

# **Heber Public Utility District**

## **REPORT TO BOARD OF DIRECTORS**

**MEETING DATE:** October 20, 2022

**FROM:** Laura Fischer, General Manager

**SUBJECT:** Adopt Resolution 2022-19 Approving the Amended and Restated Agreement Between the District and CR&R Incorporated for Integrated Solid Waste Management Services.

**ISSUE:**

Shall the Board of Directors adopt Resolution 2022-19 Approving the Amended and Restated Agreement Between the District and CR&R Incorporated for Integrated Solid Waste Management Services?

**GENERAL MANAGER'S RECOMMENDATION:**

It is recommended that the Board of Directors Adopt 2022-19 Approving the Amended and Restated Agreement Between the District and CR&R Incorporated for Integrated Solid Waste Management Services.

**FISCAL IMPACT:**

Rate Implementation through Prop 218 will cost the District approximately \$5,000. The Amended Agreement does not have a cost recovery mechanism included.

If approved, the new Agreement will generate \$1,800 per year to the District to reimburse program implementation costs (SB 1383), and \$1,000 per year for public outreach activities. In addition, the District received the Franchise Tax amount of 10% of CR&R's gross receipts.

**BACKGROUND:**

On June 17, 2010, an Agreement was entered into between Heber Public Utility District and Palo Verde Valley Disposal Service for the collection and disposal of solid waste, among other things, and the terms and conditions of said Agreement.

In September, 2011, the assets of Palo Verde Valley Disposal Service were purchased by CR&R Incorporated, who assumed the rights and responsibilities of Palo Verde Valley Disposal Service under said agreement. The Heber Public Utility District authorized the transfer of the Franchise Agreement from Palo Verde Disposal Service to CR&R Incorporated via Resolution Number 2011-14.

Pursuant to Section 5 of the current Agreement, CR&R Incorporated submitted a request to the HPUD Board for a seven (7) year extension of the Agreement, through June 30, 2024. At the August 20, 2015 HPUD Board meeting, representatives from CFR&R presented their request as well as a list of certain contract enhancements in return for the contract extension, which was approved.

The District is proposing to amend and restate the existing Agreement between the Heber Public Utility District and CR&R to account for increased required services and related costs associated with compliance with new State regulations. The Amended and Restated Agreement incorporates all prior modifications to the Agreement.

### **DISCUSSION:**

The proposed Agreement will provide the same services from CR&R but will also include implementation of current State legislation including SB 1383.

It is the District's goal to keep costs to our customers as low as possible, while complying with all State and local regulations. The new SB 1383 regulations are in place to improve the environment and enhance sustainability efforts, they also come with mandates that are unfunded. The rate increases are a pass-through cost to maintain compliance with State regulations.

Changes to the Amended and Restated Agreement include:

- No change to the current 10% franchise fee, however, HPUD and CR&R will change the current practice of collecting the franchise fee to meet the language of the Amended Agreement.
- Extension of the Agreement for three years. Current Agreement term ends 2024, Amended Agreement ends 2027.
- No change to the current senior discount program.
- Rates must be approved through Prop 218 process. HPUD estimates that moving the CR&R rates through the Prop 218 process will cost the District about \$5,000. This is not being reimbursed by CR&R and will have a negative impact on the HPUD Trash Fund.
- A 4% rate ceiling is included in this Amended Agreement. Rates cannot be increased by more than 4% per year starting July 1, 2023.
- CR&R is proposing one rate increase exceeding the 4% cap. This rate of 4.7%, which must also be approved by the Prop 218 process, will be effective February 1, 2023. The next rate increase to be implemented on July 1, 2023 with a maximum rate increase up to 4% per year for the next four years through the Agreement term.
  - January 2023 Prop 218 Rate Hearing
  - If passed, 4.7% rate increase starting February 1, 2023.
  - If passed, 4% increase implemented July 1, 2023.
  - If passed a maximum of 4% increase per year through 2027.
- Change to customers billed by HPUD and which customers are billed by CR&R. Currently, HPUD is paying from an invoice presented to the District by CR&R. This includes customer accounts that may change or accounts that are not current with their payments. HPUD pays the full amount that CR&R bills less the 10% franchise fee. The amended Agreement presented for your consideration allows that HPUD should pay the full amount that we receive (gross revenue) from the customer's payment less the 10% franchise fee. If a customer account has been changed, or if a customer is late, these changes will be reflected in the current gross receipts collected by HPUD.

- Change in how the rate increase is calculated. Currently CPI for all urban consumers, changed to CPI index-, Los Angeles-Long Beach-Anaheim average.
- Insurance Amount Changes. This Agreement increases the amount of insurance CR&R is required to carry.
- Bulk Drop Off – Clean Up Day Events are increased from 2 per year to 4 per year.
- CR&R will provide a Sharps Collection Program: Upon request, Contractor will provide to customers, at not additional charge, postage paid mail back containers to collect sharps.
- CR&R shall provide a Residential Food Waste Diversion Program. Food waste shall be placed in the green cart in residential single family and multi-family properties. Carts shall be labeled to accept the food waste.
- CR&R shall provide a Commercial and Multi-Family Organic Material Collection Program, including food waste collection. This includes meeting with business owners and providing appropriate service with bins or carts that meet State regulations.
- CR&R shall provide Food Recovery Assistance by identifying Tier 1 and Tier 2 generators and annually provide generators information about the program. CR&R shall work with District to conduct compliance inspections to Tier 1 and 2 generators. Currently HPUD does not have any Tier 1 generators and only has one Tier 2 generator, which is the Heber School.
- CR&R will assist the District with large venue and event assistance for event recycling by providing carts and bins.
- CR&R will assist District in procuring recovered organic waste products to meet the District's procurement targets under SB1383, such as compost.
- CR&R will perform ongoing, but no less than twice a year, cart contamination inspections. Noticing will be provided on cart or bin found to be contaminated with unacceptable waste. Non-compliance will be forwarded to the District for enforcement.
- CR&R will provide the District reports on its contamination monitoring efforts.
- CR&R will review de minimis waivers and provide recommendation to District.
- CR&R will include an outreach and technical assistance plan to include a CR&R representative to visit generators and assess waste stream, provide education to generators such as signage requirement. The Site Visits and Waste Assessments will also determine required level of service to commercial generators.
- CR&R will provide classroom recycling bins in the Heber School District.
- CR&R will perform annual compliance reviews of commercial generators and food recovery compliance and provide reports to the District.
- CR&R shall reimburse to the District \$1,800 annually to refund HPUD expenses including, but not limited to, staffing costs related to District programs, education and outreach campaigns and consultant costs related to implementation of AB939/SB1383 programs.

**NEXT STEPS:**

District staff, in compliance with proceedings required under Article XIII D, Section 6 of the California Constitution, Proposition 218 process, will mail out a Proposition 218

Notice to property owners with information on the proposed new rates. The notice will provide a date and time for a protest public hearing to discuss the proposed rates. Property owners (and tenants/commercial or single family/multifamily of such properties who actually pay the rates) will have the ability to file a protest until the close of the public hearing. District staff has prepared a report on this Agenda to authorize the Public Hearing to be held on December 15, 2022.

**CONCLUSION:**

Staff recommends that the Board of Directors approve Resolution 2016-2 amending the Agreement with CR&R for the Collection, Transportation, Recycling, and Disposal of Solid Waste, Recyclable and Compostable Material as presented.

Respectfully Submitted,

Laura Fischer,  
General Manager

Attachment: Amended and Restated Agreement Between the HPUD and CR&R  
Resolution 2016-2 Amending the Agreement with CR&R

**RESOLUTION NO. 2022-19**

**A RESOLUTION OF THE HEBER PUBLIC UTILITY DISTRICT APPROVING THE AMENDED AND RESTATED AGREEMENT BETWEEN THE HEBER PUBLIC UTILITY DISTRICT AND CR&R INCORPORATED FOR INTEGRATED SOLID WASTE MANAGEMENT SERVICES**

**WHEREAS**, the Heber Public Utility District approved a Modified Service Agreement with CR&R on January 20, 2016 via Resolution Number 2016-2; and

**WHEREAS**, the State of California enacted AB 1826, requiring the implementation of mandatory commercial organics recycling; and

**WHEREAS**, the State of California enacted SB 1383, expanding the implementation of mandatory organics recycling; and

**WHEREAS**, the Heber Public Utility District and CR&R wish to amend and restate the Amended Agreement to enable implementation of the proposed programs in order to achieve compliance with AB 1826 and SB 1383; and

**WHEREAS**, the Heber Public Utility District and CR&R further wish to amend and restate the Amended Agreement to consolidate all previous amendments and service agreements; and

**WHEREAS**, this Resolution does not authorize any rate increase that requires Proposition 218 approval; and

**WHEREAS**, it is in the best interest of the Heber Public Utility District to approve the Amended and Restated Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of Heber Public Utility District as follows:

1. That the foregoing is true, correct and adopted.
2. That the Heber Public Utility District does hereby approve the Amended and Restated Agreement.
3. That the General Manager is hereby authorized to sign the Amended and Restated Agreement, a copy of which is on file at the Office of the Board Secretary.

**PASSED AND ADOPTED** by the Heber Public Utility District Board on the 20<sup>th</sup> Day of October 2022 by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Kaine Garcia, President  
Board of Directors

ATTEST:

\_\_\_\_\_  
Moises Cardenas, Clerk of the Board

APPROVE AS TO FORM:

\_\_\_\_\_  
Steven M. Walker, General Counsel

STATE OF CALIFORNIA )  
COUNTY OF IMPERIAL )  
HEBER PUBLIC UTILITY )  
DISTRICT )

I, MOISES CARDENAS, Clerk of the Board of the Heber Public Utility District, County of Imperial, State of California, DO HEREBY CERTIFY that the foregoing resolution was dully passed, approved and adopted by the Board of Directors of the Heber Public Utility District at its regularly scheduled meeting held on the 20th day of October, 2022.

By \_\_\_\_\_  
Moises Cardenas, Clerk of the Board

**AMENDED AND RESTATED AGREEMENT**  
**BETWEEN THE**  
**HEBER PUBLIC UTILITY DISTRICT**  
**AND**  
**CR&R INCORPORATED**  
**FOR**  
**INTEGRATED SOLID WASTE**  
**MANAGEMENT SERVICES**

\* \* \*

**OCTOBER 20, 2022**

# TABLE OF CONTENTS

## Contents

<b>ARTICLE 1: DEFINITIONS .....</b>	<b>2</b>
<b>ARTICLE 2: GRANT AND ACCEPTANCE OF FRANCHISE .....</b>	<b>20</b>
2.1 Grant and Acceptance of Franchise .....	20
2.2 Enforcement of Exclusivity.....	20
2.3 Effective Date .....	20
2.4 Term of Agreement.....	20
2.5 Option to Extend Term .....	20
2.6 Representations and Warranties of Contractor.....	21
2.7 Conditions to Effectiveness of Agreement.....	22
2.8 Delegation of Authority .....	22
2.9 Limitations to Scope .....	22
2.10 District’s Right to Direct Changes .....	23
2.10.1 General.....	23
2.10.2 New Diversion Programs.....	24
2.10.3 Flow Control Option .....	24
2.11 Ownership of Solid Waste .....	25
2.12 Contractor Status .....	25
2.13 Contractor Authorization .....	25
2.14 Permits and Licenses .....	26
2.15 Annexations.....	26
<b>ARTICLE 3: FEES PAID TO THE DISTRICT .....</b>	<b>26</b>
3.1 Public Recycling Cooperation Funding .....	26
3.2 Franchise Fee.....	26
3.3 Time and Method of Franchise Fee Payments to District .....	26
3.3.1 Revenue Collected by District .....	26
3.3.2 Revenue Collected by Contractor.....	26
3.3.3 AB 939 / SB 1383 Reimbursement .....	27
3.4 Future Fees .....	27
<b>ARTICLE 4: DIRECT SERVICES .....</b>	<b>27</b>
4.1 Services to be Provided by Contractor – General.....	27
4.2 Refuse Services .....	28
4.2.1 Single Family Refuse Collection .....	28
4.2.2 Refuse Cart Overage .....	29
4.2.3 Backyard Service .....	29
4.2.4 Multi-Family and Commercial Refuse Collection.....	29
4.2.5 Commercial Cart Service .....	29
4.2.6 Overflowing Commercial Containers .....	30
4.2.7 Roll-off Box Service.....	30
4.2.8 Temporary Bin Service.....	30
4.2.9 Scout Vehicles/Roll-Outs.....	30



4.2.10	Locking Bins.....	30
4.2.11	Solid Waste and Bulky Item Drop-off Events .....	31
4.2.12	On-Call Bulky Item Pickup.....	31
4.2.13	Bulky Item Diversion .....	31
4.2.14	Disposal of Electronic and Other Special Wastes .....	32
4.2.15	Sharps Collection Program .....	32
4.2.16	Curbside Used Oil Collection.....	32
4.3	Recycling .....	34
4.3.1	General.....	34
4.3.2	Single Family Recycling Collection.....	34
4.3.3	Multi-Family and Commercial Recyclables Collection .....	34
4.3.4	Section Reserved.....	35
4.3.5	Marketing and Sale of Recyclable Materials .....	35
4.3.6	Minimum Recycling Requirements .....	35
4.3.7	Construction and Demolition Debris Diversion and MRF .....	35
4.3.8	Operations Facility .....	35
4.4	Organic Material Collection Program – General .....	35
4.4.1	Single Family Green Waste Collection .....	36
4.4.2	Commercial and Multi-Family Organic Materials Collection .....	36
4.4.3	End Uses for Green Waste.....	37
4.4.4	Food Recovery Assistance.....	37
4.5	District Services.....	38
4.5.1	District Facilities Collection.....	38
4.5.2	District Sponsored Events .....	38
4.5.3	Emergency Collection and Disposal Service .....	38
4.5.4	Dumping Privileges .....	38
4.5.6	Large Venue and Event Assistance, Event Recycling.....	39
4.5.7	Provision of Recovered Organic Waste Products .....	39
4.5.8	Contractor Warranty of Recovered Organic Waste Products .....	39
4.6	Operations.....	39
4.6.1	Schedules .....	39
4.6.2	Missed Pickups .....	40
4.6.3	Vehicles .....	40
D.	Cleaning and Maintenance .....	41
4.6.4	Containers .....	42
4.6.5	Litter Abatement.....	44
4.6.6	Personnel.....	45
4.6.7	Identification Required.....	45
4.6.8	Fees and Gratuities.....	46
4.6.9	Non-Discrimination .....	46
4.6.10	Report of Accumulation of Solid Waste.....	46
4.7	Transfer, Processing, and Disposal.....	46
4.7.1	Processing Facility Temporary Equipment or Operational Failure Waiver .....	47
4.7.2	Transportation to Non-Approved Facilities Prohibited .....	48
4.8	Status of Disposal Site .....	48
4.9	Dedicated Routes.....	48
4.10	Route Audit.....	48
4.11	Service Exceptions; Hazardous Waste Notifications .....	49
<b>ARTICLE 5: OTHER SERVICES .....</b>		<b>50</b>

5.1	Services and Customer Billing.....	50
5.1.1	Customers Billed by District.....	50
5.1.2	Customers Billed by Contractor .....	50
5.1.3	Review of Accounts.....	51
5.1.4	Non-Payment; Collections; Suspension of Service .....	51
5.1.5	Exemption From Service .....	51
5.1.6	Senior Discount .....	51
5.2	Customer Service .....	52
5.2.1	Local Office/Customer Service .....	52
5.2.2	Complaint Documentation .....	53
5.2.3	Resolution of Customer Complaints .....	53
5.2.4	SB 1383 Noncompliance Complaints .....	53
B.	Investigation of SB1383 Noncompliance Complaints .....	53
5.2.5	Contract Liaison .....	54
5.2.6	Service Liaison.....	54
5.2.7	Review of Generator Waiver Requests.....	54
5.3	Education and Public Awareness .....	55
5.3.1	General.....	55
5.3.2	Material Distribution Methods .....	55
5.3.3	Non-English Language Requirements .....	55
5.3.4	Ongoing Education Requirements.....	56
5.3.5	Contractor Representative.....	57
5.3.6	Community Events.....	57
District 5.4	Waste Generation/Characterization Studies .....	57
5.5	Contamination Monitoring.....	58
5.5.1	Contamination Inspection Methods .....	58
5.6	Inspection and Enforcement.....	60
A.	Annual Compliance Reviews .....	60
5.	Compliance Review Process.....	61
5.7	Technical Assistance Program .....	61
5.7.1	Site Visits and Waste Assessments.....	61
5.7.2	Workshops and Meetings.....	63
5.7.3	Record Keeping and Reporting Requirements.....	63
5.8	Universal Enrollment Monitoring.....	63
	<b>ARTICLE 6: CONTRACTOR COMPENSATION AND RATES.....</b>	<b>64</b>
6.1	General.....	64
6.2	Initial Rates.....	64
6.3	Schedule of Future Adjustments.....	64
6.3.1	Annual Rate Adjustment.....	64
6.4	Method of Adjustments.....	65
6.4.1	General.....	65
6.5	Extraordinary Adjustments.....	67
6.6	Change in Approved Disposal Facility .....	68
	<b>ARTICLE 7: REVIEW OF SERVICES AND PERFORMANCE .....</b>	<b>68</b>
7.1	Solid Waste Services and Performance Review Meeting .....	68
	<b>ARTICLE 8: RECORDS, REPORTS, AND INFORMATION REQUIREMENTS .....</b>	<b>69</b>
8.1	General.....	69
8.2	Records .....	69

8.2.1	General	69
8.2.2	Financial Records	70
8.2.3	Solid Waste Records	70
8.2.4	CERCLA Defense Records	71
8.2.5	Disposal Records	71
8.2.6	Compilation of Information for State Law Purposes	71
8.2.7	Other Programs' Records	72
8.3	Reports	72
8.3.1	Report Formats and Schedule	72
8.3.2	Quarterly Reports	73
8.3.3	Annual Report	76
8.3.4	Financial Report	79
8.4	Reporting Adverse Information	79
8.5	Right to Inspect Records	80
8.6	Failure to Report	80
8.7	Public Records	80
<b>ARTICLE 9: INDEMNIFICATION, INSURANCE, BOND, AND LETTER OF CREDIT</b>		<b>80</b>
9.1	Indemnification	80
9.2	Hazardous Substances Indemnification	81
9.3	CalRecycle Indemnification and Guarantee	82
9.4	Insurance	83
H.	Required Endorsements	85
<b>ARTICLE 10: DISTRICT'S RIGHT TO PERFORM SERVICE</b>		<b>87</b>
10.1	General	87
10.2	Temporary Possession of Contractor's Property	88
10.3	Billing and Compensation to District During District's Possession	88
10.4	District's Right to Relinquish Possession	88
10.5	District's Possession Not A Taking	89
10.6	Duration of District's Possession	89
<b>ARTICLE 11: DEFAULT, REMEDIES, AND LIQUIDATED DAMAGES</b>		<b>89</b>
11.1	Events of Default	89
I.	Acts or Omissions	90
11.2	Criminal Activity of Contractor	91
11.3	Section Reserved	92
11.4	Right to Terminate Upon Default and Right to Specific Performance	92
11.5	Liquidated Damages	92
1.	Collection Reliability	93
2.	Collection Quality	93
3.	Customer Responsiveness	94
4.	Diversion Efforts	94
5.	Timeliness of Submissions to District	94
6.	Cooperation with Service Provider Transition	95
7.	Public Education and Outreach	95
8.	General Contract Adherence	95
9.	SB 1383 Requirements	95
11.6	Excuse from Performance	97
11.7	Notice, Hearing and Appeal of District Breach	98

11.8	Assurance of Performance .....	99
<b>ARTICLE 12: OTHER AGREEMENTS OF THE PARTIES.....</b>		<b>99</b>
12.1	Relationship of Parties.....	99
12.2	Compliance with Law.....	99
12.3	Governing Law .....	99
12.4	Jurisdiction.....	99
12.5	Assignment.....	100
12.6	Affiliated Companies.....	101
12.7	Contracting or Subcontracting .....	101
12.8	Binding on Assigns.....	102
12.9	Cooperation in Preparation for Termination or Expiration of Contract .....	102
12.10	Parties in Interest.....	102
12.11	Waiver .....	102
12.12	Contractor's Investigation .....	103
12.13	Condemnation .....	103
12.14	Notice .....	103
12.15	Representatives of the Parties .....	104
12.16	District Free to Negotiate with Third Parties .....	104
12.17	Compliance with Municipal Code.....	104
12.18	Privacy.....	104
12.19	Proprietary Information, Public Records .....	104
12.20	Compliance with Immigration Laws .....	105
<b>ARTICLE 13: MISCELLANEOUS PROVISIONS.....</b>		<b>105</b>
13.1	Entire Agreement.....	105
13.2	Section Headings .....	105
13.3	References to Laws and Other Agreements.....	105
13.4	Interpretation .....	106
13.5	Agreement.....	106
13.6	Severability .....	106
13.7	Exhibits.....	106
13.8	Non-Waiver Provision .....	106
13.9	Attorneys' Fees .....	106
8.1	General Requirements.....	6
	Approved Facilities.....	2
8.2	Black Container Waste Disposal Standards .....	10
8.3	Weighing of Discarded Materials .....	10
8.4	Rejection of Excluded Waste.....	12
8.5	Discarded Materials Evaluations at Approved Facilities .....	12

## **EXHIBITS**

1. AB 341, AB 827, AB 1826, and SB 1383 Implementation Plan 2.
2. Rates effective February 1, 2023 or after successful Prop 218 public hearing.
3. Processing, Transfer, and Disposal Services and Facility Standards
4. Collection System Specifications

# AGREEMENT

This Amended and Restated Agreement (“Agreement”) for Integrated Solid Waste Management Services (hereinafter the “Agreement”) is entered into this 20<sup>th</sup> day of October, 2022, by and between the Heber Public Utility District (“District”) and CR&R Incorporated (“Contractor”), for the Collection, Transportation, Recycling, Processing, and Disposal of Solid Waste and other services related to meeting the goals and requirements of the California Integrated Waste Management Act.

## RECITALS

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the District has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for the Collection, Transfer and Transportation, Recycling, Processing, and Disposal of Solid Waste and other services related to meeting the Diversion goals required by AB 939, and other requirements of the California Integrated Waste Management Act; and,

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

WHEREAS, the State of California has found and declared that the amount of Solid Waste generated in California, coupled with diminishing Disposal capacity and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote a reduction in landfill Disposal and to maximize the use of feasible waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of material that must be disposed; and,

WHEREAS, SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets; and,

WHEREAS, SB 1383 requires jurisdictions to implement Collection programs, meet Processing Facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement and fulfill other requirements; and, the District has chosen to delegate some of its responsibilities to Contractor, acting as the District’s designee, through this Agreement; and,

WHEREAS, the successful implementation of Solid Waste Collection in Residential, Commercial and industrial areas in the District will entail the expenditure of large sums of capital by the Contractor, for which the Contractor is, subject to the terms of Proposition 218, entitled to be compensated. The

District intends that this Agreement will contribute to safeguarding public health by providing the most cost-effective, efficient, reliable, and environmentally appropriate Solid Waste services to its citizens, and

WHEREAS, the District declares its intention of maintaining reasonable rates and quality service related to the Collection, Transfer and Transportation, Recycling, Processing, and Disposal of Solid Waste and other services; and,

WHEREAS, the District Board of Directors has determined that Contractor, by demonstrated experience, reputation and capacity is qualified to continue to exclusively provide for the Collection of Solid Waste (except as otherwise permitted pursuant to Section 2.9 of this Agreement) within the corporate limits of District and to Transport such Solid Waste to places of Processing and Disposal, which may be designated in accordance with this Agreement, and District and Contractor desire that Contractor be engaged to perform such services on the terms and conditions set forth in this Agreement; and,

WHEREAS, District and Contractor (“Parties”) hereto desire to enter said Agreement; and,

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

NOW, THEREFORE, in consideration of the Premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

## **ARTICLE 1: DEFINITIONS**

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

### **1.1 AB 341**

“AB 341” means the Assembly Bill approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded and replaced from time to time.

### **1.2 AB 827**

“AB 827” means the Assembly Bill approved by the Governor of the State of California on October 2, 2019, which amended Sections 42649.2, 42649.2, 42649.8, and 42649.81 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

### **1.3 AB 939**

“AB 939” means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

### **1.4 AB 1594**

“AB 1594” means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which amended Sections 40507 and 41781.3 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

### **1.5 AB 1826**

“AB 1826” means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as “AB 1826,” as amended, supplemented, superseded, and replaced from time to time.

### **1.6 Affiliated Companies**

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

### **1.7 Alternative Daily Cover (ADC)**

“Alternative Daily Cover” or “ADC” has the same meaning as in Section 20690 of Title 27 of the California Code of Regulations.

### **1.8 Alternative Intermediate Cover (AIC)**

“Alternative Intermediate Cover” or “AIC” has the same meaning as in Section 20700 of Title 27 of the California Code of Regulations.

### **1.9 Alternative Facility(ies)**

“Alternative Facility(ies)” means any Facility other than Approved Facilities approved by the District for replacement or temporary use.



### **1.10 Applicable Law**

“Applicable Law” means all statutes, rules, regulations, guidelines, actions, determinations, Permits, orders, or requirements of the United States, State, County, the District and local and regional government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the Site or the performance of the Parties’ respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, prevailing wages if applicable, and the Imperial County Integrated Waste Management Plan. Applicable Law includes, but is not limited to, AB 939, AB 341, AB 1826, and SB 1383. All references herein to Applicable Law include subsequent amendments or modifications thereof, unless otherwise specifically limited in this Agreement.

### **1.11 Approved C&D Processing Facility**

“Approved C&D Processing Facility” means the South Yuma County Landfill located at 19536 South Avenue 1E, Yuma, Arizona 85365, which is owned and operated by Contractor, which is a C&D Processing Facility or a mutually agreeable successor Facility.

### **1.12 Approved Disposal Facility**

“Approved Disposal Facility” means the South Yuma County Landfill located at 19536 South Avenue 1E, Yuma, Arizona 85365, which is owned and operated by Contractor, which is a Disposal Facility or a mutually agreeable successor Facility.

### **1.13 Approved Facilities**

“Approved Facility(ies)” means any one of or any combination of the: Approved C&D Processing Facility; Approved Disposal Facility; Approved Organic Waste Processing Facility, Approved Source Separated Recyclable Materials Processing Facility; and, Approved Transfer Facility or a mutually agreeable successor Facility.

### **1.14 Approved Organic Waste Processing Facility**

“Approved Organic Waste Processing Facility” means the South Yuma County Composting located at 19536 South Avenue 1E, Yuma, Arizona 85365, which is owned and operated by Contractor, which is an Organic Waste Processing Facility or a mutually agreeable successor Facility.

### **1.15 Approved Source Separated Recyclable Materials Processing Facility**

“Approved Source Separated Recyclable Materials Processing Facility” means the South Yuma County Landfill located at 19536 South Avenue 1E, Yuma, Arizona 85365, which is owned and operated by Contractor, which is a Source Separated Recyclable Materials Processing Facility or a mutually agreeable successor Facility.

### **1.16 Approved Transfer Facility**

“Approved Transfer Facility” means the Transfer Stations located at 599 East Main Street, El Centro, California 92243, and 853 Dogwood, El Centro, CA\_92243 , which is owned and operated by Contractor, which are Transfer Facilities. The Parties understand at the time of this Agreement, that CR&R is

permitting and intends to build a new, consolidated Transfer Facility located at Dogwood and Aurora Avenues in the City of El Centro and once constructed will be the Approved Primary Facility for Transfer.

**1.17 Back-Haul**

“Back-Haul” means generating and Transporting Recyclable Materials and/or Organic Waste to a destination owned and operated by the Generator using the Generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

**1.18 Billings**

“Billings” or “Billing” or “Bill” means the statements of charges provided to Customers for services rendered by Contractor under this Franchise Agreement with the District.

**1.19 Bin**

“Bin” means a metal Container with hinged lids and wheels with a capacity of less than ten (10) cubic yards.

**1.20 Bin Service**

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

**1.21 Black Container**

“Black Container” has the same meaning as in 14 CCR Section 18982.2(a) and shall be used for the purpose of storage and Collection of Black Container Waste or Mixed Waste.

**1.22 Black Container Waste**

“Black Container Waste” means Solid Waste that is Collected in a Black Container that is part of a three-Container Organic Waste Collection service that prohibits the placement of Organic Waste in the Black Container as specified in 14 CCR Sections 18984.1(a) and (b) or as otherwise defined in 14 CCR Section 17402(a)(6.6). For the purposes of this Agreement, Black Container Waste includes carpet and textiles.

**1.23 Blue Container**

“Blue Container” has the same meaning as in 14 CCR Section 18982.2(a) and shall be used for the purpose of storage and Collection of Source Separated Recyclable Materials.

**1.24 Bulky Items**

“Bulky Items” means Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); electronic equipment (including stereos, televisions, computers and monitors, VCRs, microwaves and other similar items commonly known as “brown goods” and “E-Waste”); Universal Waste (“U-Waste”); Residential wastes (including wood waste, tree branches, scrap wood, rocks, sod and earth, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Items do not include car bodies, Construction and Demolition Debris,

or items requiring more than two (2) Persons to remove. Other items not specifically included or excluded above will be Collected provided that they are not more than eight (8) feet in length, four (4) feet in width, or more than one-hundred and fifty (150) pounds. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, District shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

**1.25 California Code of Regulations (CCR)**

“California Code of Regulations” or “CCR” means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

**1.26 CalRecycle**

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

**1.27 Cart**

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than thirty (30)- and no greater than one-hundred and one (101)-gallons.

