlike manner. Said work shall be performed and completed to the reasonable satisfaction of the City Manager consistent with industry standards.

2. Operations; Compliance with Laws and Regulations.

The street sweeping methods and procedures used by CONTRACTOR shall be consistent with the current standards in the industry, in compliance with all Federal, State and local laws and regulations, and shall be subject to the approval of the City Manager.

3. Schedule and Routes.

Street sweeping routes and schedules are to be performed pursuant to the Street Sweeping Map attached hereto as Exhibit 9. The City Manager shall approve the hours during which the sweeping shall be performed. Sweeping may be required during early morning hours on certain major streets.

4. Special Events.

CONTRACTOR will provide street sweeping services for five (5) work order special events per calendar year. The City shall provide CONTRACTOR with five (5) days' notice of any work order special events.

5. Emergency Street Sweeping Services.

CONTRACTOR shall provide emergency contact information and a 24-hour on call telephone number for emergency street sweeping. CONTRACTOR shall provide street sweeping services on an emergency basis outside of established hours and routes when requested by the City, and shall be compensated by City for such services at a rate of \$110/hr. for the first hour that a street sweeper is on the site of an emergency street sweeping and in half hour increments thereafter.

6. Change in Frequency

The CITY may direct CONTRACTOR to change the frequency of street sweeping for any CITY street. CONTRACTOR shall implement CITY-directed changes in frequency within fifteen (15) Work Days of receipt of written notice from the Agreement Administrator to adjust sweeping frequency. Any changes under this Article shall be treated as CITY-directed changes under Section 24.01.

7. Street Additions. As new streets are constructed and accepted by CITY, CITY may, at CITY's sole option, designate such streets as part of the Service Area for the purposes of Street Sweeping Services. If the Agreement Administrator designates such streets as part of the Service Area, CONTRACTOR shall provide Street Sweeping Service on such streets under the terms and conditions of this Agreement within fifteen (15) Work Days of receipt of written notice from the Agreement Administrator to begin service. Any changes under this section shall be treated as CITY-directed changes under Section 24.01.

8. Adverse Weather Conditions. Because of varying rain conditions throughout the CITY, CONTRACTOR may verbally request permission from the Agreement Administrator to cancel sweeping during heavy and persistent

rainstorms within the Service Area. CONTRACTOR may cancel sweeping only with the prior consent of the Agreement Administrator.

9. Hazardous Waste. CONTRACTOR shall not be required to remove any Hazardous Waste from the street surface. If, in the course of performing Street Sweeping Services, any material believed to be Hazardous Waste shall be immediately reported to the Calexico Police Department, the Agreement Administrator, and any other responsible agency.

10. Complaints

Complaints related to street sweeping are to be reasonably resolved, including by re-sweeping areas not properly serviced if necessary, within 24 hours on Work days.

11. Sweeping Vehicle Speed.

Street sweeping vehicles shall not operate at a speed that exceeds the manufacturer's recommendations for the sweeper and/or the speed for good street sweeping practice as determined by the City Manager.

12. Safety.

All safety related defects determined to exist on any sweeping vehicle shall be corrected by contractor prior to the vehicle being utilized for further street sweeping operations.

13. Disposal of refuse.

CONTRACTOR shall, at its own expense, dispose of all Solid Waste Collected in the course of street sweeping in the same manner as required for solid waste collected in the course of providing solid waste handling services.

14. CONTRACTOR's Street Sweeping Equipment.

a. Type. CONTRACTOR Street Sweeping shall be conducted by either a vacuum sweeper or combination sweeper. All Tymco 600 street sweepers utilized in this agreement shall meet all Federal, State, and local regulations including but not limited to SCAQMD Rule 1186.

b. Quantity. CONTRACTOR shall have and maintain a minimum of two (2) primary sweepers, and one (1) back-up sweeper for use in providing services to the City. In the event that a sweeper requires repair or replacement, a replacement sweeper will be provided so that the established inventory does not fall below the above stated minimums.

c. Condition. All vehicles and equipment used to perform street sweeping services shall be kept and maintained by CONTRACTOR or its subcontractor in good mechanical condition and working order. Any of the primary sweepers that need permanent replacement due to age and condition of the vehicle shall be replaced with a new vehicle. In addition, the following shall apply:

(1) Said equipment shall be kept clean at all times;

(2) CITY shall provide water for sweeper dust control.