**1.28 District**

“District” means Heber Public Utility District, and all the territory lying within the boundaries of District as presently existing or as such boundaries may be modified during the term of this Agreement.

**1.29 Collect/Collection**

“Collect” or “Collection” means to take physical possession, Transport, and remove Solid Waste within and from District.

**1.30 Commercial**

“Commercial” refers to services performed at or for Commercial Premises.

**1.31 Commercial Edible Food Generators**

“Commercial Edible Food Generators” includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators.

**1.32 Commercial Premises**

“Commercial Premises” means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but

excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, Premises upon which the following uses) are occurring shall be deemed to be Commercial Premises: Adult Residential Facilities, Assisted Living Facilities, Convalescent Homes, Dormitories, Extended Stay Motels, Group Residential Facilities, Group Care Facilities, Hotels, and Motels.

### **1.33 Compost**

“Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the Effective Date of this Agreement, that “Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized Facility.

### **1.34 Compostable Plastics**

“Compostable Plastics” or “Compostable Plastic” means plastic materials that meet the ASTM D6400 standard for compostability.

### **1.35 Construction and Demolition Debris**

“Construction and Demolition Debris,” “C&D Debris,” or “C&D Material(s)” means any combination of inert building materials and Solid Waste resulting from construction, remodeling, repair, cleanup, or demolition operations as defined in California Code of Regulations, Title 22 Section 66261.3 et seq. This term includes, but is not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard, and other associated packaging; roofing material, ceramic tile, carpeting, plastic pipe, and steel. The material may be commingled with rock, soil, tree stumps, and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

### **1.36 Container**

“Container(s)” means a receptacle for temporary storage of Solid Waste. Containers may include Bins, Carts, Roll-Off Boxes, compactors, or other storage instruments to the extent such Containers are permitted by the District for use for Collection services provided under the Agreement. Container includes receptacles provided by Contractor to Customers for the storage and Collection of Refuse, Green Waste, Organic Waste, or Recyclable Materials.

### **1.37 Contractor**

“Contractor” means CR&R Incorporated, a corporation organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and subcontractors.

### **1.38 Contractor Compensation**

“Contractor Compensation” means the revenue received by the Contractor from Customers in return for providing services in accordance with this Agreement and any amendments to this Agreement.

### **1.39 CPI**

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U), all items index – , Los Angeles-Long Beach-Anaheim average.

#### **1.40 Customer**

“Customer” means a Person receiving Solid Waste Handling Services from Contractor pursuant to the terms of this Agreement.

#### **1.41 Designated Waste**

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

#### **1.42 Discarded Materials**

“Discarded Materials” are a form of Solid Waste, and shall be regulated as such. For purposes of this Agreement, material is deemed to have been discarded, without regard to whether it is destined for Recycling or Disposal, and whether or not it has been separated from other Solid Wastes, in all cases where a fee or other compensation, in any form or amount, is directly or indirectly solicited from, or levied, charged, or otherwise imposed on, or paid by, the Generator or Customer in exchange for handling services. As used herein, handling services include, without limitation, the Collection, removal, Transportation, delivery, and Processing and/or Disposal of the material. Discarded Materials do not include Edible Food that is recovered for human consumption and is not discarded. For the purposes of this Agreement, Discarded Materials include Source Separated Recyclable Materials, Source Separated Organic Materials, Food Waste, Black Container Waste or Mixed Waste, and C&D Debris once the materials have been placed in Containers for Collection.

#### **1.43 Disposal**

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

#### **1.44 Divert or Diversion**

“Divert” or “Diversion” (or any variation thereof) means to prevent Discarded Materials from Disposal at landfill or Transformation Facilities, (including Facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, reuse, Recycling, Composting, anaerobic digestion or other method of Processing, subsequent to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the District.

#### **1.45 Edible Food**

“Edible Food” means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

#### **1.46 Electronic Waste or E-Waste**

“Electronic Waste” or “E-Waste” means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as “brown goods”.

#### **1.47 Environmental Laws**

“Environmental Laws” means all federal and State statutes, county, local and District ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

#### **1.48 Excluded Waste**

“Excluded Waste” means Hazardous Substance, Hazardous Waste, infectious waste, Designated Waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that Approved Facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, Transfer, Processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills or accepted at the Facility by permit conditions, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or District to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include used motor oil and filters, household batteries, Universal Wastes, and/or latex paint when such materials are defined as allowable materials for Collection through this Agreement and the Generator or Customer has properly placed the materials for Collection pursuant to instructions provided by District or Contractor as set forth in this Agreement.

#### **1.49 Facility**

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

#### **1.50 Food Recovery**

“Food Recovery” means actions to Collect and distribute Edible Food for human consumption which otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

### **1.51 Food Recovery Organization**

“Food Recovery Organization” means an entity that primarily engages in the Collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A. A food bank as defined in Section 113783 of the Health and Safety Code;
- B. A nonprofit charitable organization; and,
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Agreement.

### **1.52 Food Recovery Service**

“Food Recovery Service” means a Person or entity that Collects and Transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

### **1.53 Food Scraps**

“Food Scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

### **1.54 Food-Soiled Paper**

“Food-Soiled Paper” means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

### **1.55 Food Waste**

“Food Waste” means Source Separated Food Scraps and Food-Soiled Paper. Food Waste is a subset of Source Separated Green Container Organic Waste (Source Separated Organic Materials).

### **1.56 Franchise Fee**

“Franchise Fee” means the fee paid by Contractor to District , or withheld from District billings, for the right to hold the Franchise for Solid Waste services granted by this Agreement.

### **1.57 Generator**

“Generator” means any Person whose act first causes Discarded Materials to become subject to regulation under federal, State, or local regulations.

### **1.58 Green Container**

“Green Container” has the same meaning as in 14 CCR Section 18982.2(a) and shall be used for the purpose of storage and Collection of Source Separated Organic Materials.

### **1.59 Green Waste**

“Green Waste” means tree trimmings, wood stumps, grass cuttings, dead plants, leaves, branches, flowers, plant stocks, and dead trees (not more than six (6) inches in diameter or 48 inches in length) and similar materials. Green Waste is a component of Organic Waste.

### **1.60 Gross Receipts**

“Gross Receipts” means all payments received from Billings by District or Contractor, and compensation in any form related to this Agreement, of Contractor or subsidiaries, parent companies or other Affiliates of Contractor, for the Collection and Transportation of Solid Waste pursuant to this Agreement, including, but not limited to, Customer fees for Collection of Solid Waste, without subtracting Franchise Fees, late fees, or other fees or any other cost of doing business. Sales revenue from the sale of Recyclable Materials including the sale of Compost or any byproduct of Contractor’s Processing efforts, is excluded from Gross Receipts for purposes of calculating Franchise Fees.

### **1.61 Hazardous Substance**

“Hazardous Substance” is defined to include any hazardous or toxic substance, material or waste, or a mixture of wastes, which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a “Hazardous Waste,” “extremely Hazardous Waste” or “restricted Hazardous Waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a “Hazardous Substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a “hazardous material,” “Hazardous Substance,” or “Hazardous Waste” under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a “Hazardous Substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) “used oil” as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Captor 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or a Hazardous Substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a “toxic pollutant” pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as “Hazardous Waste” pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. § 6903); (xii) defined as a “Hazardous Substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 6901); (xiii) defined as “Hazardous Material” pursuant to the Hazardous Materials Transportation Act 29 U.S.C. Section 5101, et seq.; or (xiv) defined as such or regulated by any “Superfund” or “Superlien” law, or any other federal, State or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect.



### **1.62 Hazardous Waste**

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code 25110.02, 25115, and 25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC 6901 et seq.), all future amendments thereto, and all rules and regulations promulgated there under.

### **1.63 Household Hazardous Waste (“HHW”)**

“Household Hazardous Waste” means Hazardous Waste generated at Residential Premises.

### **1.64 Incompatible Materials**

“Incompatible Material” or “Incompatibles” mean(s) human-made inert material, including, but not limited to, glass, metal, plastic, and also includes Organic Waste that the receiving end-user, Facility, operation, property, or activity is not designed, permitted, or authorized to perform Organic Waste recovery activities as defined in 14 CCR Section 18983.1(b), or as otherwise defined by 14 CCR Section 17402(a)(7.5).

### **1.65 Large Event**

“Large Event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Agreement.

### **1.66 Large Venue**

“Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7 Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

### **1.67 Materials Recovery Facility (“MRF”)**

“Materials Recovery Facility” means a permitted Solid Waste Facility where Solid Wastes or Recyclable Materials are sorted or separated for the purposes of Recycling, Processing or Composting.

### **1.68 Mixed Waste Organic Waste Collection Stream or Mixed Waste**

“Mixed Waste Organic Waste Collection Stream” or “Mixed Waste” means Organic Waste Collected in a Container that is required by 14 CCR Sections 18984.1, 18984.2, or 18984.3 to be taken to a High Diversion Organic Waste Processing Facility, or as otherwise defined in 14 CCR Section 17402(a)(11.5). “Mixed Waste” means Mixed Waste Organic Collection Stream.

### **1.69 Mulch**

“Mulch” means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch shall conform with the following conditions, or conditions as otherwise specified in 14 CCR Section 18993.1(f)(4):

- A. Meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land applications specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3).
- B. Was produced at one or more of the following types of Facilities:
  1. A compostable material handling operation or Facility as defined in 14 CCR Section 17852(a)(12), that is permitted or authorized under Division 7 of Title 14 of the CCR, other than a chipping and grinding operation or Facility as defined in 14 CCR Section 17852(a)(10);
  2. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7, Chapter 12; or,
  3. A Solid Waste landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.

### **1.70 Multi-Family or Multi-Family Dwelling**

“Multi-Family” or “Multi-Family” Dwelling” means any building or lot containing five (5) or more dwelling units. Multi-Family Dwelling units generally receive Refuse Collection service through the use of shared Bins.

### **1.71 Non-Compostable Paper**

“Non-Compostable Paper” includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

### **1.72 Non-Organic Recyclables**

“Non-Organic Recyclables” means non-putrescible and non-hazardous recyclable wastes including, but not limited to, bottles, cans, metals, plastics, and glass, or as otherwise defined in 14 CCR Section 18982(a)(43). Non-Organic Recyclables are a subset of Source Separated Recyclable Materials.

### **1.73 Organic Materials**

“Organic Materials” means Green Waste and Food Waste, individually or collectively. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Recyclable Material and Solid Waste. Organic Materials are a subset of Organic Waste.

#### **1.74 Organic Waste**

“Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Green Waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

#### **1.75 Owner**

“Owner” means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to an Approved Facility.

#### **1.76 Person**

“Person” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Imperial, cities, and special purpose districts.

#### **1.77 Premises**

“Premises” means any land or building in the District where Solid Waste is generated or accumulated.

#### **1.78 Process, Processed, or Processing**

“Processing” means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

#### **1.79 Prohibited Container Contaminants**

“Prohibited Container Contaminants” means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the District’s Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable Source Separated Green Container Organic Waste for the District’s Green Container; (iii) Discarded Materials placed in the Black Container that are acceptable Source Separated Recyclable Materials and/or Source Separated Green Container Organic Waste to be placed in District’s Green Container and/or Blue Container; and (iv) Excluded Waste placed in any Container.

#### **1.80 Proposition 218**

“Proposition 218” (Prop 218) means Articles XIIC and XIID of the California Constitution and any implementing legislation promulgated thereunder, as amended, supplemented, superseded, and replaced from time to time.

#### **1.81 Putrescible Waste**

“Putrescible Waste” means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions, and

includes materials such as, but not limited to Food Waste, offal, and dead animals; or as otherwise defined in 14 CCR Section 17402(a)(21).

### **1.82 Rate Year**

“Rate Year” means the period from July 1 through June 30 of the following year (fiscal year), for each year during the Term of this Agreement.

### **1.83 Recyclable Materials or Recyclables**

“Recyclable Materials” or “Recyclables” means Solid Waste the Generators set out in Recyclables Containers for Collection for the purpose of Recycling by the Contractor. For the purposes of this Agreement, Recyclable Materials shall include, but not be limited to:

- newsprint corrugated material
- high-grade paper and mixed paper glass
- aluminum cans
- tin cans
- steel and other types of scrap metals
- PET polyethylene terephthalate containers (“PET”) marked “1” as of the date hereof high-density polyethylene containers (“HDPE”) marked “2” as of the date hereof low density polyethylene containers (“LDPE”) marked “4” as of the date hereof California redemption containers
- ferrous metals
- non-ferrous metals
- white paper
- mixed paper, including but not limited to, flyers, brochures, mailing inserts and other mixed paper
- telephone directory books

This list may be expanded to include any other material for which a Recycling market or process is developed, and which material is designated by the District to constitute Recyclable Material during the term of this Agreement. Notwithstanding any other term or provision of this Agreement to the contrary, materials shall be deemed to constitute Solid Waste within the meaning of California Public Resources Code Section 40191, and regulated accordingly, whether or not said materials are identified on the foregoing list or may be potentially recyclable, in all cases where the material is mixed or commingled with other types of Solid Waste, or where a fee, charge, or other form of consideration, regardless of amount, is directly or indirectly solicited or received from the Generator in exchange for Collection, removal, Transportation, storage, Processing, handling or Disposal services (“fee for service” Recycling), whether or not arranged by or through a subcontractor, broker, agent, or affiliate of the provider of such service.

### **1.84 Recycling**

“Recycle,” “Recycling,” or “Recycled” means the process of Collecting, sorting, cleansing, treating, and reconfiguring materials for the purpose of returning them to the economic mainstream in the form of raw material for new, Reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling includes Engineered Municipal Solid Waste and other processes

deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or Transformation as defined in Public Resources Code Section 40201.

### **1.85 Refuse**

“Refuse” means Solid Waste or debris, except sewage, Construction and Demolition Debris, Recyclable Materials, and/or Organic Waste placed in Source Separated Containers for Collection.

### **1.86 Renewable Natural Gas (RNG)**

“Renewable Natural Gas” or “RNG” means gas derived from Organic Waste that has been Diverted from a Landfill and Processed at an in-vessel digestion Facility that is permitted or otherwise authorized by 14 CCR to recover Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

### **1.87 Residential**

“Residential” refers to services performed at and for Residential Premises.

### **1.88 Residential Premises**

“Residential Premises” means Premises upon which dwelling units exist, including, without limitation, Single Family and Multi-Family Dwellings, apartments, boarding or rooming houses, condominiums, mobile homes, efficiency apartments, and second units. Notwithstanding any provision to the contrary herein, or otherwise, for purposes of this Agreement, Premises upon which the following uses are occurring shall not be deemed to be Residential Premises, and rather shall be deemed to be Commercial Premises: Adult Residential Facilities, Assisted Living Facilities, Convalescent Homes, Dormitories, Extended Stay Motels, Group Residential Facilities; Group Care Facilities, Hotels, Motels, and any other businesses not specifically listed at which residency is transient in nature and hence should be classified as Commercial Premises as determined by the District on a case by case bases.

### **1.89 Roll-off Box**

“Roll-off Box” means Solid Waste Collection Containers of 10-yards or larger.

### **1.90 SB 1383**

“SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time. For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

### **1.91 Self-Hauler**

“Self-Hauler” or “Self-Haul” means a Solid Waste Customer, Commercial Generator, Multi-Family Generator, or special event that Transports its own Recyclable Materials to a Recycling Facility or Organic

Materials to an Organic Materials Processing Facility by using a vehicle owned by that Transporting entity rather than using the hauling services of the Solid Waste Collector.

### **1.92 Sharps**

“Sharps” means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications.

### **1.93 Single Family or Single Family Dwelling**

“Single Family” or “Single-Family Dwelling” means a building or lot containing four or fewer Residential dwelling units. Single Family or Single-Family Dwelling units generally receive individual Cart Refuse Collection service.

### **1.94 Solid Waste**

“Solid Waste” means all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including Refuse, Construction and Demolition Debris, Bulky Items, Recyclable Materials, and Green Waste, or any combination thereof which are permitted to be disposed of in a Class III landfill, and which are included in the definition of “Non-hazardous Solid Waste” set forth in the California Code of Regulations. “Solid Waste” means all Solid Wastes generated by Residential, Commercial, and industrial sources, and all Solid Waste generated at construction and demolition sites, and at treatment works for water and wastewater, which are Collected and Transported under the authorization of the District or are Self-Hauled by residents or contractors. Solid Waste does not include agricultural crop residues, mining waste and fuel extraction waste, forestry wastes, ash from industrial boilers, furnaces and incinerators or Hazardous Material, any waste which is not permitted to be disposed of at a Class III landfill and which fall within the definition of “Nonhazardous Solid Waste” set forth in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations as amended or designated Class II wastes. materials shall be deemed “Solid Waste” consistent with the meaning of California Public Resources Code Section 40191, and for purposes of this Agreement shall be regulated as such, whether or not they may be potentially Recyclable Material, in either of the following instances: (a) the material is mixed or commingled with other types of Solid Waste such that more than sixty-five percent (65%) of the material consists of Solid Waste rather than Recyclable Materials, or (b) the payment of a fee, charge, or other consideration, in any form or amount, is directly or indirectly solicited or received from the Generator by any Person or combination of Persons in exchange for Collection, removal, Transportation, storage, Processing, handling, consulting, Container rental or Disposal services (“fee for service” Recycling), whether or not arranged by or through a subcontractor, broker, agent, consultant, or Affiliate of the provider of such service.

### **1.95 Solid Waste Handling Services**

“Solid Waste Handling Services” means the Collection, Transfer, Transport, Recycling, Processing, and Disposal of Solid Waste.

### **1.96 Source Separated**

“Source Separated” means materials, including commingled Recyclable Materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or Processing of those materials for Recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet

the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the Agreement, Source Separated shall include separation of materials by the Generator, property Owner, property Owner's employee, property manager, or property manager's employee into different Containers for the purpose of Collection such that Source Separated materials are separated from Black Container Waste/Mixed Waste and other Solid Waste for the purposes of Collection and Processing.

#### **1.97 Source Separated Blue Container Organic Waste**

"Source Separated Blue Container Organic Waste" means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes and Non-Organic Recyclables as defined in 14 CCR Section 18982(a)(43); or as otherwise defined by 14 CCR Section 17402(a)(18.7). Source Separated Blue Container Organic Waste is a subset of Organic Waste.

#### **1.98 Source Separated Green Container Organic Waste**

"Source Separated Green Container Organic Waste" means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate Collection of Organic Waste by the Generator, excluding Source Separated Blue Container Organic Waste, carpets, Non-Compostable Paper, and textiles. Source Separated Green Container Organic Waste is a subset of Organic Waste.

#### **1.99 Source Separated Recyclable Materials**

"Source Separated Recyclable Materials" means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.

#### **1.100 State**

"State" means the State of California.

#### **1.101 Tier One Commercial Edible Food Generators**

"Tier One Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Supermarket.
- B. Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- C. Food Service Provider.
- D. Food Distributor.
- E. Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Agreement.

#### **1.102 Tier Two Commercial Edible Food Generators**

"Tier Two Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- B. Hotel with an on-site food facility and 200 or more rooms.
- C. Health facility with an on-site food facility and 100 or more beds.
- D. Large Venue.
- E. Large Event.
- F. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- G. A local education agency with an on-site food facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement.

### **1.103 Transfer**

“Transfer” means the act of Transferring the materials Collected by Contractor in its route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such materials.

### **1.104 Transfer Station**

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

### **1.105 Transformation**

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

### **1.106 Transportation or Transport**

“Transportation” or “Transport” means the act of conveying Collected materials from one location to another.

### **1.107 Universal Waste**

“Universal Waste” or “U-Waste” means all wastes defined by 22 CCR Subsections 66273.1 through 66273.9. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and Electronic Waste but do not include paints, oils, or solvents.



## **ARTICLE 2: GRANT AND ACCEPTANCE OF FRANCHISE**

### **2.1 Grant and Acceptance of Franchise**

Subject to the terms and conditions of this Agreement (including but not limited to the exclusions set forth in Section 2.9) and Applicable Law, and to the rights of State, county and school district facilities to use a Solid Waste enterprise other than Contractor, District hereby grants to Contractor and Contractor hereby accepts from District, for the Term hereof, the exclusive franchise, right and privilege to provide Solid Waste Handling Services at all Residential and Commercial Premises within District (the “Franchise”).

### **2.2 Enforcement of Exclusivity**

Contractor shall be responsible for enforcing the exclusivity of this Agreement. District shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but shall have no obligation to do so for the benefit of Contractor or otherwise. District additionally shall have the right, but not the obligation, to request that Contractor enforce the exclusivity provisions hereof. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by District. Should District take administrative, law enforcement, or other legal action to protect Contractor’s exclusive rights, or otherwise enforce the exclusivity of this Agreement (including the adoption of any resolution or ordinance intended to facilitate the enforcement of the exclusive rights granted herein) Contractor shall reimburse District for its all administrative, law enforcement, or other legal costs and fees related to any such action.

### **2.3 Effective Date**

The “Effective Date” of this Agreement shall be the date which the District Board of Directors approves this Agreement.

### **2.4 Term of Agreement**

The term of this Agreement (the “Term”) shall commence on the October 20, 2022 (the “Effective Date’), and shall expire December 31, 2027, subject to extensions as provided herein. Notwithstanding the foregoing, the unexcused failure or refusal of Collector to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of District, for earlier termination of this Agreement for cause in accordance with the procedures elsewhere contained herein.

### **2.5 Option to Extend Term**

The Agreement may be extended in five (5) year intervals by mutual agreement of the District and the Contractor according to the following noticing procedure:

If the District desires to extend the term of the Agreement, it shall give notice of extension to the Contractor, no later than 18 months prior to the Agreement’s expiration. If Contractor does not desire to extend the Agreement, the Contractor shall have thirty (30) days from receipt of District’s written notice to provide a written response to the District expressing it does not want to extend the Agreement.

## 2.6 Representations and Warranties of Contractor

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

- A. Contractor is validly existing as a corporation under the laws of the State of California and the State of Arizona.
- B. Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations hereunder: (1) conflicts with, violates or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.
- C. There is no action, suit or other proceeding as of the date of this Agreement, at law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Contractor.
- D. Contractor has no knowledge of any Applicable Law in effect as of the date of this Agreement that would prohibit the performance by Contractor of this Agreement and the transactions contemplated hereby.
- E. Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it, and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Collection services required by this Agreement.
- F. The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Exhibits of this Agreement, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and complete in all material respects on and as of the Effective Date of this Agreement.
- G. Contractor's representative, designated in Section 5.3.5, shall have authority in all daily operational matters related to this Agreement. District may rely upon action taken by such designated representative as action of Contractor unless the actions taken are not within the scope of this Agreement.
- H. The Approved Disposal Facility is properly permitted by the applicable regulatory agencies is classified as a Class III Landfill (permitted to receive municipal Solid Waste), complies with all Applicable Laws, is not on or being considered for inclusion on a State or federal Superfund list, or CalRecycle list of Solid Waste facilities failing to meet State minimum standards.

## **2.7 Conditions to Effectiveness of Agreement**

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the District in writing, is a condition precedent to the effectiveness of this Agreement, and a condition of Contractor's continued right to the benefits conveyed herein:

- A. Accuracy of Representations. All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true and correct on and as of the Effective Date, and shall remain so during the Term hereof.
- B. Absence of Litigation. There shall be no litigation pending in any court challenging the award of this Franchise to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.
- C. Furnishing of Insurance. Contractor shall have furnished evidence of the insurance as required by Article 9 and shall comply with all ongoing requirements relating thereto.
- D. Effectiveness of the District Board of Directors' Action. District's approval of this Agreement shall have become effective pursuant to California law prior to the Effective Date.

## **2.8 Delegation of Authority**

The administration of this Agreement by District shall be under the supervision and direction of District Manager's office and the actions specified in this Agreement, unless otherwise stated, shall be taken by the District Manager, or his or her designee.

## **2.9 Limitations to Scope**

Notwithstanding any provision to the contrary contained herein, the exclusive franchise, right and privilege to provide Solid Waste Handling Services at Premises within District granted to Contractor by this Agreement specifically excludes the following services, which services may be provided by Persons other than Contractor, and which may be the subject of other permits, licenses, franchises or agreements issued or entered by District:

- A. Recyclable and Organic Materials. Other Persons shall maintain the right to: (1) accept Source Separated Recyclable Materials and Source Separated Organic Materials donated from the service recipient or Generator, or (2) to pay the service recipient or Generator for Source Separated Recyclable Materials and Source Separated Organic Materials provided that there is no net payment made by the service recipient to such other Person.
- B. Donated or Sold Materials. Any items which are Source Separated at any Premises by the Generator and sold or donated to other Persons, including youth, civic, or charitable organizations.
- C. Solid Waste, including Recyclable Materials and/or Organic Materials, which is removed from any Premises by the Generator, and which is Transported personally by such Generator (or by his or her full-time employees) to a Solid Waste Facility in a manner consistent with all Applicable Laws and regulations;

- D. Green Waste removed from a Premises by a gardening, landscaping, or tree trimming Contractor, utilizing its own equipment, as an incidental part of a total service offered by that Contractor rather than as a hauling service;
- E. The Collection, Transfer, Transport, Recycling, Processing, and Disposal of animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- F. The Collection, Transfer, Transport, Recycling, Processing, and Disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- G. The Collection, Transfer, Transport, Recycling, Processing, and Disposal of Hazardous Substances, Hazardous Waste, Household Hazardous Waste and radioactive waste regardless of its source, including tires, used oil and used oil filters;
- H. The Collection, Transfer, Transport, Recycling, Processing, and Disposal of Solid Waste by District through District officers or employees in the normal course of their District employment;
- I. Solid Waste Handling Services for governmental agencies other than District, which may have facilities in District, but over which District has no jurisdiction in connection with the regulation of Solid Waste; and,
- J. The Collection of Recyclable Materials and/or Organic Materials that are not Diverted by the Contractor's Diversion programs.
- K. The Food Waste or other Organic Waste Diverted from Disposal removed from a Premises and delivered to hog farms or to other Premises for use as animal feed; and,
- L. Edible Food removed from a Premises and recovered for human consumption.

The exclusive franchise, right and privilege to provide Solid Waste Handling Services within District granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable State and federal laws, now in effect and adopted during the term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing Applicable Laws with regard to Solid Waste Handling Services, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, future enactments or developing legal trends limit the ability of District to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that District shall not be responsible for any lost profits claimed by Contractor to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible.

## **2.10 District's Right to Direct Changes**

### **2.10.1 General**

District may direct Contractor to perform additional services (including new Diversion programs, etc.) or modify the manner in which it performs existing services or Bills for services. Pilot programs and

innovative services which may entail new Collection methods, and different kinds of services and/or new requirements for Generators are included among the kinds of changes which District may direct. Contractor acknowledges that State law may increase the Diversion requirement during the term of this Agreement and Contractor agrees to propose services to meet such Diversion requirements. Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services, including a profit factor equal to ten percent (10%) of the incremental cost of such additional or modified services. However, any adjustment will be subject to majority protest approval. If the District Manager and Contractor cannot agree upon the amount of a rate adjustment for new or additional services, then District may contract with other parties for such services which shall be considered exempt from the exclusivity provisions of Section 2.2. The District Council shall make the final determination and its decision shall be final and binding. If Contractor cannot receive agreed to compensation due to a majority protest, Contractor will not be required to implement additional services.

### **2.10.2 New Diversion Programs**

Contractor shall present, within thirty (30) days of a request to do so by District, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:

- A. Collection methodology to be employed (equipment, manually powered, etc.).
- B. Equipment to be utilized (vehicle number, types, age, etc.).
- C. Labor requirements (number of employees by classification).
- D. Type(s) of Containers to be utilized.
- E. Type(s) of material to be Collected.
- F. Provision for program publicity/education/marketing.
- G. One-year projection of the financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

### **2.10.3 Flow Control Option**

If District directs Contractor to a Facility other than an Approved Facility listed in this Agreement, or otherwise requested by Contractor, and in doing so it adversely affects the ability of the Contractor to meet either or both of the requirements of Section 9.3 and Section 4.3.6, then in this event the District and Contractor shall meet and confer and mutually agree on revised obligations for Sections 9.3 and 4.3.6. The foregoing notwithstanding, in the event District directs Contractor to a Facility other than an Approved Facility listed in this Agreement or otherwise requested by Contractor, then a rate adjustment may be implemented based upon any demonstrable increase or decrease in costs associated with handling, Processing, Disposal, and Transportation.

In the event District so notifies Contractor of its desire to cease exercising its Flow Control Option, Contractor shall have the absolute discretion to utilize any Disposal Facility, Transfer Station, Recycling

Facility, Material Recovery Facility, C&D Processing Facility, Organic Waste Processing Facility, landfill, or other Facility of its choosing to retain, Recycle, Process, and Dispose of Solid Waste generated within the District, provided the use of such Facility by Contractor enables it to meet all other requirements of this Agreement and State law.

### **2.11 Ownership of Solid Waste**

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

Solid Waste, or any part thereof, which is disposed of at a Disposal Facility or Facilities (whether landfill, Transformation Facility, Transfer Station, Organic Waste Processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Facility(ies) once deposited there by Contractor. District may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that District has such ownership or possession unless such written notice has been given to Contractor.

### **2.12 Contractor Status**

Contractor represents and warrants that it is duly organized, validly existing and in good standing under Applicable Laws. It is qualified to transact business in the State of California and the State of Arizona and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

### **2.13 Contractor Authorization**

Contractor represents and warrants that it has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of Contractor (or the shareholders, if necessary) have taken all actions required by Applicable Law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Contractor have authority to do so. Contractor shall authorize one employee for the District as a single point of contact for issues arising under this Agreement, and Contractor acknowledges and agrees that District may expect and assume that this employee's actions are taken on behalf of and with the full approval of the Contractor.

## **2.14 Permits and Licenses**

Contractor shall acquire and maintain all necessary permits and licenses for the Collecting, Transporting, Processing, and storing of Solid Waste and Recyclables, disposing of Solid Waste, and the Recycling of Recyclables as required under this Agreement. Failure to maintain all required permits shall be deemed a material breach of contract for which District may terminate this Agreement as provided in Section 11.1.

## **2.15 Annexations**

This Agreement extends to any territory annexed to the District during the term of this Agreement except to the extent that Collection by Contractor within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and District agrees that it shall cooperate with Contractor to fulfill any requirement necessary for Contractor to serve the annexed area consistent with this paragraph.

## **ARTICLE 3: FEES PAID TO THE DISTRICT**

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

### **3.1 Public Recycling Cooperation Funding**

Contractor shall provide \$2,000 to the District for outreach efforts to increase the level of public cooperation in separating materials. Said fee is due July 1 of each rate year and shall be paid within 30 days.

### **3.2 Franchise Fee**

Throughout the Term of this Agreement Contractor shall pay to District a Franchise Fee in an amount equal to ten percent (10%) of the Gross Receipts collected by District and/or Contractor from all services provided in District pursuant to the terms of this Agreement (excluding late charges), as more fully described in Section 3.3. The Franchise Fee was the product of extensive negotiation and represents the Parties' estimate of the reasonable value of the franchise.

### **3.3 Time and Method of Franchise Fee Payments to District**

#### **3.3.1 Revenue Collected by District**

The portion of the District Franchise Fee based upon revenue Billed and collected by the District will be withheld from District's monthly payments to Contractor.

#### **3.3.2 Revenue Collected by Contractor**

On or before the thirtieth (30<sup>th</sup>) day following the end of each calendar quarter during the Term of this Agreement, Contractor shall remit any Franchise Fees due to District for Gross Receipts received by Contractor that calendar quarter. If the Franchise Fees are not paid on or before the thirtieth (30<sup>th</sup>) day following the end of the calendar quarter, Contractor shall pay to District a penalty in an amount equal to

ten percent (10%) of the amount owing for that quarter, plus interest at a rate of one and one-half (1.5%) per month.

Each Franchise Fee remittance to District shall be accompanied by a statement detailing Gross Receipts received from Customers by Contractor for the period covered from all operations conducted or permitted, pursuant to this Agreement. In addition, Contractor shall maintain copies of all Billing and Collection records for five (5) years, following the date of Billing, for inspection and verification by District at any reasonable time upon request.

The Franchise Fee was the product of extensive negotiation and represents the Parties' estimate of the reasonable value of the franchise.

### **3.3.3 AB 939 / SB 1383 Reimbursement**

On or before the thirtieth (30<sup>th</sup>) day following the end of each calendar quarter during the Term of this Agreement, the Contractor shall pay an AB 939/SB 1383 Reimbursement to District in monthly amounts of \$450, (Equivalent to \$1,800 annually). District shall use the AB 939/SB 1383 Reimbursement to refund expense including but not limited to, staffing costs related to City programs, pilot studies, education and outreach campaigns, technical assistance to Customers, reporting, compliance, capacity planning, provision of special containers, or other activities involved in compliance with AB 939 and/or SB 1383. The City shall retain the sole right to set priorities for the use of its AB 939/SB 1383 Fee. This fee shall be a pass through cost.

### **3.4 Future Fees**

In the event that District implements a new fee, such as a Refuse Vehicle Impact Reimbursement, Contractor shall be entitled to a rate adjustment in an amount sufficient to recover the fee from Customers. District may elect to have Contractor pay quarterly in accordance with the requirements of Section 3.3, annually, or on another schedule as District identifies. District may set deadlines and late fees, and additional fees would be subject to audit, as are the current fees under Section 8.2.8.

## **ARTICLE 4: DIRECT SERVICES**

### **4.1 Services to be Provided by Contractor – General**

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

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that all Customers are provided reliable, courteous and high-quality Solid Waste Handling Services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this Section, whether such other aspects are enumerated elsewhere in the Agreement



or not.

All Collection systems shall comply with CalRecycle requirements under SB 1383 as described in Exhibit 9.

## **4.2 Refuse Services**

### **4.2.1 Single Family Refuse Collection**

Contractor shall provide all Customers at Single Family Dwellings and Multi-Family Dwellings without Bin Service, with one Black 90-gallon Cart, and shall Collect all Refuse placed therein for Collection not less than once per week.

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

#### **4.2.2 Refuse Cart Overage**

Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Customers are therefore entitled to two annual pickups of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, or barrels of Refuse. Contractor shall Collect all Refuse put out for Collection in addition to the foregoing two (2) pickups to be provided at no charge. Customers may be charged per pickup in accordance with the approved rate schedule for overage pickups above two (2) per year. In addition to the two (2) free pickups, Contractor shall Collect all additional Refuse placed out for Collection in the Customer's own Containers (bags, barrels, etc.) at no additional charge during the period beginning December 26 through the end of the holiday tree Collection period (see Section 4.4.1.2). This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Recycling Materials, Organic Waste, or Bulky Items which are Collected in accordance with Section 4.2.13.

#### **4.2.3 Backyard Service**

Contractor shall provide disabled Customers with backyard service. Contractor will remove Refuse, Recyclable and Green Waste Containers, and Green Waste bundles from Customer's storage area, place them out for Collection, and return Containers to Customer's storage area after Collection, ensuring that all doors or gates are closed securely. In order to qualify as disabled under this Section, Customers must have been issued a handicap placard from the Department of Motor Vehicles or otherwise obtain approval to receive such service from the District. Additionally, walk-out service need not be provided if an able-bodied Person resides with the disabled Customer.

#### **4.2.4 Multi-Family and Commercial Refuse Collection**

Contractor shall provide Bin Service to Multi-Family and Commercial Customers. Contractor shall Collect and remove all Refuse that is placed in Black Bins, or Bins with Black lids, from the property of Customers receiving Bin Service, at least once per week and more frequently if required to handle the waste generated at the Premises where the Bins are located. If Contractor and Customer have a disagreement as to the number or size of Bins, District shall make the final determination. Special consideration shall be given when determining the pickup areas to ensure that the flow of traffic is not impeded.

#### **4.2.5 Commercial Cart Service**

As an alternative to the requirements of Section 4.2.4, Contractor shall offer Collection in 90-gallon Black Refuse Carts to Customers at Commercial Premises that do not have space for, or do not generate enough waste to require the use of Bins for Collection. Rates for Customers receiving such service shall not exceed the maximum rates set forth on Exhibit 2. If Contractor and Customer have a disagreement as to the number or size of Carts, District shall make the final determination. If Contractor and Customer have a disagreement as to whether a Refuse Cart is appropriate, or if District determines the Collection in a Refuse Cart causes health and safety or other concerns, District shall make the final determination as to whether Collection in a Refuse Cart may occur. Service includes Recycling services in accordance with Section 4.3.3.

#### **4.2.6 Overflowing Commercial Containers**

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

Contractor will photograph overflowing Bins and send the photo and a letter to the Customer, requesting that the Customer increase service. If a response is not received, Contractor will contact Customer and confirm receipt of the letter. If Customer does not choose to increase service and continues to have overflowing Bins, Contractor will send another photo with a notification that extra clean-up charges will be assessed for future violations. Customers may be charged in accordance with the approved rate schedule for any future violations.

#### **4.2.7 Roll-off Box Service**

Contractor shall provide exclusive (as limited by Section 2.9) permanent and temporary Roll-off Box Collection service upon request. Contractor must deliver a temporary Roll-off Box to a Customer within two (2) business days of request. Roll-off Boxes must be removed within two (2) business days of request by Customer. Contractor may not charge for any services not listed in the rate schedule without prior approval of the District.

#### **4.2.8 Temporary Bin Service**

Contractor shall provide exclusive (as limited by 2.9) temporary Bin Service to Customers upon request. Contractor must deliver a temporary Bin to a Customer within two (2) business days of request. Temporary Bins must be removed within two (2) business days of request by Customer. Rates for temporary Bin Service are listed separately in the approved rate schedule.

#### **4.2.9 Scout Vehicles/Roll-Outs**

Contractor may choose to use scout vehicles for efficiency or other operational needs, such as to access Bins and avoid driving Collection vehicles on private roads and driveways. In special instances, scout service or a long roll-out may be required due to potential damage to a private road or due to noise from the Collection vehicle, even if not operationally required. Contractor may not charge an additional fee for the use of a scout vehicle or for long-rollouts, unless a Customer for whom Contractor would not otherwise provide such scout service specifically requests it. If the Customer specifically requests it, for noise or other reasons, then Contractor may negotiate a rate with that Customer.

#### **4.2.10 Locking Bins**

Contractor shall provide locking Bin Service to Customers that request such service in accordance with the approved rate schedule.

#### **4.2.11 Solid Waste and Bulky Item Drop-off Events**

As part of the consideration for the District granting it the exclusive rights for Solid Waste Handling Services set forth herein, Contractor shall conduct four Drop-off Events per year (quarterly) on days approved in advance by District and promoted by Contractor. On each event day, Contractor shall provide and service as many Roll-off Boxes as necessary for all participating District residents to drop off Solid Waste and Bulky Items. Contractor will provide staff for these events. District will determine location of events, and may require Contractor to hold them at a site provided by Contractor. Contractor may require residents to provide either a driver's license or a utility bill in order to prove residency prior to dropping-off Solid Waste and Bulky Items. Contractor shall Process all dropped-off Solid Waste at no additional charge to District or Customers. The following provisions shall apply to this program:

- A. No single item that cannot be handled by two workers will be accepted.
- B. The following items will not be picked up: Hazardous Substances, Hazardous Waste, including waste oil or anti-freeze; concrete and dirt. (For the purposes of this Section, televisions, monitors and other items referred to as "E-Waste" are not considered hazardous and will be Collected by and disposed of in accordance with this Section as well as Sections 4.2.12, 4.2.13 and 4.2.14 by Contractor.)
- C. Contractor shall record by class and weight (in tons) the Solid Waste Collected during the cleanup events. Contractor shall record the kinds and weights (in tons) of Solid Waste Diverted, during these cleanups from the landfill through Recycling, reuse, Transformation or other means of Diversion.

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

Contractor shall provide Bulky Item pickup service to all Single Family and Multi-Family Customers. Each Residential Customer shall be entitled to three Bulky Item pickups per calendar year at no additional charge. Each Multi-Family building will be entitled to the number of free pickups entitled to each Residential Customer based on the number of dwelling units.

Customers may put out up to four (4) Bulky Items at each pickup. Contractor may instruct Customers to provide Contractor with a minimum of one (1) Business Day's notice for the items which shall be Collected on the Customer's regular Collection day. Contractor shall Collect all Bulky Items as defined in Section 1.24 including items referred to as Electronic Waste or "E-Waste." The same provisions as to acceptable items and recording keeping in Section 4.2.11 will apply to on-call Bulky Item Collections

Commercial Customers, and Residential Customers that require more than three (3) pickups per year, may receive Bulky Item Collection under the same terms for a fee, in accordance with the approved rate schedule in Exhibit 2.

#### **4.2.13 Bulky Item Diversion**

Bulky Items Collected by Contractor in accordance with Sections 4.2.11 or 4.2.12, or otherwise Collected under this Agreement, may not be landfilled or disposed of until the following hierarchy of Diversion efforts has been followed by Contractor:

- A. Reuse as is

- B. Disassemble for reuse or Recycling
- C. Transport Bulky Items and reusable items to the appropriate Approved Facility for Reuse, Processing
- D. Transport Green Waste to the Approved Organic Waste Processing Facility for Processing
- E. Transport paper products to the Approved Source Separated Recyclable Materials Processing Facility for Processing
- F. Disposal

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items unless the compaction mechanism is not used to compact the Bulky Items, unless they have been designated for Disposal.

Contractor shall ensure that Bulky Items containing Freon, such as refrigerators, freezers and dehumidifiers, are safely dismantled, and hazardous/toxic materials are Disposed of in accordance with all current and future regulations.

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

Contractor shall Divert waste requiring special handling, such as Electronic Waste, or “E-Waste,” Collected in accordance with Sections 4.2.11 or 4.2.12, or by other means under this Agreement, by taking these goods to a properly permitted Facility, and not by landfilling.

Contractor may encourage Customers through public education materials to bring small items requiring special handling, such as fluorescent bulbs or batteries, to a local HHW drop-off center, but will properly Process such material received through the provision of services under this Agreement at no additional charge.

#### **4.2.15 Sharps Collection Program**

Upon direction from District, Contractor shall provide Customers, at no additional charge, within one week of request, a pre-paid, postage-paid mail back container to safely Collect Sharps and send Sharps for proper Disposal. Contractor shall also make Sharps containers available at a pickup location in the District as an alternative for the Customer. The maximum number of containers provided at no additional charge shall not exceed ten (10) containers annually. If the containers provided exceed ten, then the Contractor shall be reimbursed by the District for the additional costs not reflected in the rates. If less than ten (10) containers are utilized in any given year, the remaining containers shall be rolled over for use in future years. Contractor shall provide an annual report to City on the number of Sharps containers distributed.

#### **4.2.16 Curbside Used Oil Collection**

Contractor shall Collect used oil and oil filters from Customers receiving Residential Cart Collection service on the Customer’s regularly scheduled Collection day. The contractor will receive cabinets to be attached to the Contractor’s Residential Cart Collection vehicles to Collect and Transport sealed used oil containers and filter bags, and will receive used oil Containers and filter bags initially through the District’s Solid Waste task force. When these containers wear out or are no longer sufficient in number to meet District needs, Contractor shall purchase similar replacement containers and bags, subject to District approval

prior to ordering.

Contractor shall initially distribute containers and bags upon Customer request, with replacement oil containers and new filter bags to be left by Contactor upon pickup of used oil and/or filters. Contactor shall be responsible for cleaning containers between uses.

Contractor shall be compensated per the approved rate schedule, based upon a fixed cost per home entitled to receive this service, which are Residential accounts receiving Cart service. District may increase Customer rates accordingly, or may pay Contractor directly from grant or other funds.”

## **4.3 Recycling**

### **4.3.1 General**

The Parties agree that the list of accepted types of Source Separated Recyclable Materials may be added to or removed from this list from time to time by mutual consent provided that in all cases Source Separated Recyclable Materials (including Paper Products and Printing and Writing Papers as defined by SB 1383, 14 CCR Section 18982(a)) is included for Collection. Contractor shall not add or remove materials to or from this list without written approval from the District or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Contractor will update public education materials accordingly as new items are added to those recovered by the Facility. Prohibited Container Contaminants shall not be Collected in the Blue Containers, or Containers with Blue lids.

Contractor shall Transport the Source Separated Recyclable Materials to (i) the Approved Source Separated Recyclable Materials Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Source Separated Recyclable Materials Processing Facility, as specified in Exhibit 8.

### **4.3.2 Single Family Recycling Collection**

Contractor shall provide all Customers receiving Cart Refuse Collection with a Blue 90-gallon Cart for Collection of Source Separated Recyclable Materials, and shall Collect all Recyclable Materials placed therein for Collection not less than once per week. Contractor shall Collect Recyclable Material placed in Recycling Carts for Collection from each Customer on the same day as Customers' Refuse Cart is Collected.

Contractor will update public education materials accordingly as new items are added to those recovered by the Facility. Customers that regularly fill their Recycling Cart may request additional Carts at no additional charge.

### **4.3.3 Multi-Family and Commercial Recyclables Collection**

Contractor agrees to provide at no additional charge, unlimited Source Separated Recyclable Materials Collection service to Multi-Family and Commercial Customers requesting it from the Contractor, through June 30, 2022. Effective July 1, 2022, Source Separated Recyclable Materials Collection service to Multi-Family and Commercial Customers will be charged at a maximum of seventy-five (75%) of the Refuse Collection rates for the same size container and frequency of Collection, as shown in the attached rate schedule.

Contractor may purchase Source Separated Recyclable Materials from its Customers as well. The Contractor agrees to provide Bins, Cans or Carts to such Customers in sufficient quantities to meet the Recycling needs of each Customer. Source Separated Recyclable Materials Collection programs shall be made available at a minimum for the materials included above in Section 4.3.1.

Contractor also agrees to make programs available for all other Source Separated Recyclable Materials for which it has established markets. The Contractor shall notify all Customers via a mailed notice prior to the start of services under this Agreement, and in each annual notice or, if requested by District, second notice to Customers, of the availability of free Source Separated Recyclable Materials Collection programs.

#### **4.3.4 Section Reserved**

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

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

#### **4.3.6 Minimum Recycling Requirements**

Contractor shall Divert from landfilling, a minimum of twenty percent (20%) of all Solid Waste it Collects under this Agreement annually for the 12 months ending December 31 of each calendar year during the term of this Agreement. Additionally, Contractor shall Recycle or Divert from landfill sufficient waste to ensure the District meets Imperial County's AB939 goals.

#### **4.3.7 Construction and Demolition Debris Diversion and MRF**

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

#### **4.3.8 Operations Facility**

Contractor will site its operating yard within fifteen (15) miles of District limits, or another area if approved in writing in advance by the District Board of Directors.

### **4.4 Organic Material Collection Program – General**

All Generators of Food Waste shall be provided a Source Separated Organic Materials Collection program. Source Separated Organic Materials that are to be accepted for Collection in the Source Separated Organic Materials Collection program include the following: Food Scraps, Food-Soiled Paper, Compostable Plastics (if accepted at the Approved Organics Waste Processing Facility), and Green Waste. The Parties agree that types of Source Separated Organic Materials may be added to or removed from this list from time to time by mutual consent. Contractor shall not add or remove materials to or from this list without written approval from the District or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers.

Contractor may Collect Compostable Plastics in the Green Containers for Processing at the Approved Organic Waste Processing Facility, if the Facility accepts Compostable Plastics. At least three (3) months prior to the commencement of the Collection of Compostable Plastics in the Source Separated Organic Materials program, Contractor shall provide written notification to the District that the Facility can Process and recover these Compostable Plastics. Contractor shall provide written notification to the District annually that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. Contractor shall notify the District within five (5) business days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Facility will



not Process and recover Compostable Plastics; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics are no longer accepted for Collection. Such changes shall be handled as a change in scope pursuant to Section 2.10.

#### **4.4.1 Single Family Green Waste Collection**

Contractor shall provide all Customers receiving Cart Refuse Collection with a green 90-gallon Cart, or a Cart with a green lid, for Collection of Green Waste ("Green Waste Cart(s)"). Contractor shall Collect all Green Waste placed in Green Waste Carts, as well as all Green Waste bundled as set forth below, and put out for Collection by Customers not less than once per week on the same day as Refuse Collection. Contractor shall have a Green Waste Recycling program whereby it, at a minimum, Collects the types of Green Waste defined in Section 1.59.

Contractor shall only be obligated to Collect Green Waste set out for Collection in bundles if it is a maximum of four (4) feet long and eighteen (18) inches in diameter.

Customers that regularly fill their Green Waste Cart may request additional Carts at rates contained in the District approved Rate Schedule.

##### **4.4.1.1 Residential Food Waste Diversion Program**

Within ninety (90) days of District Board of Directors approval of this Agreement, Contractor shall initiate a Residential Food Waste Diversion Program, whereby, Food Waste shall be placed in the Green Carts, or Carts with green lids. The Residential Food Waste Diversion Program shall be implemented at all Single Family Residential Premises, and Multi-Family Premises with Cart service, throughout the District. With this change, the Contractor shall re-label the existing Green Waste Carts with "Organics" labels, approved by the District, identifying materials accepted in the Organics program. Rates shall be adjusted as illustrated in Exhibit 2 attached.

##### **4.4.1.2 Holiday Tree Collection Program**

Contractor shall operate an annual holiday tree Collection program for two weeks following December 25. During this period all holiday trees placed out for Collection by Single Family and Multi-Family Customers shall be Collected by Contractor. Single Family and Multi-Family Cart Customers shall place trees adjacent to their Source Separated Organic Materials Carts for Collection, and Multi-Family Bin Customers shall place the trees in or adjacent to Bins. After this period, trees will be Collected as Bulky Items under Section 1.24. Trees up to seven (7) feet in length will be Collected and Diverted without Customers needing to cut them. Contractor may request that Customers with larger trees cut the trees to pieces no longer than seven (7) feet. Contractor will Divert all holiday trees from landfilling. Contractor shall Process all holiday trees that are properly set out for Collection as Organic Waste in accordance with Exhibit 8.

#### **4.4.2 Commercial and Multi-Family Organic Materials Collection**

Within ninety (90) days of District Board of Directors approval of this Agreement, Contractor will provide a Source Separated Organic Materials Collection program to Commercial businesses and Multi-Family Dwellings that, at minimum, meets the standards required by AB 1826. Contractor shall provide Source Separated Organic Materials Collection, including Food Waste, from all Commercial and Multi-Family

Customers that generate Food Waste. At a minimum the program will include Organic Materials Cart Collection service and Organic Materials Bin Collection service at the rates included in Exhibit 2.

#### **4.4.3 End Uses for Green Waste**

Contractor shall Divert Green Waste materials Collected through weekly Cart and bundle Collection, holiday tree Collection, and Roll-off Box Collection from Disposal. Contractor must provide end uses for Green Waste that maximize Diversion credits for District according to regulations established by the California Integrated Waste Management Board. Contractor is responsible for monitoring how the Green Waste will be Diverted at selected facilities and for selecting alternative facilities if necessary to ensure full Diversion credit. Failure to do so places the Contractor in default, and District has the option, but not obligation, to direct Contractor where to deliver the material.

#### **4.4.4 Food Recovery Assistance**

- A. Contractor shall identify all Commercial Customers that meet the definition of Tier One and Tier Two Commercial Edible Food Generators and provide a list of such Customers to the District, which shall include: Customer name; service address; contact information; Tier One or Tier Two classification; and, type of business (as it relates to the Tier One and Tier Two Commercial Edible Food Generator definitions).
- B. At least annually, Contractor shall cooperate with District and/or its consultants to conduct inspections of Tier One Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services to assess compliance with the requirements of 14 CCR Chapter 12 Article 10. Commencing January 1, 2024 and at least annually thereafter, Contractor shall expand its assistance to include Tier Two Commercial Edible Food Generators.
- C. At least annually, the Contractor shall provide Commercial Edible Food Generators with the following:
  - 1. Information about the Contractor's and/or District's Edible Food Recovery program;
  - 2. Information about the Commercial Edible Food Generator requirements under 14 CCR Chapter 12 Article 10;
  - 3. Information about Food Recovery Organizations and Food Recovery Services operating within the District, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
  - 4. Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.
- D. The Contractor may provide the education information required by this Section (subsection C above) by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Commercial businesses.
- E. Contractor shall cooperate with the implementation, expansion, or operation of Food Recovery efforts in the District, Food Recovery Organizations, and/or Food Recovery Services.

## **4.5 District Services**

### **4.5.1 District Facilities Collection**

Contractor shall Collect and dispose of all Refuse, Recyclable Material, and Organic Material put in Containers for Collection at Premises owned and/or operated by the District, now and in the future, at no charge. Service levels and number of facilities serviced may increase during the Term of this Agreement without any additional compensation paid to the Contractor. Such Premises include, but are not limited to, Water Treatment Plant, Wastewater Treatment Plant, Recreation Center, Tito Huerta Park, District offices, parks, recreation facilities, District yard and street maintenance operations. Collections shall be scheduled at a time mutually agreed upon by Contractor and District. Notwithstanding, District must pay for roll off bins for District construction and demolition projects, performed by District's construction contractors, and for construction and demolition projects performed by District crews that generate more than ten (10) tons per project.

### **4.5.2 District Sponsored Events**

Contractor shall provide Solid Waste, Recycling Collection, Organic Materials Collection, and Disposal/Processing service for District-sponsored events. This shall include providing Containers (Bins, Roll-off Boxes, Recycling Containers and cardboard waste boxes with liners) to Collect and Dispose of or Process all Solid Waste, Recyclable Materials and Organic Materials. The Contractor shall provide these services at twelve District-sponsored events per year, at no cost to District, the ratepayers, or the event sponsors. District will select the events and events may vary from year to year. Contractor will annually also provide \$1,000 sponsorship to support the Heber Fall Fiesta.

### **4.5.3 Emergency Collection and Disposal Service**

Contractor will assist District at the District's request with emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, riot or civil disturbance), or as otherwise determined necessary by the District, by providing Collection equipment and drivers normally assigned to District. Contractor may charge District for actual Disposal costs plus service rates per the approved rate schedule.

### **4.5.4 Dumping Privileges**

Contractor shall provide for the free Disposal of Solid Waste by Residential Customers at the Contractor's yard or Approved Transfer Station or other location approved in writing in advance by the District. Dumping privileges at approved location will be Saturday from 8 AM to 12 PM. Residents may be asked to produce an HPUD water bill. C&D Debris is excluded from free Disposal under this Section. This material must be handled in accordance with Exhibit 8.

#### **4.5.5 Large Venue and Event Assistance, Event Recycling**

Contractor shall assist District planners of Large Venue events with reporting and planning needs to provide Recycling and Organics Materials Diversion as may be useful in meeting the requirements of AB 2176 and SB 1383, and in lowering Disposal quantities generated at such events at no additional charge.

#### **4.5.6 Provision of Recovered Organic Waste Products**

Contractor shall assist the District to procure and provide to District sufficient quantities of Compost, and/or Renewable Natural Gas generated in California to meet the District's per capita annual Organic Waste product requirement contained in SB 1383 (14 CCR Section 18993.1). Contractor may meet this obligation by one or a combination of the following activities:

- A. Bulk Compost upon request by the District, Contractor shall make available to District bulk Compost at a cost per ton included in the approved rate schedule that meet requirements defined in SB 1383, and shall Transport such material to District, or third parties identified by District.
- C. Use of Renewable Natural Gas in Collection vehicles.

Contractor shall ensure sufficient Capacity of recovered Organic Waste products to meet the mandatory procurement requirements for jurisdictions contained in SB 1383 (14 CCR Section 18993.1) and to comply with specifications of these materials as defined in SB 1383, as may be amended, during the term of this Agreement including Agreement extensions granted by the District.

#### **4.5.7 Contractor Warranty of Recovered Organic Waste Products**

Contractor shall provide assurance through the execution of a liability waiver stating that all Organic Waste products provided by the Contractor and used within the District are free from pathogens and inorganic waste material that may be harmful to the health and welfare of the District and meet or exceed the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3). The Contractor shall indemnify and hold harmless the District against any claims arising from contaminated recovered Organic Waste products provided by the Contractor as set forth in Section 9.1.

### **4.6 Operations**

#### **4.6.1 Schedules**

To preserve peace and quiet, Solid Waste shall only be Collected during the hours of 6:00 a.m. to 7 p.m, as now in effect and as it may be amended during the term of this Agreement. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day, Collection days for the remainder of that week shall all be postponed one Collection day.

Contractor shall review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with District upon thirty (30) days written notice requesting said review. Contractor shall submit a copy of its Commercial and Residential schedule and route map within seven (7) days if requested by District. If the plan is determined to be inadequate

by District, Contractor shall revise it incorporating any changes necessary to make it satisfactory to District within thirty (30) days. No change in schedules and routing shall be implemented for fifteen (15) days after Contractor receives approval from District and notifies Customers.

#### **4.6.2 Missed Pickups**

When notified of a missed pickup prior to noon., Contractor shall Collect the Refuse, Recyclable Materials, and/or Green Waste that was not Collected the same day. If notified after noon., Collection must take place no later than noon of the next business day.

If a missed pickup is not made up within a reasonable time, District may perform service and Contractor shall be exposed to the liquidated damages assessed for missed pickups per Section 11.5.

#### **4.6.3 Vehicles**

- A. General.** Contractor is responsible for providing all vehicles that may be required for the Collection of Solid Waste that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with this Agreement. Contractor is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies.
- B. Specifications.** Contractor shall use best efforts to obtain Renewable Natural Gas (RNG) to power all Residential and Commercial route Collection Vehicles used by Contractor under this Agreement if, and when, such vehicles are implemented for the District. Contractor agrees to utilize RNG vehicles if it develops a new Solid Waste Facility in the region, or, if it installs a natural gas fueling station at its existing or future Solid Waste Facility. The RNG used to power the Collection Vehicles shall be derived from Organic Waste that has been Diverted from a landfill and Processed at an in-vessel digestion Facility that is permitted or otherwise authorized by 14 CCR to Recycle Organic Waste and meets SB 1383 requirements. Upon District's request, Contractor shall obtain and provide the District with a written certification by an authorized representative of the publicly-owned treatment works or the wheeling agreement service provider certifying that the in-vessel digestion Facility produces the RNG consistent with the requirements of 14 CCR Section 18993.1(h). Contractor shall maintain records of the amount of RNG purchased and shall report this information to the District. Contractor shall agree to the District the right to report this RNG usage toward the District's fulfillment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.