(3) Mechanical brushes and brooms shall be maintained in proper condition and shall be replaced as recommended by the manufacturer or when pick-up availability becomes impaired.

(4) **Inspection.** All equipment utilized for street sweeping operations shall be subject to inspection by the City Manager at any time. The street sweeper may be cleaned, emptied and parked at the City-owned lot at 545 Pierce Avenue in Calexico, CA 92231.

15. Street Sweeping Personnel.

a) **Qualifications.** CONTRACTOR shall employ competent and experienced drivers and mechanics for the performance of street sweeping operations (“Street” Sweeping Personnel.”)

b) **Uniforms.** CONTRACTOR’s Street Sweeping Personnel shall wear clean uniform bearing CONTRACTOR’s (or its subcontractor’s) company name, or other suitable clothing approved by the City.

c) **Identification of Employees.** CONTRACTOR shall provide identification badges, cards or similar devices, for all its street sweeping personnel who may make personal contact with residents of the City. The City may require CONTRACTOR to notify Customers yearly of the form of identification.

e) **Driver’s License.** CONTRACTOR’s street sweeping personnel shall, at all times, carry a valid operator’s license for the type of vehicle he or she is operating.

f) **Discontinued use of Unsatisfactory Employees.** No street sweeping personnel shall continue to have any involvement whatsoever with regard to any work in any way relating to or arising from this Agreement if the City gives notice to CONTRACTOR that such person is determined by the City to be intemperate, discourteous, disorderly, inefficient, or otherwise objectionable.

g) **Training and Legal Compliance.** CONTRACTOR shall provide operating and safety training for its entire street sweeping personnel that meets minimum OSHA, and all other applicable standards.

16. Contract Administration.

a) **Verification.** City will receive website and password information for the sweeper’s GPS system, and will be able to monitor the current location of the sweeper and area swept.

b) CONTRACTOR shall keep a daily log of streets swept. If requested by the Agreement Administrator a report will be prepared showing the streets swept.