Such vehicles must be registered with the California Department of Motor Vehicles and shall have water-tight bodies designed to prevent leakage, spillage, or overflow. At all times during the term of this Agreement, Contractor's Collection vehicles shall comply with Imperial Valley Air Quality Management District Requirements and the California Air Resource Board's emission standards as they may be approved for Refuse removal vehicles, as well as other federal, State and local laws and regulations that may be enacted during the term of this Agreement.

- C. Vehicle Identification and Labeling.** Each Collection vehicle shall be marked with Contractor's name, toll free phone number, and a vehicle identification number designed by Contractor for each Collection Vehicle which shall be prominently displayed on all such Vehicles, in lettering at least six

inches in height. All equipment of Contractor used to provide the services set forth in this Agreement shall be subject to inspection by District on a semi-annual basis.

**D. Cleaning and Maintenance**

1. Contractor shall maintain all properties, vehicles, facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.
2. Collection Vehicles shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. District may inspect vehicles at any time to determine compliance with this Agreement. Contractor shall also make all Collection Vehicles available to the Imperial County Public Health Department for inspection, at any frequency it requests. Contractor agrees to replace or repair to the District's satisfaction, any Collection Vehicle which District determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
3. Contractor shall repaint any or all Collection Vehicles within thirty (30) days' notice from District, if District determines that their appearance warrants painting. District may not require a vehicle to be repainted if it has been repainted within the previous thirty-six (36) months.
4. Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all Collection Vehicle maintenance, recorded by date, and shall make such records available to District upon request.
5. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date, nature of repair, and the verification by signature of a maintenance supervisor that the repair has been properly performed.
6. Contractor shall clean up any leaks or spills from its vehicles per the NPDES permit in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such clean-up efforts.
7. Upon request, Contractor shall furnish District a written inventory of all equipment, including Collection Vehicles, used in providing service pursuant to this Agreement. This inventory shall list all equipment by manufacturer, year of production, ID number, date of acquisition, type, capacity, and whether the vehicle is a spare.

- E. Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.

Contractor's equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and such noise control features shall be incorporated throughout the entirety of all Collection Vehicle. Noise levels of equipment used

for Collection shall comply with District ordinance and in no event shall the noise level exceed 75 dba when measured at a distance of 25 feet from the vehicle, five feet from the ground. Contractor shall store all equipment in safe and secure locations in accordance with District's applicable zoning regulations.

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

- F. District Inspection.** District may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of the State Vehicle Code, including, but not limited to, California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. District may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service shall be returned to service until it conforms with, and its return to service has been approved by District.
- G. Vehicle Inspections.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. Contractor shall repair, or arrange for the repair of all its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. District Contract Manager may inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to determine compliance with sanitation requirements.
- H. Correction of Defects.** Following any inspection, the District Manager shall have the right to cause Contractor, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The District Manager's determination may be appealed to the District Council, whose decision shall be final.

#### **4.6.4 Containers**

Contractor will provide Containers to be used under this Agreement.

##### **4.6.4.1 Carts**

- A. Cart Design Requirements.** Contractor shall provide Customers with Carts at the start of service under this Agreement. All Carts provided by Contractor utilized in the performance of this Agreement shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to District's approval. Carts must meet color, size, uniformity, and quality requirements of this Agreement and SB 1383. The District will not permit Carts with inconsistent colors or in poor condition to be used in the District at any time during the term of this Agreement, and may require Contractor to replace such Carts.

- B. Capacity.** The references in Sections 4.2, 4.3 and 4.4 to Cart sizes of 90-gallons may be approximate. The Cart size may range from 90-gallons to 101-gallons, but must be uniform throughout the District and for all waste streams to provide a uniform appearance.
- C. Cart Color and Appearance.** The Refuse, Recycling and Green Waste Carts will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Refuse Cart lids will be Black . Source Separated Recyclable Materials lids will be Blue. Organic Materials lids will be Green. Cart colors shall be consistent throughout District.
- D. Cart Labeling and Hot Stamping.** Labels used on Carts shall be placed on the Cart lid, and hot stamps shall be on the top of the lid and/or on the body of the Cart. Design for both the labels and the hot stamps must be approved by District prior to ordering labels or Carts. District shall approve what information is included on the label and in the hot stamp, as well as approve design and quality. Labels shall be replaced when worn. Cart labels and hot stamps will include bilingual (English and Spanish) and graphic instruction on what materials should and should not be placed in each Cart. Carts shall include the telephone number to call for Bulky Item pickups.

**4.6.4.2 Cart Maintenance and Replacement Responsibilities**

Contractor shall be responsible for Cart repair and maintenance, graffiti removal, and replacing damaged Carts within two (2) business days at no additional charge to the Customer or to District, unless Contractor can demonstrate to the District Manager beyond a reasonable doubt that the damage was due exclusively the Customer’s intentional or negligent behavior. District Manager shall make the final determination. All repairs must restore the Cart to its full functionality. Unsightly/worn-out Carts shall be replaced by Contractor upon Customer request.

Lost or stolen Carts shall be replaced within two (2) business days of being reported to the Contractor. Commercial Customers shall be charged a replacement fee as shown in the District-approved rate schedule. Residential Customers may receive one free replacement for a reported lost or stolen Cart within a twelve-month period. Residential Customers who request additional replacements of their lost or stolen Carts within a 12-month period shall be charged a replacement fee as shown in the District approved rate schedule.

Contractor shall inspect all Carts on an ongoing basis. Contractor shall provide a report to District on an annual basis documenting the results of these inspections including, but not limited to, the number of Carts replaced by Cart type, and the addresses where Carts were replaced. In addition, drivers shall be proactive in reporting Carts that require repair, replacement, and/or graffiti removal.

**4.6.4.3 Bins**

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

Upon Customer or District request, or if required to maintain the Containers in a clean condition, Contractor shall clean all Bins once per year at no additional charge. Contractor shall perform cleaning or replacement of Bins more frequently if necessary, or if requested by Customer or



District, for an additional fee in accordance with the approved rate schedule, to prevent a nuisance caused by odors or vector harborage. When a Bin is removed for cleaning, Contractor shall replace the Bin, either temporarily or as a change-out, with another Container. Contractor shall remove graffiti from any Container within one business day of request by District or Customer. Contractor is required to proactively look for graffiti when Collecting Bins, with all graffiti removed from Containers in no later than five (5) business days after any Collection without notification.

Contractor shall inspect all Bins on an annual basis. Contractor shall provide a report to District on an annual basis documenting the results of the inspection including, but not limited to, the dates of inspection, the number of Bins replaced by Bin type, and the addresses where Bins were replaced. In addition, drivers shall be proactive in reporting Bins that require repair, replacement, and/or graffiti removal.

- B. Bin Identification and Color.** Each Bin placed in District by Contractor shall have the name of Contractor and phone number in letters not less than three (3) inches high on the exterior of the Bin so as to be visible when the Bin is placed for use. Bins shall be labeled to include bilingual (English and Spanish) and graphic instruction on what materials should and should not be placed in each Bin. Contractor shall repaint Bins upon District's request. All Refuse Bins shall have Black lids. All Source Separated Recyclable Materials Bins shall have Blue lids. All Source Separated Organic Materials Bins shall have Green lids.

#### **4.6.4.4 Roll-off Boxes**

Contractor shall provide sufficient Roll-off Boxes to meet Customer demand throughout the Term of the Agreement, and will keep all Roll-off Boxes clean, free from graffiti, equipped with reflectors, and with the name and phone number of Contractor in letters not less than three (3) inches high on the exterior of the Roll-off Box so as to be visible when the Roll-off Box is placed for use. Contractor shall properly cover all open Roll-off Boxes during Transport as required by the State Vehicle Code.

#### **4.6.5 Litter Abatement**

- A. Minimization of Spills.** Contractor shall use due care to prevent Solid Waste or fluids from leaking, being spilled, and/or scattered during the Collection or Transportation process. If any Solid Waste or fluids leak or spill during Collection, Contractor shall promptly clean up all such materials. Each Collection Vehicle shall carry a broom, shovel, absorbent, and containment materials at all times for this purpose.

Contractor shall not Transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste Transfer between vehicles, without prior written approval by District.

- B. Clean Up.** During the Collection or Transportation process, Contractor shall clean up all litter spilled during Collection or otherwise caused by Contractor. Contractor shall leave a "red tag" notice for Customer if litter not caused by Contractor is found in Container enclosure or around Containers. Contractor shall directly contact Customer regarding instances of repeated spillage not caused by Contractor and will report such instances to District. District will attempt to rectify such situations with the Generator if Contractor has already attempted to do so without success. Contractor shall photograph spillage and enclosure location and provide the photographs to the Customer and/or

the District prior to charging the Bin Enclosure Cleaning Fee in the approved rate schedule for repeated instances of spillages at the same location.

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

- C. **Covering of Loads.** Contractor shall properly cover all open debris boxes during Transport to the Disposal Site.

#### **4.6.6 Personnel**

- A. **Qualified Drivers.** Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.
- B. **Hazardous Waste Employee Training.** Contractor shall establish and vigorously enforce an educational program which will train Contractor's employees in the identification of Hazardous Waste. Contractor's employees shall not knowingly place such Hazardous Waste in the Collection Vehicles, nor knowingly dispose of such Hazardous Wastes at the Processing Facility or Disposal Site.
- C. **Customer Courtesy.** Contractor shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work as quietly as reasonably possible. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If District has notified Contractor of repeated complaints related to discourteous or improper behavior of an employee, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.
- D. **Unauthorized Material Removal.** Contractor shall dismiss or discipline employees who remove documents or any other material from Containers, other than specifically for the purposes of Disposal and Diversion as described in this Agreement.
- E. **Training.** Contractor shall provide suitable operations, health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

#### **4.6.7 Identification Required**

Contractor shall provide its employees, companies, and subcontractors with identification for all individuals who may make personal contact with residents or businesses in District. District may require

Contractor to notify Customers yearly of the form of said identification. Contractor shall provide a list of current employees, companies, and subcontractors to District upon request.

District reserves the right to perform a security and identification check through the Imperial County Sheriff's Department upon Contractor and all its present and future employees employed by Contractor to work in District, in accordance with accepted procedures established by District, or for probable cause.

#### **4.6.8 Fees and Gratuities**

Contractor shall not, nor shall it permit any agent, employee, or subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for services authorized to be performed under this Agreement except as described in this Agreement, in accordance with Exhibit 2 as updated and approved by District throughout the Term of the Agreement.

#### **4.6.9 Non-Discrimination**

Contractor shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or Solid Waste law.

#### **4.6.10 Report of Accumulation of Solid Waste**

Contractor shall direct its drivers to note (1) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to District within one (1) working day of such observation.

### **4.7 Transfer, Processing, and Disposal**

Contractor shall Transport all Discarded Materials to the Approved Facility(ies) specified in Exhibit 8 and shall Transfer, Process, and Dispose of Discarded Materials in accordance with this Section and Exhibit 8. If the Approved Facilities change during the term of this Agreement, and the Contractor does not own or operate one or more of the Approved Facilities, Contractor shall enter into a subcontract agreement with the Owner or Facility operator of such Approved Facility(ies) and the requirements of this this Section and Exhibit 8 shall pertain to the subcontractor. In addition, subcontractor requirements or obligations related to indemnification (Article 9) and insurance requirements (Section 9.4) shall apply, as well as any other subcontractor requirements or obligations stated in other Sections of this Agreement.

The Approved Facilities shall comply with the following requirements.

- A. Approved Transfer Facility. Contractor's Approved Transfer Facility shall be a Transfer Facility or operation that Transfers Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials and Source Separated Organic Materials, and/or Black Container Waste Collected in accordance with this Agreement.
- B. Approved Source Separated Recyclable Materials Processing Facility (Blue Containers). Contractor's Approved Recyclables Processing Facility shall be a Facility or operation that Processes Single-

Family, Multi-Family, and Commercial Source Separated Recyclable Materials to recover materials designated for Collection in the Blue Container.

- C. Approved Organic Waste Processing Facility (Green Containers). Contractor's Approved Organic Waste Processing Facility shall be a Facility that Processes Single-Family, Multi-Family, and Commercial Source Separated Organic Materials to recover Source Separated Organic Materials.
- D. Approved Disposal Facility (Black Containers). Contractor's Approved Disposal Facility shall be a Disposal Facility that accepts Single-Family, Multi-Family, and Commercial Black Container Waste Collected in accordance with this Agreement for Disposal.

#### **4.7.1 Processing Facility Temporary Equipment or Operational Failure Waiver**

- A. **Notification to the District.** The Contractor, or their subcontractor (such as a Facility operator), shall notify the District of any unforeseen operational restrictions that it becomes aware of that have been imposed upon the Approved Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the Approved Facility from Processing and recovering Blue Container and/or Green Container materials. The Contractor or subcontractor shall notify the District as soon as possible and no later than two (2) business days from the time of the incident. The notification shall include the following: (i) name of Approved Facility; (ii) the Recycling and Disposal Reporting System Number of the Approved Facility; (iii) date the Approved Facility became unable to Process Blue Container and/or Green Container materials; (iv) description of the operational restrictions that have been imposed upon the Approved Facility by a regulatory agency or unforeseen equipment failure or operational restriction that occurred; (v) the period of time the Contractor anticipates the temporary inability of the Approved Facility to Process Blue Container and/or Green Container materials; (vi) Contractor's proposed action plan to deliver materials to an Alternative Facility for Processing (refer to Section 4.7.1.B) or Contractor's request for waiver to deliver Blue Container and/or Green Container materials to the Approved Disposal Facility.
- B. **Use of Alternative Facility or Waiver for Disposal of Materials.** Upon notification by Contractor or subcontractor of the Approved Facility's inability to Process materials, District shall evaluate the notification and determine if District shall require Contractor to use an Alternative Facility or allow the Contractor to Transport the Blue Container and/or Green Container materials to the Approved Disposal Facility for Disposal on a temporary basis for a time period specified by the District. Upon District's decision, the District shall notify the Contractor of its requirement to use an Alternative Facility for Processing or to use the Approved Disposal Facility for Disposal, and the period of time that the District will allow the Blue Container and/or Green Container materials to be redirected to the Alternative Facility or Approved Disposal Facility. Pursuant to 14 CCR Section 18984.13, the approved Disposal period shall not exceed ninety (90) days from the date the Approved Facility's Processing restriction or failure commenced. In such case, the Contractor must receive written permission from the District prior to depositing any Discarded Material in a Landfill.
- C. **Record Keeping and Reporting.** Contractor shall maintain a record of any Approved Facility incidents and report this information to the District in accordance with Article 8.

#### **4.7.2 Transportation to Non-Approved Facilities Prohibited**

If Contractor Transports Discarded Materials to a Facility other than the Approved Facility(ies) or an Alternative Facility without prior District approval, Contractor's failure to comply may result in assessment of liquidated damages as described in Section 11.5.

#### **4.8 Status of Disposal Site**

Any landfill utilized by Contractor shall comply with Applicable Law and shall have been issued all permits from federal, State, regional, county and District agencies necessary for it to operate as a Class III Landfill and is in full regulatory compliance with all such permits.

#### **4.9 Dedicated Routes**

Solid Waste Collected in the District may not be commingled in Collection vehicles with Solid Waste from other jurisdictions. All routes shall be dedicated exclusively to Heber Public Utility District Solid Waste.

#### **4.10 Route Audit**

Once during the first year and every three years thereafter, unless requested annually by District, Contractor shall conduct an audit of its Collection routes in the District. District may use information from the audit to develop a request for proposals for a new service provider. District may instruct Contractor when to conduct the audit in order for the results to be available for use in preparation of a request for proposals or for other District uses. District may also instruct Contractor to conduct an audit at a time that would produce the most accurate Customer service information for a new service provider to use in establishing service with Customers. In setting these audit dates, District will establish due dates for Contractor providing routing and account information, and later the report to District.

The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver of each Customer in District. This Person(s) is to be approved in advance by District. The route audit information shall include, as a minimum, the following information for each account:

For Residential Customers:

- Route Number;
- Truck Number;
- Number of Residential Customers;
- Number of Extra Carts (by type of waste stream);
- For Commercial Customers:
  - Route Number;
  - Truck Number;
  - Account Name;
  - Account Number;

- Account Service Address;
- Service Level per District Billing System (Quantity, Size, Frequency);
- Service Level per Routing System;
- Observed Containers (Quantity and Size).
- Container condition;
- Proper signage; and,
- Graffiti.

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

- Identification of the routes;
- Route map;
- Truck numbers;
- Number of accounts, by route and in total (Residential and Commercial);
- Confirmation that all routes are dedicated exclusively to District Customers;
- Number and type of exceptions observed;
- Total monthly service charge (Residential and Commercial), pre-audit;
- Total monthly service charge (Residential and Commercial), post-audit (subsequent to corrections of identified exceptions); and,

The report shall include a description of the procedures followed to complete the route audit. This description shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations.

The report shall also include a description of the changes and Contractor's plans to resolve the exceptions. The results of the audit, and supporting back-up data, shall be available for review by District or its representative.

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

- A. Failure to Collect.** When Solid Waste is not Collected from any Solid Waste service recipient, Contractor shall notify its service recipient in writing, at the time Collection is not made, through the use of a "red tag" or otherwise, of the reasons why the Collection was not made.
- B. Hazardous Waste Inspection and Reporting.** Contractor reserves the right and has the duty under law to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste and the right not to Collect Hazardous Waste put out with Solid Waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste anywhere within District. In addition to other required notifications, if Contractor

observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any District property, including storm drains, streets or other public rights of way, Contractor will immediately notify District Manager or District Manager's designee. Contractor shall implement and maintain a training program that will assist its employees in identifying and properly disposing of any Hazardous Waste that may come into their possession.

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

## **ARTICLE 5: OTHER SERVICES**

### **5.1 Services and Customer Billing**

#### **5.1.1 Customers Billed by District**

District shall Bill all Residential Premises Customers receiving Cart service. Exceptions may be made for C.O.D. payments, overage charges or other one-time charges for which the District may permit Contractor to Bill Customers and collect revenue directly from Customers. District shall pay Contractor monthly, based upon actual revenue received, net of fees to be withheld by District per Article 3. Contractor Compensation will be based upon gross revenue received by District and Contractor each month. Contractor Compensation is exclusively derived from the Billings for services listed on the approved rate schedule, and Contractor shall charge no additional fees unless approved in advance by District. Payment to Contractor shall be made within thirty (30) days of month end. Contractor has thirty (30) days after receipt of payment to dispute payment.

Billing cycles shall be determined by District . District bills during the month service is provided and places Billings on the water bill, but reserves the right to change the timing and/ or method of its billing procedures.

#### **5.1.2 Customers Billed by Contractor**

Contractor shall bill all temporary and permanent Roll-Off Box Customers, and all temporary services, as well as C.O.D. payments, overage charges or other one time charges for which the District may permit Contractor to bill Commercial Bin and Cart Customers and Residential Cart Customers. Contractor shall bill all Multi-Family Premises and Commercial Premises Customers receiving Bin Service and Commercial Premises Customers receiving cart service. Contractor shall report this revenue and remit applicable fees to District per Article 3.

Contractor shall direct bill, or require C.O.D. or pre-payment via credit card for charges for which District will not bill.

Contractor shall submit to District a quarterly Contractor Billing and revenue report for all the Contractor billed Customers within thirty (30) calendar days of quarter-end. Report shall include the date of the charge, Customer name, service and billing address, and amount billed/paid. Additional information such as service level provided, shall be made available upon request. Format must be approved by District.

### **5.1.3 Review of Accounts**

Contractor shall review each Customer's account for the Rate Year ending June 30, 2022, and every three (3) years thereafter and submit to District a written report of its review of all Customer accounts along with the results of the route audit described in Section 4.10. The purpose of the Customer account review is to confirm that the amount which District is Billing each Customer is correct. Results of this account review should be submitted as part of the annual route audit summary described in Section 4.10.

### **5.1.4 Non-Payment; Collections; Suspension of Service**

Contractor will suspend service and pull Containers due to non-payment upon receiving notification from District to do so, but may not otherwise suspend service without prior District approval.

District is not required to permit Collection services to be turned off, and will complete its billing and noticing procedures before requesting that such services be turned off. District may alternatively suspend service of other simultaneously billed services.

Contractor shall be compensated only on revenue received by District from Residential Customers and may not take action regarding collections without prior approval from the District, regardless of District's actions or lack of actions in the collection of unpaid Billings.

Notwithstanding the above, in the event of a Billing dispute or to avoid a negative impact on public health or safety, Contractor shall continue to provide service to all Customers unless permitted otherwise by District, without regard to the status of said Customer account.

The District may choose to collect late fees from Residential Customers, but these fees would not be forwarded to Contractor. The Contractor may choose to collect late fees from Customers billed by Contractor pursuant to Section 5.1.2. Such fees will be subject to limitations imposed pursuant to California Law.

### **5.1.5 Exemption From Service**

The District may establish guidelines to exempt properties from receiving and paying for Solid Waste Collection service. Exempt properties may include vacant or unoccupied properties or properties in which Owners can document alternative means of Self-Haul Disposal.

### **5.1.6 Senior Discount**

Senior residents shall receive a 10% discount from standard residential cart monthly service fees. The senior discount shall be applied to premises occupied by all persons 65 years or older.



## **5.2 Customer Service**

### **5.2.1 Local Office/Customer Service**

Contractor shall maintain a local office within 15 miles of the District limits. Said office shall be open, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of holidays (“Office Hours”). A responsible and qualified bilingual (English and Spanish speaking) representative of Contractor shall be available during Office Hours for personal communication with the public at the local office. Contractor’s telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. If District receives more than five (5) complaints in thirty (30) days that Customers are unable to contact Contractor by phone, District may require Contractor to increase capacity. Contractor shall have either a representative, a message machine, or an answering service available outside of Telephone Service Hours. Calls received outside of Telephone Service Hours shall be responded to on the next business day. Contractor shall provide District with a twenty-four (24) hour emergency number to a live Person, not voicemail. Contractor shall provide means for the District to transfer calls received by the District directly to the Contractor’s local office. Contractor shall also provide means for Customers to e-mail Contractor with complaints and service requests, and to make payments electronically.

Contractor shall record Customer complaints regarding Customer service personnel in accordance with Section 5.2.2. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties or disciplined and appropriately trained.

## **5.2.2 Complaint Documentation**

Service complaints received by District shall be directed to Contractor. Contractor shall keep daily logs of complaints forwarded to it for a minimum of three (3) years.

Contractor shall log all complaints received and said log shall include the date and time the complaint was received, the name, address and telephone number of the caller/complainant, a description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint. Log shall also include each instance that Solid Waste is not Collected and the form of notification used to inform the participants of the reasons of non-Collection and the end result or means of resolution of the incident.

All written Customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day of receipt. Contractor shall use best efforts to resolve complaints within two (2) business days and must respond to written complaints within five (5) working days of receipt. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

All Customer service records and logs kept by Contractor shall be available to District upon request. District shall, at any time during regular Office Hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

## **5.2.3 Resolution of Customer Complaints**

Should Contractor and Customers not be able to resolve a complaint, not be able to establish a mutually acceptable fee to be charged for services not included on the approved rate schedule, or otherwise disagree, the matter shall be determined by District, and District's decision shall be final.

Intervention by District is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this Section is intended to affect the remedies of third parties against Contractor.

## **5.2.4 SB 1383 Noncompliance Complaints**

### **A. Documentation of Complaints**

1. **SB 1383-Noncompliance Complaints.** For complaints received in which the Person alleges that an entity is in violation of SB 1383 requirements, Contractor shall document the information listed in Article 8. Contractor shall provide this information in a monthly summary report in accordance with Article 8.

### **B. Investigation of SB1383 Noncompliance Complaints**

1. **Investigation.** Contractor shall commence an investigation, within ninety (90) days of receiving a complaint in the following circumstances: (i) upon Contractor receipt of a complaint that an entity may not be compliant with SB 1383 and if District determines that the allegations against the entity, if true, would constitute a violation of SB 1383; and, (ii) upon District request to investigate a complaint received by District, in which District determines that the allegations against the entity, if true, would constitute a violation of SB

1383. Contractor is required to investigate complaints against Customers and Generators, and not against Food Recovery Organizations, Food Recovery Services, and other entities regulated by SB 1383.

Contractor shall investigate the complaint using one or more of the following methods:

- a. Reviewing the service level of the entity that may not be compliant with SB 1383;
  - b. Reviewing the waiver list to determine if the entity has a valid de minimis, or space constraint;
  - d. Inspecting Premises of the entity identified by the complainant, if warranted; and/or,
  - e. Contacting the entity to gather more information, if warranted.
2. **Reporting.** Within ten (10) days of completing an investigation of an SB 1383-noncompliance complaint, Contractor shall submit an investigation complaint report that documents the investigation performed and recommends to District on whether or not the entity investigated is in violation of SB 1383 based on the Contractor's investigation. The District shall make a final determination of the allegations against the entity.

### **5.2.5 Contract Liaison**

Contractor shall designate in writing a "Contract Liaison" who shall be responsible for working with District and/or District's designated representative(s) to resolve Agreement-related issues. District shall have the right to approve the Contractor's choice for a liaison. District shall be notified in advance of any change in Contract Liaison.

### **5.2.6 Service Liaison**

Contractor shall designate in writing a field supervisor as "Service Liaison" who shall be responsible for working with District and/or District's designated representative(s) to resolve Customer service related complaints. District shall have the right to approve the Contractor's choice for a liaison. District shall be notified in advance of any change in Service Liaison.

### **5.2.7 Review of Generator Waiver Requests**

Generators may submit requests for de minimis waivers, physical space waivers, and any other applicable waivers to the Contractor. Contractor shall within ten (10) business days review the Generator's waiver application and inspect the Generator's Premises to verify the accuracy of the application. Contractor shall provide documentation of the inspection, including the Contractor's recommendation to approve or deny the waiver request, and send this information to the District within fifteen (15) days of receipt of the Generator's waiver application for the District's review and approval. The District ultimately retains the right to approve or deny any application, regardless of the Contractor's recommendation. Contractor shall report information regarding waivers reviewed on a monthly basis, in accordance with Section 8.3.2.F.

## **5.3 Education and Public Awareness**

### **5.3.1 General**

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

Contractor shall maintain its own program of providing information relevant to needs and methods to reduce, reuse and Recycle Solid Waste with its Bills.

District may request Contractor to perform mailing services for Customers direct billed by the Contractor, and if so able, provide not less than thirty (30) days' notice to Contractor prior to the mailing date of any proposed mailing to permit Contractor to make appropriate arrangements for inclusion of District's materials. District will provide Contractor the mailers at least fifteen (15) days prior to the mailing date. District shall normally bear the expense of reproduction and distribution of such additional information only to the extent it is clearly in excess of Contractor's normal Billing costs.

### **5.3.2 Material Distribution Methods**

Contractor shall use the following methods to provide education information to Customers. All materials are to be approved by the District prior to distribution.

- A. Printed materials.** Contractor shall provide printed education materials as described in this Section. The Contractor shall be responsible for the design, printing, and distribution of these materials. All Contractor printed public education materials shall, at a minimum, use recycled paper and/or be made of recycled material. The Contractor will use one-hundred percent (100%) post-consumer paper, and procure printed materials from local businesses. Contractor shall provide electronic copies of all print materials, and printed copies, in amount requested by District, for distribution at District facilities.
- B. Electronic materials and website content.** Contractor shall provide electronic and website content for education and outreach materials, which may include but is not limited to: digital graphics, digital versions of print materials, social media posts, and blog posts. The Contractor shall be responsible for the design, posting, and electronic distribution of these materials.

### **5.3.3 Non-English Language Requirements**

The Contractor shall make all public education and outreach materials required by this Section available in English and Spanish.

The Contractor may allow Customers to request mailings electronically in lieu of hardcopies. Contractor shall be required to provide an annual report to the District of Customers that have requested to receive mailings electronically. Customers will be provided the option to request electronic mailings annually.

### 5.3.4 Ongoing Education Requirements

- A. **Initial and Follow-Up Mailing.** Forty-five (45) days prior of the start of service under this Agreement, Contractor will prepare and mail an initial mailing to all Customers explaining the new or revised programs as defined by this Agreement. The mailing will describe program changes, Diversion programs available, and other pertinent information. Contractor will send a second reminder mailing about the new programs fifteen (15) business days prior to start of services.
- B. **Instructional “How-to” Packets.** An information packet shall be provided to each Customer at the start of service under this Agreement and to each new Customer throughout the Agreement term. This packet shall: describe available services, including available Diversion programs; Sharps safe Disposal program, Residential backyard service, provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for Collection, the types of materials to be placed in each Cart); detail holiday Collection schedules; and provide billing and Customer service telephone numbers. This packet will contain updated information on how to use Containers, when, where, and how to place Solid Waste for Collection, and who to contact with service or Billing questions, and for Bulky Item pickups.

The packet should also clearly indicate what materials, such as syringes and other Household Hazardous Wastes (HHW), should not be disposed of in these Containers. This brochure shall include instructions on how Customers should dispose of HHW, such as information on the HHW drop-off facilities and other available programs.

- C. **Annual Notice of SB 1383 Requirements.** Not less than once per year during each Rate Year, and at the initiation of Residential Food Waste Collection, Contractor shall prepare and distribute to each Generator in the District a mailing that includes information specified in SB 1383 (14 CCR Section 18985.1(a). Such mailer shall be distributed by District to all Residential and Commercial mailing addresses including individual Multi-Family Dwelling Units.
- D. **Business Recycling Brochure.** Contractor will prepare and distribute a business Recycling brochure to encourage the implementation and proper use of Commercial Recycling and Organic Waste programs, and information on Refuse, Recycling, and Organic Materials Bin cleaning and replacement options as described in Section 4.6.4.3. The brochures shall be distributed upon new Service initiation, and annually to all businesses.
- E. **Container Labels and Hot Stamps.** Refuse, Recyclables, and Organic Materials Waste Containers shall carry stickers/labels and hot stamps as described in Sections 4.6.4.1.D and 4.6.4.3.B.
- F. **Annual Newsletter.** Not less than once per year during each Rate Year, Contractor shall prepare and distribute to each Customer a brochure promoting and explaining: all Solid Waste programs offered by District and Contractor (such as Source Separated Recyclable Materials and Source Separated Organic Materials Collection, Holiday Tree, Sharps safe Disposal program, Residential backyard service, and Bulky Item Collections) described in detail; the environmental, regulatory, and other benefits of participating in Diversion programs; how to properly dispose of Household Hazardous Waste such as paint, chemicals, pesticides, etc. through the County’s program or other means; Collection schedules, including holiday schedules; Customers service numbers; and the procedures to begin and terminate services. This brochure shall be at least four (4) pages, and printed in full color. District may provide mailing labels from its Billing system.

- G. Additional Mailing.** District may request Contractor to prepare a Customer notice once per year, to be distributed six months after annual newsletter, to update Customers regarding program basics, program changes, holiday schedules and other service related information. District may include the notice in utility Billings or have Contractor mail such notices to Customers at no additional cost.
- H. Billing Inserts.** Subject to District's approval as to size, content and timing Contractor may prepare, copy and fold notices up to four (4) times per year for District to insert into Billings. District will coordinate which mailing in which it will be included, as other parties may need to include materials as well. Notices will need to be completed and delivered to District no less than forty-five (45) days prior to mailing. Contractor is responsible for all production and folding costs. District will provide for postage costs.
- I. Corrective Action Notice.** Contractor shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection, which explains the appropriate manner for Disposal of such items.
- J. Website.** Contractor shall develop and maintain a website to enable Customers to contact Contractor and to display holiday schedules, proper HHW Disposal procedures, which materials are to be placed in Source Separated Recyclables Containers and Source Separated Organic Materials Containers, and other useful information.
- K. Classroom Recycling.** Contractor may offer to provide Recycling containers for classrooms and will offer to provide educational Recycling materials to all schools (K-12) within the District.

### **5.3.5 Contractor Representative**

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

### **5.3.6 Community Events**

At the direction of District, Contractor shall participate in and promote Recycling and other Diversion techniques at community events and local activities. Such participation would normally include providing, without cost, Collection and educational and publicity information promoting the goals of the District's Solid Waste program.

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

Contractor acknowledges that District must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Contractor agrees to participate and cooperate with District and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by District, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, Disposed, Transformed, Diverted or otherwise handled/Processed, by Customer type (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939. Contractor will at its sole expense conduct such a waste generation and characterization study upon request of District, but not more than once every two years.

## **5.5 Contamination Monitoring**

### **5.5.1 Contamination Inspection Methods**

Contractor shall implement an inspection method in compliance with the requirements of SB 1383 (14 CCR Section 18984.5), as described below.

Physical Container Inspections. When Contractor's personnel dismounts from Collection vehicles to empty a Container, such personnel shall lift the Container lid and observe the contents. Upon finding Contaminants in a Container, Contractor shall follow the contamination noticing procedures set forth in Section 5.5.1.3.B.

#### **5.5.1.1 Actions upon Identification of Prohibited Container Contaminants**

- A. Record Keeping. The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including date, time, Customer's address, type of Container (Blue, Green, or Black Container); and maintain photographic evidence, if required. Contractor shall submit this record to the Contractor's Customer service department, and Contractor's Customer service department shall update the Customer's account record to note the event, if the documentation of the on-board computer system did not automatically update the Customer's account record.
- B. Identification of Excluded Waste. If Contractor's personnel observe Excluded Waste in an uncollected Container, the Contractor's personnel shall record that observation in accordance with Section 5.5.1.3.A and immediately inform their route supervisor. Contractor shall follow protocols specified in Section 5.5.1.1.C. The route supervisor shall investigate and initiate applicable action within one (1) business day or sooner if the Excluded Waste may cause immediate danger.
- C. Courtesy Pick-Up Notices. Upon identification of Prohibited Container Contaminants in a Customer's Container, Contractor shall provide the Customer a courtesy pick-up notice. The courtesy pick-up notification shall: (i) inform the Customer of the observed presence of Prohibited Container Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in the Blue Container, Green Container, and Black Container; (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with information that following three (3) instances of contaminated materials; Contractor may assess contamination fees; and, (v) shall include photographic evidence. Contractor shall leave the courtesy pick-up notice attached to or adhered to the Generators' contaminated Containers; at the Premises' door or gate; or, subject to District's approval, may deliver the notice by mail, e-mail, or text message.

Contractor shall Collect the contaminated Source Separated Recyclable Materials or Source Separated Organic Materials and Transport the material to the appropriate Approved Facility for Processing; or, Contractor may Collect the contaminated materials with Black Container Waste and Transport the contaminated materials to the appropriate Approved Facility for Disposal/ Processing.

- D. Notice of Assessment of Contamination Fees. If the Contractor observes Prohibited Container Contaminants in a Generator's Green Container or Blue Container on more than three (3) consecutive occasions and issued courtesy pick-up notices on each of those occasions, the

Contractor may impose the contamination fee in the approved rate schedule. Contractor shall notify the District in its monthly report of Customers for which contamination fees were assessed. Contractor shall leave a contamination fee notice attached to or adhered to the Generators' contaminated Containers, at the Premises' door or gate, or, subject to District's approval, may deliver the notice by mail, e-mail or text message. The contamination fee notice shall describe the specific material(s) of issue, explain how to correct future set outs, and indicate that the Customer will be charged a contamination fee on its next bill. The format of the contamination fee notice shall be approved by the District.

Contractor shall Collect the contaminated Source Separated Recyclable Materials or Source Separated Organic Materials and Transport the material to the appropriate Approved Facility for Processing.

- E. Communications with Customer. Whenever a Container is not Collected because of Prohibited Container Contaminants, a Customer service representative shall contact the Customer to discuss, and encourage the Customer to adopt proper Discarded Materials preparation and separation procedures.
- F. Disposal of Contaminated Materials. If the Contractor observes visible Prohibited Container Contaminants in a Generator's Containers, Contractor may Dispose of the Container's contents provided Contractor complies with the noticing requirements in Section 5.5.1.1.C above.

#### **5.5.1.2 On-Going Contamination Monitoring by Route Personnel**

Contractor shall assist on an ongoing basis in minimizing contamination by helping to educate Customers on acceptable and non-acceptable materials through ongoing education and outreach efforts and through on-going monitoring of the contents of Collection Containers. The ongoing Container monitoring shall be performed by Contractor using the method described in Section 5.5.1.

#### **5.5.1.3 Prescribed Contamination Monitoring**

A. **Methodology and Frequency.** Contractor shall, at its sole expense, conduct hauler route reviews for Prohibited Container Contaminants in Containers in a manner that is deemed safe by the Contractor; is approved by the District; and is conducted in a manner that results in all hauler routes being reviewed annually or more frequently. Such route reviews shall occur no more than two (2) times per year unless required to perform more frequently by CalRecycle.

- A. The Contractor shall conduct hauler route reviews that include inspection of the contents of Blue, Green, and Black Containers for Prohibited Container Contaminants in a manner that a minimum of ten percent (10%) of Containers on each and every hauler route are randomly inspected annually.

Contractor shall develop a hauler route review methodology to accomplish the above Container inspection requirements and such methodology shall comply with the requirements of 14 CCR Section 18984.5(b). Contractor shall submit its proposed hauler route review methodology for the coming year to the District no later than January 15 of each year describing its proposed methodology for the calendar year and schedule for performance of each hauler route's annual review. Contractor's proposed hauler route review methodology shall include not only its plan for



Container inspections, and shall also include its plan for prioritizing the inspection of Customers that are more likely to be out of compliance. District and/or CalRecycle will review and approve the proposed methodology. Contractor may commence with the proposed methodology upon approval.

If CalRecycle notifies the District or Contractor that the methodology is inadequate to meet the requirements of 14 CCR Section 18984.5(b), Contractor shall, at its sole expense, revise the methodology and, after obtaining CalRecycle approval, conduct additional hauler route reviews, increased Container inspections, or implement other changes using the revised procedure. The District may request, and Contractor shall accept, modifications to the schedule to permit observation of the hauler route reviews by the District or CalRecycle. Contractor shall provide an email notice to the District no less than ten (10) business days prior to each scheduled hauler route review that includes the specific time(s), which shall be within the District's normal business hours, and location(s).

- B. **Noticing of Generators with Contamination, and Disposal of Materials.** Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.5.1.1.C.
- C. **Monthly Quarterly Reporting Requirements.** Contractor shall maintain records and report to the District monthly on contamination monitoring activities and actions taken, in accordance with Article 8.

## 5.6 Inspection and Enforcement

### A. Annual Compliance Reviews

1. **General.** Contractor shall perform compliance reviews described in this Section commencing the date required by SB 1383, and at least annually thereafter, unless otherwise noted.
2. **Commercial Generator Compliance Reviews.** The Contractor shall complete a compliance review of all Multi-Family and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste to determine their compliance with:  
(i) Generator requirements under the District's Collection program; and, (ii) if applicable for the Generator, Self-Hauling requirements including whether a Commercial business is complying through Back-Hauling of Source Separated Recyclable Materials, Source Separated Blue Container Organic Waste, Source Separated Green Container Organic Waste, and Organic Waste. The compliance review shall mean a "desk" review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however, the District may request that the Contractor perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information.
3. **Food Recovery Compliance Reviews.** At least annually, Contractor shall conduct inspections of Tier One Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services to assess compliance with the requirements of 14 CCR Chapter 12 Article 10. Commencing January 1, 2024 and at least annually thereafter, Contractor shall expand its

Food Recovery compliance reviews to include inspections of Tier Two Commercial Edible Food Generators.

4. **Generator Waiver Inspections.** Contractor shall verify Commercial and Multi-Family Generator de minimis and physical space constraint waivers, if applicable, at least once every five (5) years from the date of issuance of the waiver.
5. **Compliance Review Process.**
  - a. **Number of Reviews.** The Contractor shall conduct a sufficient number of compliance reviews, hauler route reviews, and inspections of entities described in this Section, to adequately determine the entities' overall compliance with SB 1383, AB 1826, and AB 341. The District reserves the right to require additional inspections, if the District determines that the amount of inspections conducted by the Contractor is insufficient. District may require the Contractor to prioritize inspections of entities that the District determines are more likely to be out of compliance.
  - b. **Non-Compliant Entities.** From July 1, 2022 through December 31, 2023, when compliance reviews are performed by Contractor pursuant to Section 5.6.A, Contractor shall provide educational materials in response to violations. Contractor shall provide these educational materials to the non-compliant Customers and Generators within five (5) working days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or hauler route review. Contractor shall document the non-compliant Customers and Generators and the date and type of education materials provided and report such information to the District in accordance with Article 8. Beginning January 1, 2024, the Contractor shall document non-compliant Customers and Generators determined through Contractor's compliance reviews pursuant to Section 5.6.A, and shall report all Customers and Generators with SB 1383 violations to the District in accordance with Article 8. The District shall be responsible for subsequent enforcement action against the Generator.
  - c. **Documentation of Inspection Actions.** The Contractor shall generate a written and/or electronic record and maintain documentation for each inspection, hauler route review, and compliance review conducted, including the information described in Article 8.

## 5.7 Technical Assistance Program

Contractor to develop the AB 341, AB 827, AB 1826, and SB 1383 Implementation Plan, which is to be included as Exhibit 1, for District approval within sixty (60) days of the execution of this Agreement.

### 5.7.1 Site Visits and Waste Assessments

Contractor will include an outreach and technical assistance plan in the AB 341, AB 827, AB 1826, and SB 1383 Implementation Plan identifying the site visit schedule for which to send a Contractor representative to visit each Multi-Family and Commercial Generator's Premises for the purpose of assessing how much Source Separated Recyclable Materials and Source Separated Organic Materials is being Disposed; assessing Source Separated Recyclable Materials and Source Separated Organic Materials Collection service level needed to meet the requirements of SB 1383, and informing Generators of their requirement to subscribe to the mandatory Source Separated Recyclable Materials and Source Separated Organic

Materials Collection service. Contractor shall also notify Customers of opportunities to reduce costs by enrolling in Source Separated Recyclable Materials and Source Separated Organic Materials Collection service and reducing Black Container Waste/Mixed Waste Collection service. Contractor shall contact Multi-Family and Commercial Customers and provide site visits according to the District-approved schedule. Contractor will also provide a site visit to any Multi-Family and Commercial Generator that requests a site visit, even if it is ahead of schedule. Any internal Recycling programs or third-party Recycling programs that the Contractor encounters while conducting Customer site visits shall be documented using a District-approved electronic reporting form and provided in an electronic format such as a cloud-based file-sharing system that can be accessed by the District or its representatives.

Beginning January 1, 2023, and annually thereafter, Contractor representative shall follow up with Multi-Family and Commercial Generators who are required to participate in Source Separated Recyclable Materials and Source Separated Organic Materials Collection service under Applicable Law, including but not limited to AB 341, AB 1826, and SB 1383. The Contractor shall ensure that these Generators are participating in the Source Separated Recyclable Materials and Source Separated Organic Materials Collection Service. If the Generator is not in compliance or not participating, the representative shall assist the Customers with selecting appropriate Containers and Container sizing, identifying acceptable Discarded Materials Collection services as set forth, and attempt to resolve any logistical barriers to providing Source Separated Recyclable Materials and Source Separated Organic Materials Collection service. Contractor shall provide ongoing, on-site training for Commercial Generators' staff, including, but not limited to: management, kitchen staff, service employees, and janitorial staff; and Multi-Family Customers' staff, including but not limited to: the property manager, janitorial staff, maintenance, and any other on-site staff members or contractors that handle Discarded Materials processes.

For each on-site waste assessment conducted by Contractor, Contractor shall include documentation of the items listed below. District reserves the right to request Contractor's documentation of additional information, and shall authorize the format for required information.

- a. Pictures of material in all Containers
- b. Characteristics of the property, business, and Generator type
- c. Written recommendations for the appropriate service Level for each material type
- d. Provision of outreach and education materials appropriate to the Generator type
- e. Determination of signage placement
- f. Determination of any on-going training needs
- g. Determination of any access needs
- h. Documentation of any special service needs, (such as, but not limited to, seasonal, automated on-call compactor, etc.)
- i. Documentation of records of communications with the Generator

In addition to the site visit requirements stated above, the Contractor shall assist the District in complying with the requirements included in AB 827, and Section 18984.9(b) of SB 1383. During the site visits

required in this Section, Contractor shall provide educational material (to be provided by District) to businesses that meet the requirements of AB 827 and Section 18984.9(b) of SB 1383, and make notation of the name of the business, the business address, business contact information, and business compliance or non-compliance.

### **5.7.2 Workshops and Meetings**

Contractor shall, at its sole expense, participate in and/or plan, organize, and conduct direct Generator outreach, including, but not limited to: workshops, community events, and meetings to support Generator compliance with the Source Separated Recyclable Materials and Source Separated Organic Materials separation and program participation requirements under this Agreement and other local and State regulations, including, but not limited to, AB 341, AB 1826, and SB 1383.

If requested by the District, Contractor shall host at least two) technical assistance workshops for Residential Premises Customers in the first twelve months of the Agreement, and one) technical assistance workshops for every year thereafter, and two technical assistance workshops for Commercial Premises Customers in the first twelve months of the Agreement, and two (2) technical assistance workshops for every year thereafter. The workshops shall be open to all residents in the District, and the Contractor shall publish the time and location of the workshop no later than thirty (30) days prior to the workshop through publication on the Contractor's website, email newsletter, printed flyers delivered on hauler routes, etc. The structure and content of these workshops shall be designed by the Contractor, and submitted at least thirty (30) days prior to the date of the workshop for District approval. Workshops shall be focused on the regulatory requirements of SB 1383, AB 1826, and any local program or service changes as a result of the regulations.

By request of a Generator or the District, Contractor shall schedule and conduct an in-person or phone meeting with the Generator to discuss and assess their service needs and compliance with existing and/or upcoming programs and Applicable Law. The Contractor shall provide additional technical assistance as needed, which may include, but is not limited to site visits and waste assessments. The Contractor shall follow up with the Generator in-person or by phone no later than ten (10) working days after the initial meeting to assess the Generator's compliance with existing and upcoming programs under this Agreement and Applicable Law.

### **5.7.3 Record Keeping and Reporting Requirements**

Contractor shall maintain records of all technical assistance activities conducted and educational materials provided pursuant to this Section and submit reports to the District in accordance with Article 8.

## **5.8 Universal Enrollment Monitoring**

Contractor shall assist the District in ensuring that the enrollment of Generators occurs in a timely and efficient manner. In accordance with Section 8.3, Contractor shall maintain records and provide reports necessary for the District to verify the enrollment of Generators.

At least one (1) time per year, Contractor shall reconcile and confirm universal enrollment of Generators by comparing its Customer list to parcel information and calculating the percentage of total Generators enrolled in District's Collection program. As part of this analysis, Contractor shall provide the District with

a summary of any discrepancies found between the Customer list and parcel information, including the names and addresses of all Generators that were found to be the subject of a discrepancy. Contractor shall also provide a list of Generators that are not enrolled in the District's Collection program due to the provision and approval of a waiver pursuant to Section 5.2.7, including the name, address, and type of waiver for each Generator. In accordance with Article 8 (Reports) Contractor shall maintain records and provide reports on the Generators' service level and list of non-enrolled Generators, and other information necessary for the District to verify the universal enrollment of Generators.

## **ARTICLE 6: CONTRACTOR COMPENSATION AND RATES**

### **6.1 General**

The maximum rates set forth in Exhibit 2, and as more fully defined as Contractor Compensation in this Article, shall be the maximum amount Contractor may charge Customers as full, entire, and complete compensation due pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, letters of credit, overhead, costs associated with the Transfer, Processing, Recycling, Composting, and Disposal, profit, and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Contractor acknowledges that rate increases must comply with California law and may be subject to ratepayer protests. Contractor promises to cooperate with District in providing necessary notices and information to ratepayers. Contractor shall impose no other charges for services provided to Customers unless approved by the District Manager.

### **6.2 Initial Rates**

The Initial maximum rates effective February 1, 2023 shall not exceed the maximum rates set forth in Exhibit 2. The first adjustment shall occur on July 1, 2023 and annually thereafter following the adjustment mechanism herein and shall be limited to a maximum of four percent (4%) annually. There shall not be any carry-forwards of amounts in excess of the annual maximum (annual cap), and there shall be no decrease should the CPI produce a negative in any Rate Year.

### **6.3 Schedule of Future Adjustments**

#### **6.3.1 Annual Rate Adjustment**

Subject to the limitations set forth in Proposition 218 and Government Code Section 53756, beginning with the Rate Year starting July 1, 2023 and ending June 30, and for all subsequent Rate Years, Contractor may request an annual adjustment to the maximum rates shown in Exhibit 2. The Contractor shall submit its request in writing, to be received by District in Person or via certified mail, by the preceding March 30, and shall be based on the method of adjustment described in Section 6.4. Adjustment to the maximum rates is subject to the approval of the District Board of Directors at a public hearing, although the District Board's discretion shall be limited to determining, based on substantial evidence, whether the requested maximum rate adjustment meets the requirements as set forth herein.

## **6.4 Method of Adjustments**

### **6.4.1 General**

Pursuant to Section 6.3, the Contractor may request an adjustment to the maximum rates according to the method described herein subject to review and approval of District and the terms and conditions of Proposition 218 and Government Code Section 53756. The first adjustment may occur on July 1, 2023. All future adjustments are to be effective July 1.

#### **6.4.1.1 Majority Protest Proceedings**

To the extent applicable, adjustments and/or increases to the maximum rates, including annual requests under Section 6.3, extraordinary request under Section 6.5 and any other request for rate increases, are strictly subject to the assent of the District and approval pursuant to majority protest proceedings.

#### **6.4.1.2 Indemnification**

Contractor shall indemnify, defend and hold harmless the District, their officers, employees, agents and volunteers, (collectively, indemnitees) from and against all claims, damages, injuries, losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including attorneys' and expert witness fees, expenditures for investigations, and administration) and costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against Contractor or any of the indemnitees resulting in any form from the District's establishing maximum rates for service under this Agreement or in connection with the application of California Constitution Articles XIIC and Article XIID to the imposition, payment or collection of rates and fees for services provided by Contractor under this Agreement. Notwithstanding the foregoing, this indemnity shall not extend to any portion of the rates that is not associated with Contractor's costs in providing service, such as governmental fees, Franchise Fees or charges, nor shall it apply to any loss arising directly from the negligence of District, its officers and employees. Nothing herein is intended to imply that California Constitution Articles XIIC or XIID, apply to the setting of rates for the services provided under this Agreement, rather this Section is provided merely to allocate risk of loss between the Parties.

#### **6.4.1.3 No Waiver of District Board Discretion at Hearings**

With respect to all matters submitted to the District Board of Directors or other administrative decision-making body for hearing, this Agreement does not waive or limit the District's police powers (which police powers the parties acknowledge cannot be contractually waived) nor does anything in this Agreement waive or limit the exercise of discretion inherent to the District Board or other administrative decision-making body. However, the District will warrant that requests for rate adjustments will be heard and considered in the exercise of good faith on the part of the District. The District's decision on matters submitted to a public hearing will be made at or after the public hearing, not beforehand. While Contractor's failure to comply with the terms hereof could be a default leading to termination of this Agreement, in no case will District's failure to approve any items submitted to it for hearing (per Section 6.3 or otherwise) be a default hereunder, and, subject to the requirements of due process, District bears no liability to Contractor for any damages suffered by Contractor as a result of a hearing outcome.

#### **6.4.1.4 Proposition 218 Protest Contract Remedy**

If an annual rate adjustment requested in accordance with Section 6.3 is verified for accuracy by the District and not implemented solely as a result of a fifty percent (50%) protest in accordance with Proposition 218, or if rates in effect are reduced as a result of an initiative measure authorized by Prop 218, the District's inability to increase or maintain the rates as contemplated shall not constitute a breach of this Contract. The parties shall promptly meet and confer in good faith to determine how best to respond to such an occurrence, including reductions in service. If a mutually satisfactory arrangement cannot be agreed upon within sixty (60) days from the protest or initiative, Contractor may either: 1) accept that the rate will remain at the rates in effect prior to the requested rate increase, or 2) submit in writing to the District its intent to terminate the Agreement. A request to terminate the Agreement under this Section would require an eighteen (18) month advance written notice and must be submitted within ninety (90) days of the denial of the rate increase request as a result of the fifty percent (50%) protest. This right to terminate does not apply to rate adjustments requested under Section 6.5 or any other Section of this Agreement, or for any other reason other than requests under Section 6.3.

#### **6.4.2 Formula for Changes in Compensation.**

The compensation paid to FRANCHISEE shall be adjusted annually, effective July 1 of each calendar year hereafter during the term thereto: pursuant to the "Adjustment Formula" set forth below. In the event that circumstances beyond the control of FRANCHISEE impose or generate additional costs in the performance of this Agreement, FRANCHISEE may petition DISTRICTS Board to determine if an adjustment in compensation is warranted to avoid undue financial hardship on FRANCHISEE or material impairment of FRANCHISEE'S ability to provide the level and quality of service herein specified as outlined in "Increase In Operating Costs" below.

FRANCHISEE agrees to furnish all such accounts and records as are needed in the judgment of DISTRICT to substantiate any requests for increased payments from DISTRICT or increased rates to customers. The decision of DISTRICT shall be final.

#### **RATE ADJUSTMENT FORMULA:**

Adjustment in Compensation paid to Contractor will be based on the Consumer Price Index as defined herein. The compensation shall be adjusted annually to take effect on July 1 of each year. The Contractor and District General Manager shall meet during the month of March in order to calculate any adjustment. It is understood that the overall residential and commercial customer rates are determined by three (3) areas: collection portion, disposal portion, recycling portion. All portions of the rates are subject to the annual rate adjustment formula.

Determine the percentage change in the CPI for all urban consumers, Los Angeles-Long Beach-Anaheim average. Based upon the most recent twelve (12) months on data available from the United States Bureau of Labor Statistics ending December of the prior calendar year.

Adjust the residential and commercial rates to reflect the adjustment. The rates for residential and commercial subscriptions, as specified in Exhibit "2", shall be subjected to adjustment commencing on July 1 of each Rate Year.

### **INCREASE IN OPERATING COSTS:**

During the term of this Agreement, Franchisee may petition the District annually for rate increases based on changes in its costs of doing business, including but not limited to, revised laws, ordinances, or regulations, changes in disposal or recycling fees, and material increases in insurance, fuel or other costs (but not for the purchase or repairs of vehicles or equipment). The refusal of the District to adjust the rates as petitioned shall not be considered legitimate cause for failure of Franchisee to comply with the terms of this Agreement. The District shall have the right to conduct an audit and review prior to considering the petition for a rate increase. If the District and the Franchisee cannot agree on the amount of a proposed rate increase, each of them shall then select an accountant from an accounting firm. The selected accountants shall then select a third accountant who will review the relevant records to determine whether the Franchisee's costs of doing business have increased. The District shall submit to a cost increase sufficient to compensate the Franchisee for increased costs to the District for approval at the next meeting of the District. If the District refuses to grant a rate increase, then at any time during the next thirty-day period immediately following the District's refusal the Franchisee shall have the option to terminate this Agreement by providing 120 days written notice to the District. The cost for the accountants shall be paid half by District and half Franchisee.

## **6.5 Extraordinary Adjustments**

Subject to the conditions and limitations in Proposition 218 and Government Code Section 53756, Contractor may request an adjustment to maximum rates at reasonable times other than that allowed under Section 6.3 in the event of extraordinary changes in the cost of providing service under this Agreement. Such changes shall not include changes in tipping fees for Recyclable Material or Organic Material Processing costs, changes in the market value of Recyclable Material, inaccurate estimates by the Contractor of its proposed cost of operations, unionization of Contractor's work force, or change in wage rates or employee benefits. Contractor may request an extraordinary adjustment based upon changes in a direct per ton surcharge assessed at the Approved Disposal Facility by federal, State or local regulatory agencies after the Effective Date. Extraordinary rate adjustments shall only be effective after approval by District Board of Directors and may not be applied retroactively and shall undergo a majority protest process under Proposition 218 if such adjustments increase rates above those currently in effect.

For each request for an adjustment to the maximum rates that Contractor may charge Customers brought pursuant to this Section, Contractor shall prepare a schedule documenting the extraordinary costs. Such



request shall be prepared in a form acceptable to District with support for assumptions made by Contractor in preparing the estimate. Contractor shall also submit a schedule showing how its total costs and total revenues have changed over the past two years for the services provided under this Agreement.

District may request a copy of the Contractor's annual revenue and expense statements for the services provided in the District in connection with the District's review of Contractor's rate adjustment request. District shall review the Contractor's request and, in District's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. District may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

## **6.6 Change in Approved Disposal Facility**

Contractor or District can request a rate increase or decrease due to a change in the Approved Disposal Site Facility location. Transportation costs, as well as gate rates, will be considered. Any change in the Approved Disposal Site Facility selected for use by Contractor must be approved by the District in advance. A rate adjustment for change of the Approved Disposal Site Facility will not become effective until approved by the District Council and will not be retroactively applied.

# **ARTICLE 7: REVIEW OF SERVICES AND PERFORMANCE**

## **7.1 Solid Waste Services and Performance Review Meeting**

District may hold a meeting or a public hearing annually to review Contractor's Solid Waste Collection efforts, source reduction, Processing and other Diversion services, and overall performance under this Agreement (the "Solid Waste Services and Performance Review Meeting"). The purpose of the Solid Waste Services and Performance Review Meeting is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, Processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy, and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Meeting shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals, regulatory constraints, results of route audits, and Contractor performance. District and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Meeting.

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

- A. Current Diversion rates and a report on Contractor's outreach activities for the past year.
- B. Cost of proposed new Diversion programs

- C. Recommended changes and/or new services to improve District's ability to meet the goals of AB 939, AB 341, AB 1826, and SB 1383, and to contain costs and minimize impacts on rates. A specific plan for regulatory compliance shall be included.
- D. Any specific plans for provision for new or changed services by Contractor.

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

As a result of its findings following any Solid Waste Services and Performance Review Meeting, District may require Contractor to provide expanded or new services within a reasonable time and District may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring District to hold a Solid Waste Services and Performance Review Meeting in order to enforce any rights or remedies it has pursuant to the terms hereof.) Should District require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Contractor shall be subject to the provisions of Section 2.10.1.