17. Subcontracting.

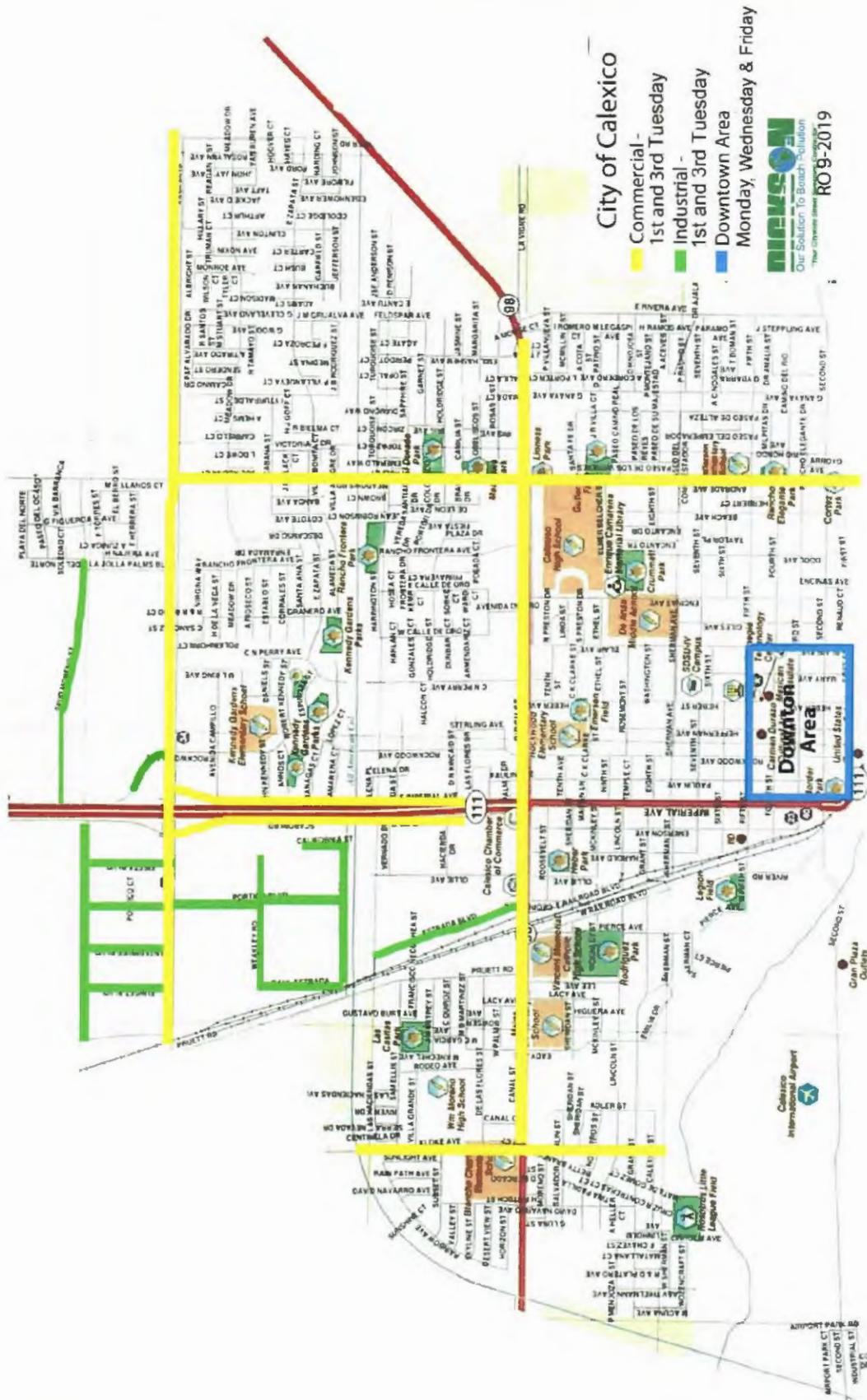
CONTRACTOR may utilize the services of a subcontractor to perform the services and meet the obligations set forth in this Exhibit. Any subcontracting shall be subject to such reasonable conditions as may be required by the City Manager, and shall be subject to the following:

a) CONTRACTOR shall be responsible to ensure any permitted subcontractor complies with all applicable terms and conditions of this Agreement;

b) Any permitted subcontractor shall be required to provide a written agreement to the City, in a form approved by the City Attorney, demonstrating its agreement to be bound by all applicable provisions of this agreement, including specifically, without limitation, the insurance and indemnity provisions set forth herein; and

c) CONTRACTOR shall be responsible for the actions and/or omissions of any subcontractor as if CONTRACTOR were carrying out the services in question itself.