## **ARTICLE 8: RECORDS, REPORTS, AND INFORMATION REQUIREMENTS**

### **8.1 General**

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

### **8.2 Records**

#### **8.2.1 General**

Contractor shall maintain records required to conduct its operations, to support requests it may make to District, to respond to requests from District in the conduct of District business. Adequate record security

shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft, and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five (5) years, and shall continue to be available for five (5) years after the expiration of this Agreement.

Contractor shall maintain adequate records, and corresponding documentation, of information required by this Agreement, such that the Contractor is able to produce accurate monthly and annual reports, and is able to provide records to verify such reports. Contractor will make these records available and provide to the District, or regional agency, as directed, any record or documentation necessary for the District to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 901, SB 1383, and other current or future federal, State, or local regulations, as amended. Upon request by the District, Contractor shall provide access to Contractor's requested records in a timely manner, not to exceed ten (10) business days from the time of District's request to Contractor.

Contractor agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to District and its official representatives during normal business hours. Account histories shall be accessible to the District by computer for a minimum of five (5) years. District may review or utilize any of the records described in this Section for any purpose whatsoever. Such records include, but are not limited to, financial, Solid Waste, Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Disposal records.

### **8.2.2 Financial Records**

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

Contractor shall maintain at least the following records:

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

### **8.2.3 Solid Waste Records**

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

- A. Customer services and Billing/District payment records;
- B. Records of tons Collected, Processed, Diverted and Disposed by waste stream (Refuse, Recyclable Materials, Organic Materials), by Customer type (Single Family, Multi-Family, Commercial, and Roll-

off Box), and the Facilities (Transfer Station, MRF, Organic Material Processing Facility, or landfill) where such material was taken;

- C. Quantity of Recyclable Materials recovered by material type, as well as quantity of material Diverted from landfills in compliance with AB 939;
- D. Special cleanup event results and Special Event tonnages, including tons Disposed and Diverted;
- E. Routes;
- F. Facilities, equipment and personnel used;
- G. Facilities and equipment operations, maintenance and repair;
- H. Number and type of Refuse, Source Separated Recyclable Materials and source Separated Organic Materials Containers in service;
- I. Complaints; and,
- J. Missed pickups.

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

District views the ability to defend against the CERCLA), State Hazardous Substance Law and related litigation as a matter of great importance. For this reason, District regards the ability to prove where Solid Waste Collected in the District was taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the District was landfilled (and therefore establish where it was not landfilled) and provide a summary copy of the reports required in Section 8.3 for not less than five (5) years following the termination of this Agreement, and agrees to notify District's Risk Administrator and District Attorney before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Contractor shall provide copies of such records to District. The requirements of this Section shall survive the expiration of the Term of this Agreement.

#### **8.2.5 Disposal Records**

Contractor shall maintain, and make available to the District upon request, records of Disposal of all Solid Waste Collected in District for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Contractor discontinues providing Solid Waste Handling Services to District, Contractor shall provide all records of Disposal or Processing of all Solid Waste Collected in District within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

#### **8.2.6 Compilation of Information for State Law Purposes.**

Contractor shall maintain accurate records for its operation, including, but not limited to, Discarded Materials quantities Collected and quantities Transported to or Transferred to each Approved Facility, listed separately by material type, Customer type, and Facility. Records shall be maintained in such form

by methods that facilitate the use of data for the production of reports as needed. Contractor will make these records available and provide to the District any record or documentation necessary for the County to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, AB 1595, SB 1383, and other current or future federal, State, or local regulations, as amended.

### **8.2.7 Other Programs' Records**

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

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

## **8.3 Reports**

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

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by District. In addition to submitting all reports on paper, Contractor agrees to submit all reports in an electronic format approved by District, compatible with District's software/computers at no additional charge. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- A. Determine and set rates and evaluate the efficiency of operations;
- B. Evaluate past and expected progress towards significantly exceeding AB 939 goals and objectives and complying with SB 1383 requirements;
- C. Determine needs for adjustment to programs; and,
- D. Evaluate Customer service and complaints.

Quarterly reports shall be submitted within thirty (30) calendar days after the end of the calendar quarter. Annual reports for which a date is not otherwise specified in this Agreement shall be submitted within thirty (30) calendar days after the end of the calendar year. If requested, Contractor's complaint summary, described in Section 5.2.2, shall be sent to the District Manager within five (5) days of request. All reports shall be submitted electronically to:

District Manager (or designated representative)  
Heber Public Utility District  
1078 Dogwood Rd. Suite #103  
Heber, CA 92249

### **8.3.2 Quarterly Reports**

The information listed shall be the minimum reported:

- A. Gross Receipts for the month by sector (Residential, Commercial, Roll-off).
- B. Tonnage Report
  - 1. Contractor shall report the total quantities in Tons of Discarded Materials Collected, Transferred, Processed, and Disposed by the Contractor, all of which shall be based on actual certified scale weights for each load, if available, or similarly accurate methodology pursuant to weighing protocols in Section 8.3 of Exhibit 8. Tonnage shall be reported separately by:
    - a. Material type, which shall include, at a minimum, separate reporting of Source Separated Recyclable Materials, Source Separated Organic Materials, Black Container Waste, and any other type of Discarded Material separately Collected by Contractor (including, but not limited to: Bulky Items, used oil, mixed C&D Debris, dirt, rock, metals, cardboard, wood waste, reusable items, salvageable materials, etc.);
    - b. Customer/sector type (Single-Family, Multi-family, Commercial Roll-off Box, C&D Debris); and,
    - c. Approved Facility and Facility type.
  - 2. Report Residue level and Tonnage for all Discarded Materials Processed, listed separately by material type Collected and Approved Facility(ies) used.
  - 3. Source Separated Recyclable Materials Tonnage marketed, by commodity, and including average commodity value for each, and Processing Residue Tonnage Disposed, listed separately by material type Collected and Approved Facility(ies) used.
  - 4. Documentation of all Discarded Materials exported out of State, as provided in 14 CCR Sections 18800 through 18813.
  - 5. Monthly report of Tonnage Collected and Diverted for each completed C&D project site and other data as it relates to the C&D services described in this Agreement.
- C. Collection and Subscription Report
  - 1. Number of Containers at each Service Level by Customer Type and program, including:
    - a. A summary of the total gallons of Cart service, cubic yards of Bin Service, and pulls; and cubic yards or Tons of Drop Box and Compactor service by Customer Type.
    - b. Calculation of the average volume of service received per: Single-Family Dwelling Unit (separately identifying Dwelling Units in a duplex, triplex, or fourplex); Multi-Family Dwelling Unit; and, Commercial Customer.
  - 2. A summary of Customer subscription data, including the number of accounts; the number of Customers subscribing to each Cart, Bin, and Roll-Off Box Service Level listed separately for Single-Family, Multi-Family, and Commercial and separately for each type of Discarded Material; and the number of Bulky Items Collections performed.

3. Documentation of the universal service enrollment process including a copy of the District-wide Generator enrollment level evaluation conducted pursuant to Section 5.2.7 of this Agreement.
4. List of all Commercial and Multi-Family Customers with a Black Container Waste Service Level of two (2) cubic yards of service capacity per week or more. Such list shall include each such Customer's service address and Black Container Waste, Source Separated Recyclable Materials, and Source Separated Organic Materials Service Levels.
5. The total number of de minimis waivers, and physical space constraint waivers granted in the month, including the Generator name and address for each waiver.
6. The number of waiver reverifications performed by the Contractor pursuant to Section 5.8 of this Agreement in the month, if any, including a copy of documentation for each reverification inspection, which shall include, at a minimum: the Generator's name, address, and Generator type; the type of waiver being verified; any photographic or other evidence collected during the inspection; and the resulting recommended conclusion by the Contractor regarding the validity of the waiver. The Contractor shall provide a summary of recommendations to the District of all waivers which the Contractor concludes to no longer be warranted.
7. Number of Bulky Item/Reusable Materials Collection events by Customer Type.

D. Contamination Monitoring Report

Hauler Route Reviews (Section 5.5)

The Contractor shall submit the following information regarding contamination monitoring Hauler Route reviews conducted pursuant to Section 5.5 of this Agreement:

1. The number and results of Hauler Route reviews conducted pursuant to Section 5.5 of this Agreement;
2. Description of the Contractor's process for determining the level of contamination;
3. Summary report of non-Collection notices and/or contamination processing fee assessment notices issued, which for each notice shall include the date of issuance, Customer name, and service address;
4. A record of each inspection and contamination incident, which shall include, at a minimum:
  - a. Name of the Customer
  - b. Address of the Customer
  - c. The date the contaminated Container was observed
  - d. The staff who conducted the inspection
  - e. The total number of violations found and a description of what action was taken for each
  - f. Copies of all notices, and enforcement orders issued or taken against Generator with Prohibited Container Contaminants
  - g. Any photographic documentation or supporting evidence.
5. Documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants;

6. A list of all Customers assessed contamination processing fees, pursuant to Section 5.5 of this Agreement, reported separately by Single-Family, Multi-Family, and Commercial Customers and including the Customer name, Customer address, and reason for the assessment of the contamination processing fee, and the total number of instances contamination processing fees were assessed in the month and the total amount of fees collected in the month.
7. Any other information reasonably requested by the District or specified in contamination monitoring provisions of this Agreement.

E. Customer Service Report

1. Number of Customer calls received regarding complaints, listing the number of calls separately by category (e.g., missed pickups). These complaints shall be documented and reported separately from SB 1383 noncompliance complaints or other regulatory noncompliance complaints.
2. Number of missed or incomplete Collections reported in total, and per one thousand (1,000) Service Opportunities in the District, presented in a graph format, which compares total missed Collections in the District during the current report period to total missed Collections in the District in past reporting periods.
3. Number of new service requests for each Customer type and requested service(s).
4. Contractor shall maintain a record of all SB 1383 noncompliance complaints and responses pursuant to Section 5.2.4 of this Agreement and submit the following information:
  - a. Total number of complaints received and total number of complaints investigated
  - b. Copies of documentation recorded for each complaint received, which shall at a minimum include the following information:
    - i. The complaint as received;
    - ii. The name and contact information of the complainant, if the complaint is not submitted anonymously;
    - iii. The identity of the alleged violator, if known;
    - iv. A description of the alleged violation; including location(s) and all other relevant facts known to the complainant;
    - v. Any relevant photographic or documentary evidence submitted to support the allegations in the complaint; and,
    - vi. The identity of any witnesses, if known.
  - c. Copies of all complaint reports submitted to the District, pursuant to Section 5.2.4.A of this Agreement.
  - d. Copies of all investigation reports submitted to the District pursuant to Section 5.2.4.B of this Agreement, which shall include at a minimum:
    - i. The complaint as received;
    - ii. The date the Contractor investigated the complaint;
    - iii. Documentation of the findings of the investigation;



- iv. Any photographic or other evidence collected during the investigation; and,
- v. Contractor's recommendation to the District on whether or not the entity investigated is in violation of SB 1383 based on the Contractor's investigation.

F. Generator Waivers

Contractor shall provide a report that documents each Generator waiver request reviewed by Contractor, which are required by Section 5.2.7. Identify in the report the Generator name and service address, the type of waiver requested, the status of the waiver (accepted, denied, pending), and other information reasonably requested by the District.

G. Education Program Report

The monthly status of activities identified in the public education plan described in Section 5.3 of this Agreement.

H. Discarded Materials Evaluation Reports

In accordance with Section 8.5 of Exhibit 8, Contractor shall provide reports of evaluations of Discarded Materials conducted at Approved Facilities.

### **8.3.3 Annual Report**

In addition to the monthly reporting requirements in Section 8.3.2, the Contractor shall provide an Annual Report, covering the most recently-completed calendar year. The Annual Report shall include the information in the following subsections.

A. Contractor shall provide the following information in the annual report:

1. Collection and Subscription Report

- a. A summary of all data provided in the Tonnage Report section, including quarterly and annual totals and averages.
- b. The type(s) of Collection service(s) provided, a list of all hauler routes serviced, and a record of the addresses served on each hauler route.
- c. A summary of Customer subscription data, including the number of accounts; the total number of Generators enrolled with Contractor for service, listed separately by service level and Container type (Cart, Bin, and Roll-Box service), separately by Single-Family, Multi-Family, and Commercial Customers, and separately for each type of Discarded Material; and the number of Bulky Items Collections performed.
- d. A detailed list of Single-Family, Multi-Family, and Commercial Customer information, including Black Container Waste, Source Separated Recyclable Materials, and Source Separated Organic Materials Service Levels, Customer type, and Customer service addresses reflecting Customer Service Levels as of June 30 (for the year in which the report is submitted).
- e. The number of C&D Collection sites served and Tonnage Collected, Tonnage Diverted, and Diversion level for each C&D Collection site.

2. Processing Facility Report

- a. Temporary Equipment or Operations Failure: If the Contractor is granted a Processing Facility temporary equipment or operational failure waiver, in accordance with Section 4.7.1 of the Agreement, the Contractor shall include the following documents and information:
  - i. The number of days the Processing Facility temporary equipment waiver or operation failure waiver was in effect;
  - ii. Copies of any notifications sent to the District pursuant to Section 4.7.1.A of the Agreement, and copies of District notices to Contractor pursuant to Section 4.7.1.B of the Agreement;
  - iii. Documentation setting forth the date of issuance of the waiver, the timeframe for the waiver; and,
  - iv. A record of the tons of Source Separated Recyclable Materials, Source Separated Organic Materials, and/or Black Container Waste redirected to an Alternative Facility or Disposed at an Approved Disposal Facility as a result of the waiver, recorded by Collection vehicle or Transfer vehicle number/load, date, and weight.
- b. Quarantined Organic Waste: A record of all compliance agreements for quarantined Organic Waste that are Disposed of, including the name of Generator, date issued, location of final disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a Landfill.
- c. Compostable Plastics in Green Containers: Written notification that the Approved Organic Waste Processing Facility(ies) has and will continue to have the capabilities to Process and recover the Compostable Plastics included with the Source Separated Organic Materials Transported to the Approved Organic Waste Processing Facility.
- d. Plastic Bags in Green Containers: Written notification to the District that the Approved Organic Waste Processing Facility has and will continue to have the capabilities to Process and recover plastic bags when it recovers Source Separated Organic Materials.

3. Public Education and Outreach Report

- a. A copy of all education and outreach materials provided to Generators, or otherwise used for education and outreach efforts in accordance with Section 5.3 of the Agreement, including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and website and social media postings.
- b. A record of the date and to whom the information was disseminated or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
- c. The number of Organic Generators and Commercial Edible Food Generators that received information and the type of education and outreach used.
- d. For any mass distribution through mailings or bill inserts, the Contractor shall maintain a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.

- e. A copy of electronic media, including the dates posted of: social media posts, e-mail communications, or other electronic messages.
  - f. Contractor shall maintain a record of all technical assistance efforts conducted pursuant to Section 5.7 of the Agreement, including:
    - i. The name and address of the Customer/Generator receiving technical assistance, and account number, if applicable.
    - ii. The date of any technical assistance conducted and the type of technical assistance, including, but not limited to: site visits, waste assessments, compliance assessments, direct outreach, workshops, meetings, events, and follow-up communications.
    - iii. A copy of any written or electronic educational materials distributed during the technical assistance process.
  - g. A copy of all special event reports submitted to the District in accordance with Section 4.5.11 of the Agreement.
4. Compliance Monitoring and Enforcement Report
- a. A summary of the total number of SB 1383 non-compliance complaints that were received and investigated, and the number of Notices of Violation issued based on investigation of those complaints, in accordance with Section 5.2 and Section 8.3.2.E of the Agreement.
  - b. The total number of Hauler Route reviews conducted pursuant to Section 5.5 of the Agreement.
  - c. The number of inspections conducted by type for Commercial Edible Food Generators, Food Recovery Organizations, and Commercial businesses.
  - d. A copy of written and/or electronic records and documentation for all audits, studies, compliance reviews, and all other inspections conducted pursuant to Section 5.6 of the Agreement.
  - e. The number of Commercial businesses that were included in a compliance review performed by the Contractor, and the number of violations found and corrected through compliance reviews, if different from the number reported in subsection 4.f. of this Section; including a list with each Generator's name or account name, address, and Generator type.
  - f. The total number of Notices of Violation issues, categorized by type of Generator.
  - g. The number of enforcement actions that were resolved, categorized by type of Generator.
  - h. Copies of all written notices, violations, educational materials, or other enforcement mechanisms issued to noncompliant Generators.
5. Food Recovery Program Support
- a. The total number of Generators classified as Tier One and Tier Two Commercial Edible Food Generators located within the District.

- b. The number of Food Recovery Services and Food Recovery Organizations located and operating within the District that contract or have written agreements with Commercial Edible Food Generators for Food Recovery.
  - c. The number of Generators participating in the Edible Food Recovery program, as described in Section 4.4.5 of the Agreement.
- 6. Vehicle and Equipment Inventory
  - a. A list of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage at June 30.
  - b. If applicable, the name, physical location, and contact information of each entity, operation, or Facility from whom the RNG was procured.
  - c. If applicable, the total amount of RNG procured by the Contractor for use in Contractor vehicles, in diesel gallon equivalents (DGE), including copies of any receipts, invoices, or other similar documentation evidencing procurement. In addition to the amount procured, Contractor shall include the total amount actually used in Contractor vehicles in the calendar year, if these values are different.
- 7. Customer Revenue and District Fee Payment Report. Provide a statement detailing Gross Revenue from all operations conducted or permitted pursuant to this Agreement and report of all District fees paid in accordance with Article 3 of this Agreement.

### **8.3.4 Financial Report**

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

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

### **8.4 Reporting Adverse Information**

Contractor shall provide District two copies (one to the District Manager, one to the District Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating in any way to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to District within thirty (30) days of receipt

by Contractor, or sooner if reasonably apparent that to do so is materially relevant, and any responses by Contractor shall be submitted to District simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely submitted to District, but shall be made available to District promptly upon District's written request.

### **8.5 Right to Inspect Records**

District shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor or its Affiliates that District shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Contractor's performance provided for in this Agreement. Contractor shall make all records and documents to be reviewed and inspected by District as a part of any audit or other record review conducted by District, available for District's review, inspection and copying within five (5) days of receiving written notice from District requesting the same.

### **8.6 Failure to Report**

The refusal or failure of Contractor to file any required reports, or to provide required information to District, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of the Agreement as described in Section 11.1 and shall subject Contractor to all remedies which are available to the District under Agreement or otherwise.

### **8.7 Public Records**

All reports made to the District pursuant to this Agreement, except for financial statements that may be made available for review as part of the biennial audit under Section 8.2.8, shall be deemed public records for purposes of the District's use, any litigation, and public records requests made pursuant to the California Public Records Act (Statutes of 1968, Chapter 1473; currently codified as California Government Code §6250 through 6276.48).

## **ARTICLE 9: INDEMNIFICATION, INSURANCE, BOND, AND LETTER OF CREDIT**

### **9.1 Indemnification**

Contractor hereby agrees to and shall indemnify and hold harmless District, its elected and appointed boards, commissions, officers, employees, consultants and agents (collectively, "Indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, contractors and/or subcontractors to comply in all respects with the provisions of this Agreement, Applicable Laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and

licenses; (3) the acts of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the Indemnitees' negligence, but shall not extend to matters resulting from the Indemnitees' sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of District, at Contractor's sole cost and expense, defend (with attorneys acceptable to District) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse District for any and all costs and expenses District incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

Contractor, upon demand of District, made by and through the District Attorney, shall protect District and appear in and defend the Indemnitees in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of District's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, or asserting rights under the United States or California Constitutions or any federal or State law to provide Solid Waste Handling Services in the District.

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

## **9.2 Hazardous Substances Indemnification**

- A. Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to District), reimburse, indemnify, and hold Indemnitees harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:
1. results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or
  2. relates to material Collected, Transported, Recycled, Processed, treated or Disposed of by Contractor.
- B. Contractor's obligations pursuant to this Section shall apply, without limitation, to:
1. any Claims brought pursuant to or based on the provisions of any Environmental Law;

2. any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation of Contractor of any Facility;
  3. any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, Transportation, Disposal, Processing or use of any materials recovered by Contractor;
  4. any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.
- C. The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.
- D. For purposes of this Section, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste any crude oil or refined or unrefined petroleum product, or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this Agreement.

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

### **9.3 CalRecycle Indemnification and Guarantee**

Contractor's duty to defend and indemnify herein includes payment of all fines and/or penalties imposed by CalRecycle, subject to the restrictions set forth in Public Resources Code Section 40059.1, if the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 and corresponding regulations are not met by the Contractor with respect to the Discarded Materials Collected under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement, or, (ii) due to Contractor delays in providing information that prevents Contractor or Jurisdiction from submitting reports required by AB 939, AB 341, AB 1826, and/or SB 1383 and corresponding regulations in a timely manner. The provisions of this Section shall survive the termination or expiration of this Agreement. In carrying out the provisions of this Section, Contractor agrees to perform the following obligations at its cost and expense:

- A. Defend, with counsel approved by District, indemnify and hold harmless the District against all fines and/or penalties imposed by CalRecycle, if Contractor fails or refuses to provide information relating to its operations which is required under this Agreement and such failure or refusal prevents or delays District from submitting reports required by AB 939, AB 341, AB 1826, and/or SB 1383 in a timely manner;
- B. Assist District in preparing for, and participating in, CalRecycle's biannual review of the District's source reduction and Recycling element pursuant to Public Resources Code Section 41825;
- C. Assist District in responding to inquiries from CalRecycle in applying for an extension under Public Resources Code Section 41820, if so directed by District; in conducting any hearing conducted by CalRecycle relating to AB 939; or in any other investigative or enforcement manner undertaken by any agency;

- D. Defend, with counsel acceptable to District, and indemnify and hold harmless the District against any fines or penalties levied against it for violation of AB 939, AB 341, AB 1826, and/or SB 1383 requirements, provided that Contractor's obligation to indemnify District shall be subject to the limitations set forth in Public Resources Code Section 40059.1(c) as may be amended from time to time;
- E. In cooperating with the District, should it seek to become its own enforcement agency, to the extent it may be permitted under State law.

## 9.4 Insurance

Contractor shall procure and maintain during the entire Term of this Agreement the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of any of Contractor's officers, agents, representatives, employees, or subcontractors in connection with Contractor's performance. The insurance requirements hereunder in no way limit Contractor's various defense and indemnification obligations, or any other obligations as set forth herein. See Exhibit 5 for additional insurance requirements not covered below.

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

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

**B. Minimum Limits of Insurance.** Contractor shall maintain in force for the term of this Agreement limits no less than:

1. Comprehensive General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence for bodily injury, Personal injury and property damage.
2. Automobile Liability: Five Million Dollars (\$5,000,000) single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California or provide evidence of State approval to be self-insured.

**C. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by District. At the option of District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's as respects District, its officials, employees and agents; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.



**D. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. District, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased, or used by Contractor; or vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to District, its elective and appointive boards, commissions, officials, employees, agents or volunteers.
- b. Contractor's insurance coverage shall be primary insurance as respects District, its elective and appointive boards, commissions, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by District, its officials, elective and appointive boards, commissions, employees, agents, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to District, its officials, elective and appointive boards, commissions, employees, agents, or volunteers.
- d. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against District, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Contractor for District.

3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to District.

**E. Acceptability of Insurers.** The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California with an A.M. Best's rating of A- or better and a minimum financial size VII and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of B or better.

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

**G. Companies and Subcontractors.** Contractor shall include all Companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Contractor and subcontractor. All coverages for Companies and subcontractors shall be subject to all of the requirements stated herein.

**H. Required Endorsements**

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to District in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

District Manager  
Heber Public Utility District  
1078 Dogwood Rd. Suite #103  
Heber, CA 92249

The Commercial Liability policy shall contain endorsements in substantially the following form:

a. "Thirty (30) days prior written notice shall be given to District in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

District Manager  
Heber Public Utility District  
1078 Dogwood Rd. Suite #103  
Heber, CA 92249

"Contractor agrees to endorse the third-party general liability coverage required herein to include as additional insureds of District, its officials, employees and agents, using standard ISO endorsement No. CB 2010 with an edition date of 1985, or equivalent provisions as determined acceptable by the Office of the District Attorney for the District in its sole discretion. Contractor also agrees to require all contractors, subcontractors and anyone else involved in any way with the project contemplated by this agreement, to do likewise."

c. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by District, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d. "Inclusion of District as an insured shall not affect District's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and District in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor would have been liable if only one party had been named as an insured."

**I. Delivery of Proof of Coverage.** Simultaneously with the execution of this Agreement, Contractor shall furnish District certificates of each policy of insurance required hereunder, in form and substance satisfactory to District. Such certificates shall show the type and amount of coverage, effective dates, and dates of expiration of policies and shall have all required endorsements. If District requests, copies of each policy, together with all endorsements, shall also be promptly

delivered to District.

Renewal certificates will be furnished periodically to District to demonstrate maintenance of the required coverage throughout the Term.

## **ARTICLE 10: DISTRICT'S RIGHT TO PERFORM SERVICE**

### **10.1 General**

In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, Process, Transport or Dispose of any or all Solid Waste as required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, excluding Saturday, Sunday, and holidays listed in Section 4.6.1, and if, as a result thereof, Solid Waste should accumulate in District to such an extent, in such a manner, or for such a time that such accumulation endangers or menaces the public health, safety or welfare, then District shall have the right, but not the obligation, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take possession of any or all of Contractor's land, equipment and other property used or useful in the Collection and Transportation of Solid Waste, and to use such property to Collect and Transport any Solid Waste generated within District which Contractor would otherwise be obligated to Collect, Transport, and properly Dispose of or Process pursuant to this Agreement.

Notice of District's determination to effect its rights under this Section may be given orally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours, excluding Saturday, Sunday and holidays listed in Section 4.6.1, of the oral notification.

Contractor shall place a minimum of five Roll-off Boxes throughout the District within forty-eight (48) hours of service disruption. District may instruct Contractor to distribute plastic bags to Customers as well.

Contractor further agrees that in such event:

- A. It will take direction from District to effect the transfer of possession of equipment and property to District for District's use, or for use by any Person or entity designated by the District.
- B. It will, if District so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.
- C. District may immediately engage all or any personnel necessary or useful for the Collection and Transportation of Solid Waste, including, if District so desires, employees previously or then employed by Contractor. Contractor further agrees, if District so requests, to furnish District the services of any or all management or office Personnel employed by Contractor whose services are necessary or useful for Solid Waste Collection, Transportation, Processing and Disposal operations and for the Billing and collection of fees for these services.

District agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.6, District shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by District, for the period of District's possession, if any, which extends beyond the period of time for which Contractor has rendered Bills in advance of service, for the class of service involved. If the interruption or discontinuance in service is caused by any other reason, regardless of District's implementation of options under this agreement, District may consider this a default.

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

If District suffers an interruption or discontinuance of service (including interruptions and discontinuance due to events described in Section 11.6), District may take possession of and use all of Contractor's property described above until other suitable arrangements can be made for the provision of Solid Waste Services which may include the grant of a Franchise to another waste hauling company.

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

Contractor agrees that it shall reimburse District for any and all costs and expenses incurred by District beyond that billed and received by District in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of Contractor under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by District to Contractor of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

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

It is further mutually agreed that District may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Contractor and thereupon demand that Contractor resume the

Solid Waste Handling Services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

### **10.5 District's Possession Not A Taking**

It is expressly agreed between the Parties that District's exercise of its rights under this Article (1) does not constitute a taking of private property for which compensation must be paid, (2) shall not create any liability on the part of District to Contractor, and (3) does not exempt Contractor from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section provided that Contractor is not required to indemnify District against claims and damages arising from the sole negligence of District, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection Vehicles during the time District has taken possession of such vehicles.

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

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

## **ARTICLE 11: DEFAULT, REMEDIES, AND LIQUIDATED DAMAGES**

### **11.1 Events of Default**

All provisions of the Franchise and this Agreement to be performed by Contractor are considered material. Each of the following shall constitute an event of default by the Contractor.

- A. Fraud or Deceit or Misrepresentation.** If the Contractor engages in, or attempts to practice, any fraud or deceit upon District or makes a misrepresentation regarding material information to District.
- B. Insolvency or Bankruptcy.** If Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage.** If Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation.** If Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to the Contractor is entered.

- E. Failure to Perform.** If Contractor ceases to provide all or a portion of the Collection, Processing or Recycling services, or any other Solid Waste Handling Services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Contractor, including labor disputes.
- F. Failure to Pay.** If Contractor fails to make any payments required under this Agreement and/or refuses to provide District, within ten (10) days of the demand, with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- G. Failure to Cooperate with Audits.** Failure to complete, perform or cooperate with any audit as described by this Agreement.
- H. Failure to Submit Reports or Documentation.** Failure to complete or to provide required reports or documents to District as required by this Agreement.
- I. Acts or Omissions.**
  - 1. Any act or omission by Contractor relative to the services provided under this Agreement which violates the terms, conditions, or requirements of this Agreement, or AB 939 and SB 1383, or any law, statute, ordinance, order, directive, rule, or regulation issued pursuant to AB 939 and SB 1383 shall constitute a default by the Contractor. Any failure to correct or remedy any such violation within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter shall constitute a default by Contractor.
  - 2. Any situation in which Contractor or any of its officers, directors or employees are found guilty of any crime related to the performance of this Agreement, or of any crime related to anti-trust activities, illegal Transport or Disposal of hazardous or toxic materials, or bribery of public officials shall constitute a default by Contractor. The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty as well as any admission of guilt by Contractor or any of Contractor's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge."
- J. False or Misleading Statements.** Any representation or disclosure made to District by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- K. Attachment.** The seizure of, attachment of, or levy on, the operating equipment of Contractor, including, without limits, its equipment, maintenance or office facilities, or any part thereof.
- L. Suspension or Termination of Service.** Any termination or suspension of the transaction of business by Contractor, including, without limitation, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) consecutive days.

- M. Failure to Provide Assurance of Performance.** If Contractor fails to provide reasonable assurances of performance as required under Section 11.8.
- N. Commingling of Recyclable Materials, and/or Organic Materials With Refuse/Landfilling of Recyclable Materials and/or Organic Materials.** If Contractor empties a Container of properly set out Recyclable Materials and/or Organic Materials into a Refuse load, or Transports Recyclable Materials and/or Organic Materials to a landfill or other location at which the material will not be Diverted from landfilling.
- O. Failure to Meet AB 939 Diversion Goal.** If CalRecycle determines the District is not in compliance with AB 939 Diversion requirements as demonstrated by receipt of a corrective action plan from CalRecycle. (See Section 4.3.6).
- P. Failure to Provide Processing Capacity.** Contractor fails to provide adequate Processing capacity in accordance with Exhibit 8, which is essential for the District to achieve SB 1383 compliance.
- Q. Failure to Achieve Processing Standards.** Contractor fails to achieve the Processing standards specified in Exhibit 8, including achievement of minimum Organic Materials recovery rates, which are essential for the District to achieve SB 1383 compliance.
- R. Failure to Comply with Other Requirements of SB 1383.** Contractor fails to comply with other requirements of the Agreement including, but not limited to, public education, reporting, contamination monitoring, recordkeeping and reporting, or other obligations of this Agreement that delegate the District’s responsibility and/or authority under SB 1383 to the Contractor.
- S. Failure to Implement Collection Program.** Contractor fails to implement a Collection program that complies with the requirements of Article 4, which is essential for the District to achieve compliance with SB 1383. Contractor shall have forty-eight (48) hours from the time it is given notification by District to cure any default arising under subsections E, F, G, H, K, L, M and N provided, however, that District shall not be obligated to provide Contractor with a notice and cure opportunity if Contractor has committed the same or similar breach within a twenty-four (24) month period. It is expressly understood that Contractor is not entitled to receive notice of default, or to cure such default, with respect to those matters listed in subsections A, B, C, D, I, J, O, P, Q, R, and S.

## **11.2 Criminal Activity of Contractor**

Should the Contractor or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal Transport or Disposal of hazardous or toxic materials, or bribery of public officials, the District reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Contractor has been given notice and opportunity to present evidence in mitigation. The term “found guilty” shall be deemed to include any judicial determination that Contractor or any of Contractor’s officers, directors, or employees is guilty and any admission of guilt by Contractor or any of Contractor’s officers, directors or employees including, but not limited to, the plea of “guilty”, “nolo contendere”, “no contest”, and “guilty to a lesser charge” entered as part of any plea bargain. If the Agreement is terminated pursuant to the above, such termination shall not occur if, within six months after District determines to terminate, the Contractor



completes a transfer of its contract rights and obligations to an individual or entity acceptable to the District pursuant to this Agreement.

### **11.3 Section Reserved**

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

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

District's rights to terminate this Agreement and to take possession of Contractor's Facility and/or equipment are not exclusive, and District's termination of this Agreement shall not constitute an election of remedies. Instead, such remedies shall be in addition to any and all other legal and equitable rights and remedies which District may have.

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

### **11.5 Liquidated Damages**

- A. General.** District finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by District as a result of a breach by Contractor of certain specific obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The parties further acknowledge that consistent, reliable Solid Waste Handling Service is of utmost importance to District and that District has considered and relied on Contractor's representations as to its quality of service commitment in entering this Agreement with it. The Parties further recognize

that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, District and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which District will suffer. Therefore, without prejudice to District's right to treat such breaches as an event of default under this Article 11, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to District that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor	District
Initial Here____	Initial Here____

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

**1. Collection Reliability**

- a. For each failure to commence service to a new Customer account within seven (7) days after order, which exceeds five (5) such failures annually: \$100.00 per occurrence
- b. For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer account on the scheduled Collection day and not make up the Collection within the time allotted per Section 4.6.6: \$100.00 per occurrence
- c. For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$100.00 per occurrence  
Each additional twenty-four (24) hour period: \$50.00 per occurrence

**2. Collection Quality**

- a. For each occurrence or failure to properly return any Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten (10) such occurrences annually: \$100.00 per Container
- b. For each occurrence of excessive noise or discourteous behavior: \$100.00 per occurrence
- c. For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$250.00 per occurrence
- d. For each occurrence of damage to private property which exceeds five (5) such occurrences annually: \$250.00 per occurrence

- e. For each failure to clean up Solid Waste spilled from Solid Waste Containers within ninety (90) minutes that exceeds ten (10) such failures annually: \$150.00 per occurrence
- f. For each deficiency in street sweeping services (as defined in Section 4.11 and Exhibit 7) that exceeds three (3) per year at the same location: \$50.00 per occurrence

**3. Customer Responsiveness**

- a. For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed: \$150.00 per day
- b. For each failure to process Customer complaints as required by Article 5: \$150.00 per occurrence
- c. For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within two (2) business days of request from District or Customer: \$ 50.00 per day
- d. For each failure to repair or replace a damaged or missing Container within two (2) business days of request from District or Customer: \$ 50.00 per day
- e. For each failure to process a claim for damages within thirty (30) days from the date submitted to Contractor: \$100.00 per occurrence
- f. For each additional thirty (30) day increment of time in which Contractor has failed to resolve a claim for damages within thirty (30) days from the claim date: \$100.00 per increment

**4. Diversion Efforts**

For each calendar quarter in which Contractor fails to provide support to the District within thirty (30) days of quarter-end, documenting that it Diverted twenty percent (20%) of the Solid Waste Contractor Collected under this Agreement: \$5,000.00 per quarter

**5. Timeliness of Submissions to District**

- a. Any report shall be considered late until such time as a correct and complete report is received by District. For each calendar day a report is late, the daily liquidated damage amount shall be:
  - i) Monthly Reports: \$400 per day
  - ii) Annual Reports: \$350 per day
  - iii) Monthly Contractor Billing and Revenue Report (for Customers billed by Contractor – see Section 5.1.2) \$ 50 per day

District may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

- b. For each failure to notify District in advance of a change in contract or service liaison to the District under this agreement: \$1,000 per notice missed

**6. Cooperation with Service Provider Transition**

- a. For each day routing information requested by District in accordance with Section 12.9 is received after District-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service : \$1,000/day
- b. For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Section 12.9: \$1,000/day
- c. For delay in not meeting the requirements contained in Section 12.9 in a timely manner, in addition to the daily liquidated damages for breach under 6(a) and 6(b) above, liquidated damages of: \$35,000

**7. Public Education and Outreach**

- a. **Failure to Perform Public Education and Outreach.** For each failure to perform any individual education and outreach activity as required and in the timeframe specified by this Agreement.
  - 1<sup>st</sup> violation - \$50 per occurrence
  - 2<sup>nd</sup> violation - \$100 per occurrence
  - 3<sup>rd</sup> and subsequent violations - \$250 per occurrence

**8. General Contract Adherence**

For each day that Contractor fails to provide services required under the Agreement, or comply with terms of the Agreement, five (5) business days after receipt of written notification from District that such services are not being provided or terms are not being met: \$300.00/day

**9. SB 1383 Requirements**

- a. Use of Unauthorized Facilities. For each individual occurrence of delivering Discarded Materials to a Facility other than an Approved Facility(ies) for each Discarded Material type under this Agreement.
  - 1<sup>st</sup> violation - \$50 per ton per offense
  - 2<sup>nd</sup> violation - \$100 per ton per offense
  - 3<sup>rd</sup> and subsequent violations - \$250 per ton per offense
- b. Failure of Approved Facility(ies) to Meet Limits on Incompatible Materials (if Applicable). For each Ton of Source Separated Recyclable Materials or Source Separated Organic Materials received at the Facility(ies) in a quarterly reporting period when Organic Waste recovered after Processing exceeds Incompatible Material thresholds defined in Exhibit 8 Section 8.1.F.2 and 8.1.G.5 if limits on Organic Waste in materials sent to Disposal apply. Liquidated damages are assessed in the quarterly reporting period when the failure occurred.
  - 1<sup>st</sup> violation - \$50 per ton per offense

2<sup>nd</sup> violation - \$100 per ton per offense  
3<sup>rd</sup> and subsequent violations - \$250 per ton per offense

- c. Failure of Approved Facility(ies) to Meet Limits on Organic Waste in Materials Sent to Disposal. For each Ton of Source Separate Recyclable Materials or Source Separated Organic Materials received at the Facility(ies) in a quarterly reporting period when Organic Waste in the materials sent to Disposal exceeds the thresholds defined in Exhibit 8 Section 8.1.G.2 if limits on Organic Waste in materials sent to Disposal apply. Liquidated damages are assessed in the quarterly reporting period when the failure occurred.

1<sup>st</sup> violation - \$50 per ton per offense  
2<sup>nd</sup> violation - \$100 per ton per offense  
3<sup>rd</sup> and subsequent violations - \$250 per ton per offense

- d. Failure to Perform Contamination Monitoring Requirements. For each failure to conduct contamination monitoring in accordance with Section 5.5 of this Agreement.

1<sup>st</sup> violation - \$50 per route per occurrence or per waste evaluation per occurrence  
2<sup>nd</sup> violation - \$100 per hauler route per occurrence or per waste evaluation per occurrence  
3<sup>rd</sup> and subsequent violations - \$250 per route per occurrence or per waste evaluation per occurrence

- e. **Failure to Comply with Container Colors Requirements as Required by SB 1383.** For each occurrence of Contractor's failure to comply with Container color requirements pursuant to Section 4.6.4.1 of this Agreement.

1<sup>st</sup> violation - \$50 per container occurrence  
2<sup>nd</sup> violation - \$100 per container occurrence  
3<sup>rd</sup> and subsequent violations - \$250 per container occurrence

- f. **Failure to Conduct Compliance Tasks.** For each failure to conduct any compliance review, Discarded Materials evaluations pursuant to Section 8.5 of Exhibit 8, and/or other inspection required by this Agreement.

1<sup>st</sup> violation - \$50 per occurrence  
2<sup>nd</sup> violation - \$100 per occurrence  
3<sup>rd</sup> and subsequent violations - \$250 per occurrence

- g. **Failure to Issue Contamination Notices.** For each failure of Contractor Collection personnel to issue contamination notices and contaminating processing fee notices and maintain documentation of issuance as required by Section 5.5 of this Agreement.

1<sup>st</sup> violation - \$50 per route per day  
2<sup>nd</sup> violation - \$100 per route per day  
3<sup>rd</sup> and subsequent violations - \$250 per route per day

- h. **Failure to Conduct Follow-Up Inspections.** For each failure to conduct a follow-up inspection as required by Section 5.6 of this Agreement.

1<sup>st</sup> violation - \$50 per occurrence

2<sup>nd</sup> violation - \$100 per occurrence

3<sup>rd</sup> and subsequent violations - \$250 per occurrence

Prior to assessing liquidated damages, District shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of District relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with District. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. District will provide Contractor with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of District shall be final.

- C. **Amount.** District may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.
- D. **Timing of Payment.** Contractor shall pay any liquidated damages assessed by District within thirty (30) days after they are assessed. If they are not paid within the thirty (30) day period, District may proceed against the performance bond required by the Agreement or find Contractor in default and terminate this Agreement pursuant to Section 11.4, or both.

## 11.6 Excuse from Performance

The Parties understand and agree herein that the services provided under this Agreement are critical to the protection of public health and safety and that Contractor is expected to perform these services despite the occurrence of events that may otherwise give rise to force majeure conditions. The Parties herein agree that the obligations for excuse from performance under this Agreement should and do have a higher standard than the general law understanding of force majeure. In particular, a Party shall be excused from performing their obligations hereunder and from any obligation to pay Liquidated Damages if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, pandemics, civil insurrection, riots, acts of any domestic government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. However, performance shall only be excused if the Party requesting relief from performance can specifically demonstrate that the performance of a specific obligation is impossible and shall only be excused from those requirements which are demonstrated to be impossible. All other performance obligations that remain possible, shall be required to continue.

In the case of labor unrest or job action directed at a third party over whom Contractor has no control, the inability of Contractor to provide services in accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide reasonable assurance of the safety of Contractor's employees while providing such services; or, (ii) make reasonable accommodations with respect to Container placement and point of Delivery, time of Collection, or other operating circumstances to minimize any confrontation with pickets or the number of Persons necessary to make Collections shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on Contractor's cooperation in performing Collection services at different times and in different locations. Further, in the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other

concerted job action conducted by the Contractor's employees or directed at the Contractor, or a subsidiary, the Contractor shall not be excused from performance. In such case, Contractor shall continue to provide a reasonably satisfactory level of performance during the pendency thereof, but the Contractor shall not be required to adhere strictly to the specific requirements of this Agreement regarding routes, Collection times or similar matters; provided, however, that in no event shall more than seven (7) calendar days elapse between pickups for Residential and Commercial Customers. Any labor action initiated by Contractor, including but not limited to a lock-out, shall not be grounds for any excuse from performance and Contractor shall perform all obligations under this Agreement during the pendency of such Contractor-initiated labor action.

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

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

The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or more of the events described in this Article shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or more.

### **11.7 Notice, Hearing and Appeal of District Breach**

- A. Administrative Hearing. Should Contractor contend that District is in breach of any aspect of this Agreement, it shall give notice to the District Manager requesting an administrative hearing on the allegation. A hearing officer shall be appointed by the District Manager, and the hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the District Manager and Contractor. The hearing officer shall make an advisory ruling on Contractor's allegations, and suggest a remedy if a breach by District is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the parties so agree in writing within thirty (30) days of the date notice of the decision is given to both Parties. Otherwise, the hearing officer's ruling shall have no further force or effect.
- B. Other Remedies; Claims. Contractor shall be entitled to all available remedies in law or equity for District's breach of this Agreement; provided, however, Contractor shall not file or otherwise commence any action against District, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted 30 day period to accept the hearing officer's decision has passed, or either District or Contractor has given timely written notice to the other that it will not accept the hearing officers decision.
- C. Actions for Damages. As a prerequisite to the filing and maintenance of any action for damages by Contractor against District arising out of this Agreement, Contractor shall present a claim to District, as required by Government Code Section 910 et seq, within thirty (30) days of the date of the occurrence giving rise to the claim for damages.

### **11.8 Assurance of Performance**

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

## **ARTICLE 12: OTHER AGREEMENTS OF THE PARTIES**

### **12.1 Relationship of Parties**

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by District and not as an officer or employee of District nor as a partner of or joint venture with District. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of District. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste Handling Services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Affiliates, contractors, subcontractors and agents. Neither Contractor nor its officers, employees, Affiliates, contractors, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to District employees by virtue of their employment with District.

### **12.2 Compliance with Law**

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws and regulations of the United States, the State of California, and any federal, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended, including but not limited to the payment of prevailing wage, if applicable.

### **12.3 Governing Law**

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

### **12.4 Jurisdiction**

Except for those matters where Federal Courts have exclusive jurisdiction, any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the Parties agree that this Agreement is made in and will be performed in Imperial County.



## 12.5 Assignment

Except as may be provided for in Article 10 (District's Right to Perform Service), Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "assignment") to any other Person without the prior written consent of District. Any such assignment made without the consent of District shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this Section the term "assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor of any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

Contractor acknowledges that this Agreement involved rendering a vital service to District's residents and businesses, and that District has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste Handling Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to District under this Agreement. District has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

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

- A. Contractor shall pay District its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment towards expenses may be requested by District prior to District consideration of any assignment request and Contractor shall be responsible to pay all costs incurred by District in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether District consents to the assignment.
- B. Contractor shall pay the District a transfer fee equal to one percent (1%) of the Gross Receipts it will receive during the remaining term of the Agreement, as estimated by District.

- C. Contractor shall furnish District with audited financial statements for itself, and the proposed assignee's operations for the immediately preceding three (3) operating years.
- D. A proforma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such proforma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Contractor's operations.
- E. Contractor shall furnish District with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, State or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with State, federal or local Environmental Laws and that the assignee has provided District with a complete list of any such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, State and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by District to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall District be obliged to consider any proposed assignment by District if Contractor is in default at any time during the period of consideration. Should District consent to any assignment request, such assignment shall not take effect until all conditions relating to District's approval have been met.

## **12.6 Affiliated Companies**

Contractor's accounting records shall be maintained on a basis showing the results of Contractor's operations under this Agreement separately from operations in other locations, as if Contractor were an independent entity providing service only to District. The costs and revenues associated with providing service to District shall not be combined, consolidated or in any other way incorporated with those of other operations conducted by Contractor in other locations, or with those of an Affiliate.

If Contractor enters into any financial transactions with a Related Party Entity for the provision of labor, equipment, supplies, services, capital, etc., related to the furnishing of service under this Agreement, that relationship shall be disclosed to District, and in the financial reports submitted to District. In such event, District's rights to inspect records, and obtain financial data shall extend to such Related Party Entity or entities.

## **12.7 Contracting or Subcontracting**

Contractor shall not engage any contractors or subcontractors for the Collection of Solid Waste. Subcontracting of street sweeping services is allowable with District approval and there shall be no additional cost to the rate payers.

## **12.8 Binding on Assigns**

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

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

Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with District and any subsequent Solid Waste enterprise it designates to assure a smooth transition of Solid Waste Handling Services. Contractor's cooperation shall include, but not be limited to, providing both the District and subsequent Solid Waste enterprise route lists, Billing information, lists of gate or other access codes and information needed for entry to service areas, Container placement areas by address, levels of service including any special needs or services required by each location, and other operating records needed to service all Premises covered by this Agreement. In recognition of the difficulty inherent in Customer's difficulty or inability to store two sets of Containers, Contractor shall remove its Containers in coordination with the distribution of Containers by the incoming service provider. Contractor shall cooperate with the District and incoming service provider in agreeing to the timing of Container removal; if parties cannot agree on a phase-out schedule and Contractor does not remove Containers in a timely manner that requires Customers to store two Containers, District, incoming service provider, or another entity may remove Contractor's Containers and seek cost reimbursement from Contractor through its performance bond, letter of credit, or other means. The failure to cooperate with District following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall, to the maximum extent feasible, provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pickups, so as not to disrupt service. Contractor shall provide District with detailed route sheets containing service names and addresses, Billing names and addresses, monthly rate and service levels (number and size of Containers and pickup days) at least ninety (90) days prior to the transition date, and provide an updated list two weeks before the transition and a final list of changes the day before the transition. Contractor shall provide means of access to the new service provider at least one (1) full business day prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

Contractor to provide documentation of any Customer declining request to provide keys, security codes, and/or remote controls used to access garages and Bin enclosures.

## **12.10 Parties in Interest**

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

## **12.11 Waiver**

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of

violation of the same or any other provision. The subsequent acceptance by either Party of any moneys which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement.

### **12.12 Contractor's Investigation**

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

### **12.13 Condemnation**

District fully reserves the rights to acquire Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the Parties set forth in Article 10.

### **12.14 Notice**

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

If to District:  
District Manager  
Heber Public Utility District  
1078 Dogwood Road Suite #103  
Heber, CA 92249

If to Contractor:  
CR&R Incorporated  
Solid Waste President  
11292 Western Avenue  
Stanton, California 90680

Copy to:

CR&R Incorporated  
General Manager  
599 East Main Street  
El Centro, CA 92243

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) days from the date it is deposited in the mail.

### **12.15 Representatives of the Parties**

References in this Agreement to the “District” shall mean the District Board of Directors and all actions to be taken by District shall be taken by the District Board of Directors except as expressly provided herein. The District Board of Directors may delegate, in writing, authority to the District Manager, and/or to other District employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority so delegated to them.

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

### **12.16 District Free to Negotiate with Third Parties**

District may investigate all options for the Collection, Transporting, Recycling, Processing and Disposal of Solid Waste for periods during which this Agreement has expired or been terminated. Without limiting the generality of the foregoing, District may solicit proposals from Contractor and from third parties for the provision of Solid Waste Handling Services which are the subject of this Agreement, including without limitation Collection services, Disposal services, Recycling services, Organic Materials services and Processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination of this Agreement pursuant to Section 11.1 or otherwise.

### **12.17 Compliance with Municipal Code**

Contractor shall comply with those provisions of the Imperial County code, and District Ordinance and Policies which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

### **12.18 Privacy**

Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer’s waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to District pursuant to this Agreement.

### **12.19 Proprietary Information, Public Records**

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

information provided by Contractor. Notwithstanding the foregoing, any documents provided by Contractor to District that are public records may be disclosed pursuant to a proper public records request.

### **12.20 Compliance with Immigration Laws.**

Contractor shall be knowledgeable of and comply with all local, State and federal laws which may apply to the performance of this Agreement. Contractor warrants and represents that all of its employees, including any and all prospective employees hired to perform services for the District under this Agreement and the employees of any subcontractor retained by the Contractor to perform a portion of the services under this Agreement, are and will be authorized to perform the services contemplated by this Agreement in full compliance with all applicable State and federal laws, rules and regulations, including, but not limited to, the Immigration Nationality Act of 1952 (commencing with Section 1101 of Title 8 of the United States Code), and the Immigration Nationality and the Immigration Reform and Control Act of 1986 (commencing with Section 1324a of Title 8 of the United States Code), as amended. Contractor agrees to verify the legal status of all of its employees and provide documentation of such verification whenever requested by the District. If Contractor discovers that any employee it has retained is not in compliance with Immigration Laws, Contractor agrees to terminate such employee.

## **ARTICLE 13: MISCELLANEOUS PROVISIONS**

### **13.1 Entire Agreement**

This Agreement, including the Exhibits, contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, and agreements between the Parties, whether written or oral. No verbal agreement or conversation with any office, agent, or employee of the District, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Contractor to any additional payment whatsoever under the terms of this contract. The Parties acknowledge this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no Party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other Party to execute this instrument.

### **13.2 Section Headings**

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

### **13.3 References to Laws and Other Agreements**

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and District.

### **13.4 Interpretation**

This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting.

### **13.5 Agreement**

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

### **13.6 Severability**

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

### **13.7 Exhibits**

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

### **13.8 Non-Waiver Provision**

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance, or unexcused defaults by the other party.

### **13.9 Attorneys' Fees**

If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable attorney's fees and costs. Attorneys' fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

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

HEBER PUBLIC UTILITY DISTRICT

("District")

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

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

CR&R Incorporated

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

By:  
David Ronnenberg

District Manager

Division President  
CR&R Incorporated

ATTEST:

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
District Clerk

\_\_\_\_\_  
TELEPHONE



**EXHIBIT 1:  
AB 341, AB 827, AB 1826, AND SB 1383 IMPLEMENTATION  
PLAN**

[Contractor to develop the AB 341, AB 827, AB 1826, and SB 1383 Implementation Plan for District approval within sixty (60) days of the execution of this Agreement]

**EXHIBIT 2**  
**EFFECTIVE: JANUARY 1, 2023\***

<b>HEBER PUBLIC UTILITY DISTRICT</b>		
<b>ANNUAL PRICE ADJUSTMENT</b>		
	<b>New</b>	<b>Unit</b>
	<b>Rate</b>	<b>Measure</b>
Standard service	\$ 21.49	per month
Senior service (10% Discount)	\$ 19.34	per month
Additional cart	\$ 8.99	per month
Additional recyc or green cart >2	\$ 4.50	per month
10 and 40 cubic yard roll-off	\$ 235.23	per pull
40 cubic yard COD	\$ 552.81	per pull
10 cubic yard COD	\$ 743.32	per pull
3 yard Clean-up Bin	\$ 83.03	per load
4 yard Clean-up Bin	\$ 110.72	per load
<b>Refuse Bin Rates 2-Yard</b>		
1 x week	\$ 78.62	per month
2 x week	\$ 157.24	per month
3 x week	\$ 235.84	per month
4 x week	\$ 314.45	per month
5 x week	\$ 393.06	per month
6 x week	\$ 471.68	per month
Extra Pickup	\$ 39.31	per pickup

	<b>Refuse Bin Rates 3-Yard</b>		
1 x week	\$ 117.93	per month	
2 x week	\$ 235.84	per month	
3 x week	\$ 353.76	per month	
4 x week	\$ 471.68	per month	
5 x week	\$ 589.62	per month	
6 x week	\$ 707.52	per month	
Extra Pickup	\$ 48.55	per pickup	
	<b>Refuse Bin Rates 4-Yard</b>		
1 x week	\$ 157.24	per month	
2 x week	\$ 314.45	per month	
3 x week	\$ 471.68	per month	
4 x week	\$ 628.92	per month	
5 x week	\$ 786.14	per month	
6 x week	\$ 943.37	per month	
Extra Pickup	\$ 57.78	per pickup	
	<b>Refuse Bin Rates 5-Yard</b>		
1 x week	\$ 196.55	per month	
2 x week	\$ 393.06	per month	
3 x week	\$ 589.62	per month	
4 x week	\$ 786.14	per month	
5 x week	\$ 982.68	per month	
6 x week	\$ 1,179.22	per month	
Extra Pickup	\$ 67.02	per pickup	
	<b>Refuse Bin Rates 6-Yard</b>		
1 x week	\$ 235.84	per month	
2 x week	\$ 471.68	per month	
3 x week	\$ 707.52	per month	
4 x week	\$ 943.37	per month	
5 x week	\$ 1,179.22	per month	
6 x week	\$ 1,415.06	per month	
Extra Pickup	\$ 76.25	per pickup	

	<b>Refuse Cart Service</b>		
	1 x week	\$ 40.05	per month
	<b>Recycle Bin Rates</b>		
	3-Yard 1x week	\$ 69.19	per month
	6-Yard 1x week	\$ 138.41	per month
	90 Gal Cart 1x week	\$ 24.03	per month
	<b>Organics Rates</b>		
	35 / 60 Gal Food - 1x week	\$ 40.05	per month
	35 / 60 Gal Food - 2x week	\$ 80.10	per month
	2 Yard Food - 1x week	\$ 161.81	per month
	90 Gal Green - 1x week	\$ 40.05	per month
	90 Gal Green - 2x week	\$ 80.10	per month
	300 Gal Tub Green - 1x week	\$ 120.16	per month
	300 Gal Tub Green - 1x week	\$ 240.31	per month
	<b>Other Services</b>		
	Bin Replacement	\$ 172.99	per service
	Cart Replacement	\$ 103.81	per service
	New Acct Delivery Bins and R/O	\$ 34.60	per service
	Install Wheels/Locks	\$ 103.67	per service
	Bin Locking Charges	\$ 8.29	per service
	Roll-Out Charge	\$ 8.29	per service
	Steam Cleaning Service	\$ 89.97	per service





# **EXHIBIT 3: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

Contractor has selected and arranged for Discarded Materials to be Transported to Approved Facilities for Transfer, Source Separated Recyclable Materials Processing, Source Separated Organic Materials Processing, Organic Waste Processing, C&D Processing, and Disposal. The Approved Facilities shall comply with the standards specified in this Exhibit. Pursuant to Section 4.7 of the Agreement, if the Contractor does not own or operate one or more of the Approved Facilities, Contractor shall enter into a subcontract agreement with the Owner or Facility operator of such Approved Facility(ies) and the requirements of Section 4.7 of the Agreement and this Exhibit shall pertain to the subcontractor(s).

Note that Contractor, by definition in Article 1 of the Agreement, includes Affiliates, DBAs, and subcontractors. As a result, requirements of Section 4.7 of the Agreement and this Exhibit shall pertain to Affiliate(s) and subcontractors providing Facility-related services.

## **8.1 General Requirements**

- A. **Overview.** Contractor agrees to Transport and deliver Discarded Materials it Collects in the District to an appropriate Approved Facility(ies) for Transfer, Processing, or Disposal, as applicable for each type of Discarded Material. As of the commencement date of this Agreement, the Approved Facilities, which were selected by Contractor and reviewed and approved by the District, are listed in the table on the following page and in the definitions in Article 1 of this Agreement. Contractor will perform all Transfer, Processing, and Disposal services at Approved Facilities in accordance with Applicable Law, standard industry practice, and specifications and other requirements of this Agreement.