# CITY OF CALEXICO



City of Calexico

Commercial -  
1st and 3rd Tuesday

Industrial -  
1st and 3rd Tuesday

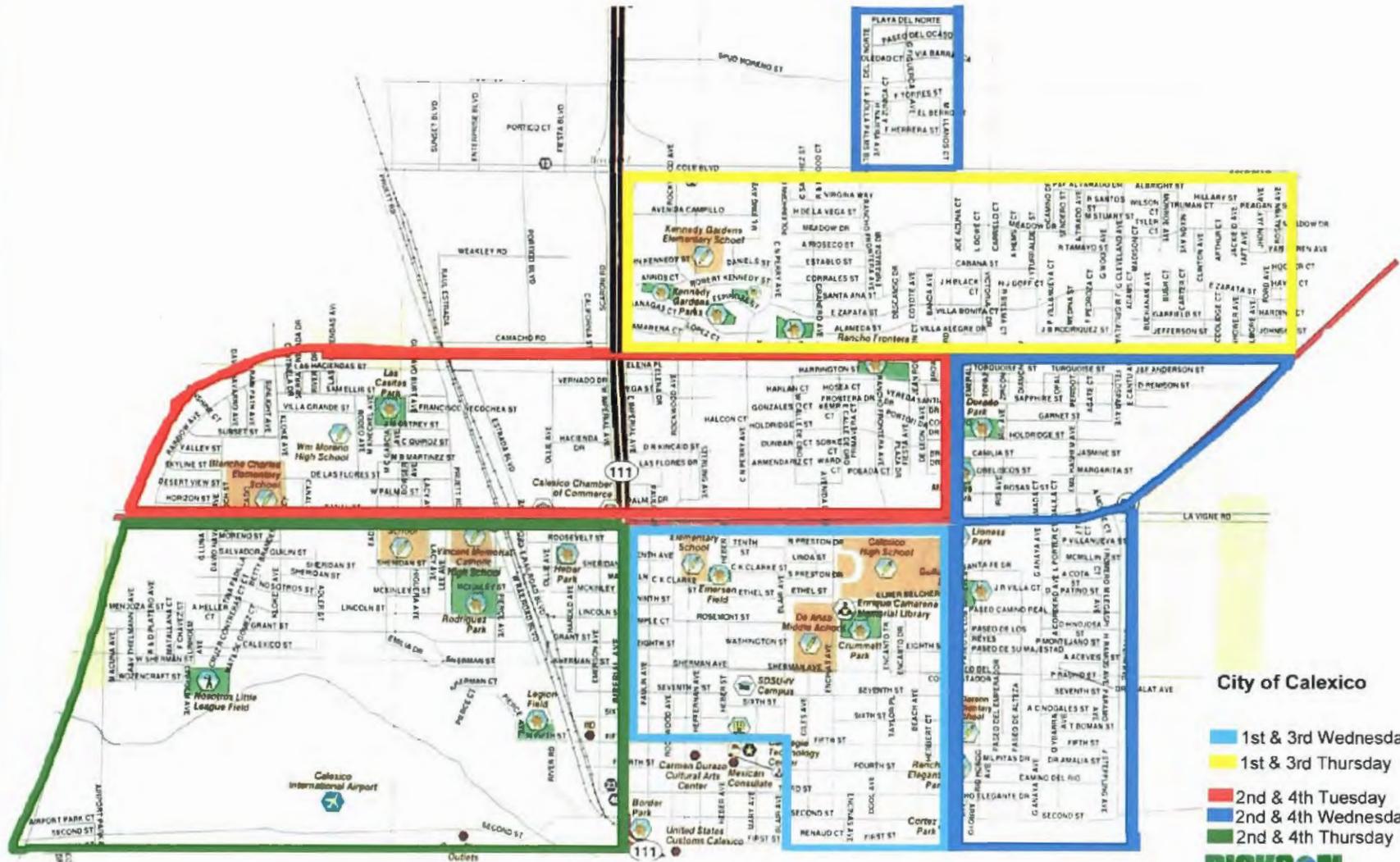
Downtown Area  
Monday, Wednesday & Friday



Our Solution To Beach Pollution

RO9-2019

# CITY OF CALEXICO



City of Calexico

- 1st & 3rd Wednesday
- 1st & 3rd Thursday
- 2nd & 4th Tuesday
- 2nd & 4th Wednesday
- 2nd & 4th Thursday



## Exhibit 10

### Downtown Street & Alley Clean-up

1. Republic Services will dedicate one employee for 4 hours each day (M-F) to maintain the cleanliness of the streets and alleys in the downtown area
2. The area will border Imperial Ave on the west, Heber Ave on the east, 1<sup>st</sup> Street on the south and 4<sup>th</sup> Avenue on the north
3. The duties of this employee will include but not be limited to the following;
  - a. Picking up litter and waste material in the Streets and Alleys (not including city owned curbside waste containers).
  - b. Identifying recycling contamination
  - c. Maintain labeling on all bins with the business owner name to help assure services are adequate
  - d. Verifying the condition of the recycling and waste containers to insure lids are in good working order, locks and lock bars are functioning properly and removing or painting over graffiti.
  - e. Working with the street sweeper to clean curb areas not accessible by the sweeper.
4. Republic Services will work with City of Calexico Public Works and Code Enforcement on any issues such as vandalism of the containers, non-payment of services which will interrupt the services and to identify businesses operating without recycling/trash services.