### Approved Facilities

Material Type	Approved Transfer Facility (if applicable)	Approved Facility (Processing or Disposal Facility)	Description of Processing Methodology (Material Recovery Facility, composting Facility, anaerobic digestion, etc.)
Source Separated Recyclable Materials	CR&R Material Recovery & Transfer Op.: <ul style="list-style-type: none"> <li>• SWIS: 13-AA-0109</li> <li>• Operator: CR&amp;R Incorporated</li> <li>• Address: 599 East Main Street, El Centro, California 92243</li> </ul> El Centro Direct Transfer Station: <ul style="list-style-type: none"> <li>• SWIS: 13-AA-0116</li> <li>• Operator: CR&amp;R Incorporated</li> <li>• Address: 853 Dogwood, El Centro, California 92243</li> </ul>	South Yuma County Landfill: <ul style="list-style-type: none"> <li>• Operator: CR&amp;R Incorporated</li> <li>• Address: 19536 South Avenue 1E, Yuma, Arizona 85365</li> </ul>	Material Recovery Facility
Green Waste	CR&R Material Recovery & Transfer Op.: <ul style="list-style-type: none"> <li>• SWIS: 13-AA-0109</li> <li>• Operator: CR&amp;R Incorporated</li> <li>• Address: 599 East Main Street, El Centro, California 92243</li> </ul> El Centro Direct Transfer Station: <ul style="list-style-type: none"> <li>• SWIS: 13-AA-0116</li> <li>• Operator: CR&amp;R Incorporated</li> <li>• Address: 853 Dogwood, El Centro, California 92243</li> </ul>	Yuma County Composting at South Yuma County Landfill: <ul style="list-style-type: none"> <li>• Operator: CR&amp;R Incorporated</li> <li>• Address: 19536 South Avenue 1E, Yuma, Arizona 85365</li> </ul>	Composting Facility
Food Waste	CR&R Material Recovery & Transfer Op.: <ul style="list-style-type: none"> <li>• SWIS: 13-AA-0109</li> <li>• Operator: CR&amp;R Incorporated</li> <li>• Address: 599 East Main Street, El Centro, California 92243</li> </ul> El Centro Direct Transfer Station: <ul style="list-style-type: none"> <li>• SWIS: 13-AA-0116</li> </ul>	Yuma County Composting at South Yuma County Landfill: <ul style="list-style-type: none"> <li>• Operator: CR&amp;R Incorporated</li> <li>• Address: 19536 South Avenue 1E, Yuma, Arizona 85365</li> </ul>	Composting Facility



Material Type	Approved Transfer Facility (if applicable)	Approved Facility (Processing or Disposal Facility)	Description of Processing Methodology (Material Recovery Facility, composting Facility, anaerobic digestion, etc.)
	<ul style="list-style-type: none"> <li>Operator: CR&amp;R Incorporated</li> <li>Address: 853 Dogwood, El Centro, California 92243</li> </ul>		
Source Separated Organic Materials	CR&R Material Recovery & Transfer Op.: <ul style="list-style-type: none"> <li>SWIS: 13-AA-0109</li> <li>Operator: CR&amp;R Incorporated</li> <li>Address: 599 East Main Street, El Centro, California 92243</li> </ul> El Centro Direct Transfer Station: <ul style="list-style-type: none"> <li>SWIS: 13-AA-0116</li> <li>Operator: CR&amp;R Incorporated</li> </ul> Address: 853 Dogwood, El Centro, California 92243	Yuma County Composting at South Yuma County Landfill: <ul style="list-style-type: none"> <li>Operator: CR&amp;R Incorporated</li> <li>Address: 19536 South Avenue 1E, Yuma, Arizona 85365</li> </ul>	Composting Facility
Black Container Waste	CR&R Material Recovery & Transfer Op.: <ul style="list-style-type: none"> <li>SWIS: 13-AA-0109</li> <li>Operator: CR&amp;R Incorporated</li> <li>Address: 599 East Main Street, El Centro, California 92243</li> </ul> El Centro Direct Transfer Station: <ul style="list-style-type: none"> <li>SWIS: 13-AA-0116</li> <li>Operator: CR&amp;R Incorporated</li> </ul> Address: 853 Dogwood, El Centro, California 92243	South Yuma County Landfill: <ul style="list-style-type: none"> <li>Operator: CR&amp;R Incorporated</li> <li>Address: 19536 South Avenue 1E, Yuma, Arizona 85365</li> </ul>	Disposal Facility
C&D	CR&R Material Recovery & Transfer Op.: <ul style="list-style-type: none"> <li>SWIS: 13-AA-0109</li> <li>Operator: CR&amp;R Incorporated</li> <li>Address: 599 East Main Street, El Centro, California 92243</li> </ul>	South Yuma County Landfill: <ul style="list-style-type: none"> <li>Operator: CR&amp;R Incorporated</li> <li>Address: 19536 South Avenue 1E, Yuma, Arizona 85365</li> </ul>	Processing Facility

Material Type	Approved Transfer Facility (if applicable)	Approved Facility (Processing or Disposal Facility)	Description of Processing Methodology (Material Recovery Facility, composting Facility, anaerobic digestion, etc.)
	El Centro Direct Transfer Station: <ul style="list-style-type: none"> <li>• SWIS: 13-AA-0116</li> <li>• Operator: CR&amp;R Incorporated</li> </ul> Address: 853 Dogwood, El Centro, California 92243		

- B. **Facility Capacity Guarantee.** Contractor shall guarantee sufficient capacity for the District over the Term of this Agreement to Transfer (if applicable), Transport, and Process all Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Debris Collected under this Agreement to the Approved Facility for Processing as applicable for each material type. Contractor shall conduct Processing activities for all Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D to recover Recyclable Materials and Organic Waste to reduce Disposal. The Processing shall be performed in a manner that minimizes Disposal to the greatest extent practicable and complies with Applicable Law, including SB 1383. Contractor may Dispose of Organic Waste from homeless encampments and illegal Disposal sites and quarantined Organic Waste, which meet the requirements described in 14 CCR Section 18984.13(d), rather than Process such materials.
- C. **Separate Handling Requirements**
1. Contractor shall keep Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D separate from each other and separate from other Solid Waste streams and shall Process the materials separately from each other and separately from other Solid Waste streams.
  2. Pursuant to 14 CCR Section 17409.5.6(a)(1), Remnant Organic Waste separated from the Black Container Waste for recovery can be combined with Organic Waste removed from the Source Separated Organic Materials for recovery once the material from the Source Separated Organic Materials has gone through the Organic Waste recovered measurement protocol described in 14 CCR Section 17409.5.4.
- D. **Residue Disposal.** Contractor shall be responsible for Disposal of residue from Processing activities at its own expense and may select the Disposal Facility(ies) to be used for such purpose.
- E. **Processing Facility Residue Guarantees.** Upon request of the District, Contractor shall provide a certified statement from the Facility operator documenting its residue level. The residue level shall be calculated separately for each material type and for each Approved Facility used for Recycling and Processing. The residue level calculation method shall be reviewed and approved by the District.
- F. **Source Separated Recyclable Materials Processing Standards**
1. Contractor shall arrange for Processing of all Source Separated Recyclable Materials at a Facility that recovers materials designated for Collection in the Blue Container and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as ADC or AIC.
  2. Limits on Incompatible Materials in Recovered Organic Waste:
    - a. Limits. Except as described in Section 8.1.G.5.c of this Exhibit 8, Contractor's Transfer/Processing Facility or operation shall only send offsite that Organic Waste (such as, but not limited to, paper products and printing and writing paper) recovered after Processing Source Separated Recyclable Materials that meets the following requirements or as otherwise specified in 14 CCR Section 17409.5.8(a):

- i. On and after July 1, 2022 with no more than 20 percent (20%) of Incompatible Material by weight; and,
      - ii. On and after January 1, 2024 with no more than 10 percent (10%) of Incompatible Material by weight.
    - b. Measurement. Contractor shall measure the actual levels of Incompatible Materials in accordance with procedures described in 14 CCR Section 17409.5.8(b).
- G. Source Separated Organic Materials Processing Standards.
- 1. Contractor shall arrange for Processing of all Source Separated Organic Materials at a Facility that recovers Source Separated Organic Materials and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as ADC or AIC.
  - 2. Contractor shall arrange for Source Separated Organic Materials Processing at the Approved Organic Waste Processing Facility that meets one or more of the following criteria, and such Facility or operation is capable of and permitted to accept and recover the types of Organic Wastes included in the Source Separated Organic Materials:
    - a. “Compostable Material Handling Operation or Facility” as defined in 14 CCR Section 17852(a)(12); small composting facilities that are otherwise excluded from that definition; or Community Composting as defined within 14 CCR Section 18982(a)(8). The compostable materials handling operation or Facility shall, pursuant to 14 CCR Section 17867(a)(16), demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
      - i. On and after July 1, 2022, less than 20 percent (20%); and,
      - ii. On and after January 1, 2024, less than 10 percent (10%).
    - b. An “In-vessel Digestion Operation or Facility” as defined in 14 CCR 17896.5. The in-vessel digestion Facility or operation shall, pursuant to 14 CCR Section 17896.44.1, demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
      - i. On and after July 1, 2022, less than 20 percent (20%); and,
      - ii. On and after January 1, 2024, less than 10 percent (10%).
    - c. A “Biomass Conversion Operation” as defined in Section 40106 of the California Public Resources Code.
    - d. Soil amendment for erosion control, revegetation, slope stabilization, or landscaping at a Landfill, that is defined as a reduction in Landfill Disposal in accordance with 14 CCR Section 18983.1(b).
    - e. Land application of compostable materials consistent with 14 CCR Section 17852(a)(24.5) and subject to the conditions in 14 CCR Section 18983.1(b)(6).

- f. Lawful use as animal feed, as set forth in California Food and Agricultural Code Section 14901 et seq. and Title 3, Division 4, Chapter 2, Subchapter 2 commencing with 14 CCR Article 1, Section 2675.
- g. Other operations or facilities with processes that reduce short-lived climate pollutants that are approved by the State in accordance with 14 CCR Section 18983.2.

If Contractor is interested in using an operation, Facility, or activity not expressly identified above for Source Separated Organic Materials Processing, Contractor shall be responsible for securing the approvals necessary from CalRecycle prior to the District's final approval of such operation, Facility, or activity, and shall do so in accordance with the procedures specified in 14 CCR Section 18983.2.

- 3. Preparation of Materials for Processing. The Contractor shall be responsible for preparing materials for Processing at the Approved Organic Waste Processing Facility, which shall include, but is not limited to, removal of visible physical contaminants such as plastic, glass, metal, and chemicals prior to size reduction.
- 4. "Overs" Management. The District may require that at no cost to the District, the Contractor conduct and provide District-specific Organic Waste Processing residue and "overs" composition data to the District reflecting then-current conditions and using a sampling protocol acceptable to the District, in its reasonable discretion. In the event that the composition of "overs" includes appreciable quantities of Organic Waste, as determined by Contractor's composition study or visual assessment by the District, the Contractor shall immediately inform the District and propose a strategy for reducing the "overs" level. At the Contractor's expense, Contractor shall implement the "overs" management strategy within five (5) business days of District approval. Such a strategy may include having the Approved Organic Waste Processing Facility re-grind large woody "overs" (after removal of contaminants) and reintroduce the ground "overs" into the composting process in order to increase the recovery of that material and reduce the Organic Waste contained in the materials sent to Disposal, or may include an alternative approach approved by the District.
- 5. Limits on Incompatible Materials in Recovered Organic Waste
  - a. Limits. Except as described in Section 8.1.G.5.c. of this Exhibit 8, Contractor's Transfer/Processing Facility or operation shall only send offsite that Organic Waste recovered after Processing the Source Separated Organic Materials that meets the following requirements or as otherwise specified in 14 CCR Section 17409.5.8(a):
    - i. On and after July 1, 2022 with no more than 20 percent (20%) of Incompatible Material by weight; and,
    - ii. On and after January 1, 2024 with no more than 10 percent (10%) of Incompatible Material by weight.
  - b. Measurement. Contractor shall measure the actual levels of Incompatible Materials in accordance with procedures described in 14 CCR Section 17409.5.8(b).

- c. Exceptions. The limits in Section 8.1.G.5.a. of this Exhibit 8, shall not apply to the recovered Organic Waste sent offsite from the Transfer/Processing Facility or operation, if the Contractor sends the recovered Organic Waste from the Transfer/Processing Facility or operation to one or more of the following types of Facilities that will further Process the Organic Waste, or as otherwise specified in 14 CCR Section 17409.5.7(c):
  - i. A Transfer/Processing Facility or operation that complies with Section 8.1.G.5.a. of this Exhibit 8;
  - ii. A compostable materials handling Facility or operation that, pursuant to 14 CCR Section 17867(a)(16), demonstrates that the percentage of Organic Waste in the materials sent to Disposal is:
    - (A) On and after July 1, 2022, less than 20 percent (20%); and,
    - (B) On and after January 1, 2024, less than 10 percent (10%).
  - iii. An in-vessel digestion Facility or operation that, pursuant to 14 CCR Section 17896.44.1, demonstrates that the percentage of Organic Waste in the materials sent to Disposal is:
    - (A) On and after July 1, 2022, less than 20 percent (20%); and,
    - (B) On and after January 1, 2024, less than 10 percent (10%).
  - iv. An activity that meets the definition of a Recycling center as described in 14 CCR Section 17402.5(d).

H. C&D Program Standards

- 1. Contractor shall comply with the CALGreen Construction and Demolition materials Recycling requirements.
  - 2. Contractor shall deliver mixed C&D loads to the Approved C&D Processing Facility for Recycling.
  - 3. Contractor shall deliver Source Separated C&D such as, but not limited to, dirt, concrete, wood waste, cardboard, or other recyclable C&D to the Approved C&D Processing Facility or other Facility authorized for Recycling C&D, and shall deliver salvageable materials to a party for Reuse or salvage.
  - 4. Contractor shall arrange for Processing of Organic Waste in the C&D at a Facility that recovers Organic Waste from C&D and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a), which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as ADC or AIC.
- I. **Plastic Bags.** If plastic bags are accepted in the Organic Waste Recovery program, Contractor shall annually submit to District written notice from the Approved Organic Waste Processing Facility

confirming said Facility can remove plastic bags when Processing Source Separated Organic Materials.

- J. **Compostable Plastics.** Contractor may accept Compostable Plastics at the Approved Organic Waste Processing Facility. Pursuant to this Agreement, Contractor shall annually submit to District written notice from the Approved Organic Waste Processing Facility confirming said Facility can Process and recover these Compostable Plastics.
- K. **Marketing.** Upon request, Contractor shall provide proof to the District that all Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Collected by Contractor were Processed and recovered materials were marketed for Recycling, salvage, or Reuse or as organics products in such a manner that materials are not deemed Landfill Disposal pursuant to SB 1383 and in a manner that materials are deemed Diversion pursuant to AB 939. All residue from the Recycling and Processing activities that is not marketed shall be reported to the District as residue and accounted for as Disposal Tonnage at the Approved Disposal Facility. No Source Separated Recyclable Materials, Source Separated Organic Materials, or C&D shall be Transported to a domestic or foreign location if Landfill Disposal of such material is its intended use. If Contractor becomes aware that a broker or buyer has illegally handled, Disposed of, or used material generated in the District that is not consistent with Applicable Law, Contractor shall immediately inform the District and terminate its contract or working relationship with such party. In such case, Contractor shall find an alternative market for the material(s) recovered from the Source Separated Recyclable Materials, Source Separated Organic Materials, and/or C&D that is compliant with Applicable Law.

The performance of commodity markets for materials recovered from Source Separated Recyclable Materials shall not be considered a reason for deeming a Facility “unavailable”, nor shall it be considered an acceptable basis for the need to use an Alternative Facility, nor shall it serve as the basis for any adjustment in Contractor’s compensation under this Agreement, other than as specifically contemplated in Article 6 of this Agreement.

- L. **Disposal of Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Prohibited.** With the exception of Processing residue, which shall not exceed the limits established under Applicable Law, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Collected under this Agreement may not be Disposed of in lieu of Recycling, Processing, or marketing the material, without the expressed written approval of the District.

If for reasons beyond its reasonable control, Contractor believes that it cannot avoid Disposal of the Source Separated Recyclable Materials, Source Separated Organic Materials, or C&D Collected in the District, then it shall prepare a written request for District approval to Dispose of such material. Such request shall contain the basis for Contractor’s belief (including, but not limited to, supporting documentation), describe the Contractor's efforts to arrange for the Processing of such material, the period required for such Disposal, and any additional information supporting the Contractor's request.

In addition, the request shall describe the Contractor’s proposed interim plans for implementation while the District is evaluating its request. If the District objects to the interim plans, the District shall provide written notice to the Contractor and request an alternative arrangement. The District shall consider the Contractor’s request and inform Contractor in writing of its decision within thirty (30) business days. Depending on the nature of the Contractor’s request, District may extend the

thirty (30) business day period, at its own discretion, to provide more time for evaluation of the request and negotiation of an acceptable arrangement with the Contractor.

## **8.2 Black Container Waste Disposal Standards**

- A. **Disposal of Black Container Waste Collected.** Contractor shall Transport all Black Container Waste Collected under this Agreement to the Approved Disposal Facility.
- B. **Disposal at Approved Facility.** Contractor shall not Dispose of Black Container Waste or residue by depositing it on any public or private land, in any river, stream, or other waterway, or in any sanitary sewer or storm drainage system or in any other manner which violates Applicable Laws.
- C. **Disposal Services.** Contractor shall provide Disposal services at the Approved Disposal Facility that include, but are not limited to:
  - 1. Operating, managing, and maintaining the Solid Waste fill areas, including the placement, burying, and compaction of Solid Waste in the Refuse fill areas; stockpiling, placement, and compaction (if necessary) of final cover; management of fill operations with regard to fill sequencing, side slopes configuration, and working face location and configuration;
  - 2. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations, closure, post-closure, and environmental monitoring; and,
  - 3. Operating, maintaining, and managing leachate and Landfill gas management systems, groundwater monitoring and management systems, storm water drainage and control systems, treatment Facilities, buildings, on-site roadways, utilities, and any other required Facility elements.
- D. **Closure and Post-Closure Disposal Facility.** will safely operate, maintain, and manage the Approved Disposal Facility in compliance with Applicable Law not only during the Term, but also thereafter until and during the Approved Disposal Facility closure and post-closure period(s) (including fulfillment of State funding requirements). Contractor's compliance obligations include compliance with the closure/post-closure requirements of applicable regulating agencies throughout the Term of this Agreement and through the required federal, State, or local post-closure period. Contractor is solely responsible, operationally and financially, for: (i) the appropriate closure and post-Closure activities of the Approved Disposal Facility; and, (ii) the establishment and funding of any reserve funds required by Applicable Law for the purposes of providing funds for the payment of costs for closure of the Approved Disposal Facility (or any cell within the Approved Disposal Facility) or post-closure activities relating to the Approved Disposal Facility. Contractor will not hold the District responsible for paying any deficiencies in required reserves. In addition, Contractor will not hold the District responsible for making any payments if actual closure and post-closure costs relating to the Approved Disposal Facility exceed the amounts reserved by the Contractor for that purposes. This obligation survives expiration or termination of the Agreement.

## **8.3 Weighing of Discarded Materials**

- A. **Maintenance and Operation.** This Section 8.3 of this Exhibit 8 applies to motor vehicle scales used at the Approved Facilities. Approved Facilities shall be equipped with one or more certified motor



vehicle scales in accordance with Applicable Law. Upon request, Contractor shall arrange for Facility operator to provide documentary evidence of such scale certification within ten (10) days of District's request during the Term. Licensed weigh master(s) shall operate those scales to weigh all inbound and outbound Collection vehicles Transporting Discarded Materials and all Transfer vehicles Transporting materials to another site. Contractor shall arrange for Facility operator to provide District with access to weighing information at all times and copies thereof within three (3) business days following the District's request. Exceptions to weighing requirements are specified in Section 8.3.G. of this Exhibit 8.

- B. **Vehicle Tare Weights for Approved Facility(ies).** Within thirty (30) days prior to the Commencement Date, Contractor shall coordinate with the Facility operator(s) to ensure that all Collection vehicles used by Contractor to Transport Discarded Materials to Approved Facilities are weighed to determine unloaded ("tare") weights. Contractor shall work with Facility operator(s) to electronically record the tare weight, identify vehicle as Contractor's, and provide a distinct vehicle identification number for each vehicle. Contractor shall provide District with a report listing the vehicle tare weight information upon request. Contractor shall promptly coordinate with Facility operator to weigh additional or replacement Collection vehicles prior to Contractor placing them into service. Contractor shall check tare weights at least annually, or within fourteen (14) days of a District request, and shall re-tare vehicles immediately after any major maintenance service that could impact the weight of the vehicle by more than fifty (50) pounds.
- C. **Substitute Scales.** If any scale at the Approved Facility is inoperable, being tested, or otherwise unavailable, Facility operator shall use reasonable business efforts to weigh vehicles on the remaining operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise unavailable, Facility operator shall substitute portable scales until the permanent scales are replaced or repaired. Facility operator shall arrange for any inoperable scale to be repaired as soon as possible.
- D. **Estimates.** Pending substitution of portable scales or during power outages, Facility operator shall estimate the Tonnage of the Discarded Materials Transported to and accepted at the Approved Facilities by utilizing the arithmetic average of each vehicle's recorded tons of Discarded Materials delivered on its preceding three (3) deliveries.

During any period of time the scales are out of service, Facility operator shall continue to record all information required by this Section 8.3 for each delivery of Discarded Materials to the Approved Facilities and each load of material Transferred to another Approved Facility(ies).

- E. **Weighing Standards and Procedures.** At the Approved Facilities, Facility operator shall weigh and record inbound weights of all vehicles delivering Discarded Materials when the vehicles arrive at the Facility. In addition, Facility operator shall weigh and record outbound weights of vehicles for which Facility operator does not maintain tare weight information. Furthermore, Facility operator shall weigh and record outbound weights of all Transfer vehicles Transporting Discarded Materials from a Transfer Facility to another Approved Facility(ies) for Processing or Disposal.
- F. **Records.** Facility operator shall maintain scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights (or tare weights) of vehicles, vehicle identification number, jurisdiction of origin of materials delivered, type of material,

company/hauler identification, and classification, type, weight, and final destination of Discarded Material if the Discarded Materials are Transferred to another Approved Facility(ies).

- G. **Exceptions to Weighing Requirements.** If the Approved Facility does not have motor vehicle scales to weigh Contractor's vehicles and Discarded Materials delivered to the Facility, Contractor shall obtain a receipt for delivery of the Discarded Materials that identifies the date and time of delivery, the type of material delivered, and the vehicle number. Contractor or Facility operator shall estimate the tonnage of material delivered for each load based on the volumetric capacity of the vehicle and material density factors (e.g., pounds per cubic yard) approved by or designated by the District.
- H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the Approved Facilities, Contractor shall make those videos available for District review during the Approved Facilities' operating hours, upon request of the District, and shall provide the name of the driver of any particular load if available.

#### **8.4 Rejection of Excluded Waste**

- A. **Inspection.** Contractor will use standard industry practices to detect and reject Excluded Waste in a uniform and non-discriminatory manner and will not knowingly accept Excluded Waste at the Approved Facility(ies). Contractor will comply with the inspection procedure contained in its permit requirements. Contractor will promptly modify that procedure to reflect any changes in permits or Applicable Law.
- B. **Excluded Waste Handling and Costs.** Contractor will arrange for or provide handling, Transportation, and delivery to a Recycling, incineration, or a Disposal Facility permitted in accordance with Applicable Law of all Excluded Waste detected at the Approved Facility(ies). Contractor is solely responsible for making those arrangements or provisions and all costs thereof. Nothing in this Agreement will excuse the Contractor from the responsibility of handling Excluded Wastes that Contractor inadvertently accepts in a lawful manner and of arranging for the disposition of that Excluded Waste in accordance with Applicable Law.

#### **8.5 Discarded Materials Evaluations at Approved Facilities**

- A. **General.** Contractor shall conduct the following "evaluations" at Approved Facilities:
  - 1. **Black Container Waste Evaluations.** Waste evaluations of Black Container Waste at the Approved Transfer Facility (if applicable) in accordance with 14 CCR Sections 18998.1(a)(3)(A) and 17409.5.7.
  - 2. **Organic Waste Recovery Efficiency Evaluations.** Waste evaluations at Approved Transfer Facility (if applicable) or Approved Processing Facility(ies) in accordance with 14 CCR Sections 17409.5.1 to 17409.5.5.
  - 3. **Evaluation of Organic Waste in Residuals.** Compliance evaluations of Organic Waste to determine the level of Organic Waste in materials sent for Disposal in accordance with 14 CCR Sections 17409.5.3, 17409.5.5, 17867 (Compost operations and facilities), and 17896.44.1 (In-vessel digestion operations and facilities).

- B. **Record Keeping and Reporting.** For the evaluations described above, Contractor shall maintain all records and submit reports to CalRecycle as described in 14 CCR Division 7, Chapter 3, Article 6.3, as applicable. Contractor shall report this information to the District on a monthly basis in accordance with Article 8.
- C. **Scheduling of Evaluations.** Contractor shall schedule evaluations during normal working hours. Contractor shall provide District notice of its intent to conduct evaluations at the Approved Facility(ies) at least ten (10) working days in advance of the evaluations.
- D. **Observance of Study by District and/or CalRecycle.** Contractor acknowledges that, upon request, a representative of the District and/or CalRecycle may oversee its next scheduled quarterly sampling and evaluation of any of the evaluations described in Section 8.5.A of this Exhibit 8 conducted at the Approved Facility(ies).

## **EXHIBIT 4: COLLECTION SYSTEM SPECIFICATIONS**

1. **General.** Upon initiation of services under this Agreement, Contractor shall provide a three-Container Collection program for the separate Collection of Source Separated Recyclable Materials, Source Separated Organic Materials, and Black Container Waste as specified in this Section, using Containers that comply with the requirements of Section 4.6.4.1.

A. **Source Separated Recyclable Materials Collection (Blue Container).** Contractor shall provide Blue Containers to Customers for Collection of Source Separated Recyclable Materials. Contractor shall Transport the Source Separated Recyclable Materials to (i) the Approved Source Separated Recyclable Materials Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Source Separated Recyclable Materials Processing Facility, as specified in Exhibit 8.

Source Separated Recyclable Materials that are to be accepted for Collection in the Source Separated Recyclable Materials Collection program include the following: newspaper, phone books, catalogs, magazines, brown paper bags, packaging, egg cartons, white paper, colored paper, envelopes, junk mail, glossy paper, shredded paper, carbonless paper, chipboard/boxboard, cardboard, empty aluminum cans, empty tin cans, juice containers, sauce containers, soda cans, tuna cans, soup cans, loose jar lids, empty aerosol, empty glass beverage containers, empty glass food containers, all glass colors, empty CRV and non-CRV plastic containers, trays and bottles #1 through #7, soft cover books/manuals, milk/juice cartons, and rigid plastic; such materials shall include Paper Products and Printing and Writing Papers as defined by SB 1383, 14 CCR Section 18982(a). The Parties agree that the list of accepted types of Source Separated Recyclable Materials may be added to or removed from time to time by mutual agreement of the parties provided that in all cases Source Separated Recyclable Materials (including Paper Products and Printing and Writing Papers as defined by SB 1383, 14 CCR Section 18982(a)) is included for Collection. Contractor shall not add or remove materials to or from this list without written approval from the District or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Prohibited Container Contaminants shall not be Collected in the Blue Containers.

B. **Source Separated Organic Materials Collection (Green Container).** Upon initiation of services under this Agreement, Contractor shall provide Green Containers to Customers for Source Separated Organic Materials Collection. Contractor shall Transport the Source Separated Organic Materials to (i) the Approved Organic Waste Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Organic Waste Processing Facility, as specified in Exhibit 8.

Source Separated Organic Materials that are to be accepted for Collection in the Source Separated Organic Materials Collection program include the following: Food Scraps, Food-Soiled Paper, Compostable Plastics, and Green Waste. The Parties agree that types of Source Separated Organic Materials may be added to or removed from this list from time to time by mutual agreement of the parties. Contractor shall not add or remove materials to or from this list without written approval from the District or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers.

Green Waste that is to be accepted for Collection in the Source Separated Organic Materials Collection program include the following: all food, fruits, vegetables, meat and bones, poultry, seafood, shellfish, dairy products, cheese, eggs and eggshells, rice, beans, bread, pasta, coffee grounds, and plate scrapings of these materials, Food Soiled Paper towels, tissue products, paper napkins, paper plates and cups, coffee filters, tea bags, greasy pizza boxes, paper bags and cardboard and; Loose green material from the yard, grass clippings, leaves, weeds, tree prunings, bush pruning's, plant material, tree trunks/stumps/branches 2" or less in diameter. The Parties agree that accepted types of Green Waste may be added to or removed from this list from time to time by mutual agreement of the parties. Contractor shall not add or remove materials to or from this list without written approval from the District or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers.

Contractor may Collect Compostable Plastics in the Green Containers for Processing at the Approved Organic Waste Processing Facility. At least three (3) months prior to the commencement of the Collection of Compostable Plastics in the Source Separated Organic Materials program, Contractor shall provide written notification to the District that the Facility can Process and recover these Compostable Plastics. Contractor shall provide written notification to the District annually that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. Contractor shall notify the District within five (5) business days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Facility will not Process and recover Compostable Plastics; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics are no longer accepted for Collection. Such changes shall be handled as a change in scope pursuant to Section 2.10.

- C. **Black Container Waste Collection (Black Container).** Contractor shall provide Black Containers to Customers for Collection of Black Container Waste. Contractor shall Transport the Black Container Waste to (i) the Approved Disposal Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Disposal Facility, as specified in Exhibit 8. Contractor may allow carpets and textiles to be placed in the Black Containers. Prohibited Container Contaminants shall not be Collected in the Black Containers.

## 2. C&D Collection

Contractor shall Collect C&D debris from all Customers that subscribe to its C&D debris Collection services and Transport the C&D to (i) the Approved C&D Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to an Approved C&D Processing Facility. Contractor shall provide C&D debris Collection and Processing services in accordance with this Agreement. Contractor shall charge Customers for C&D debris Collection services at District-approved Rates