

**AGREEMENT FOR THE COLLECTION, TRANSPORTATION, PROCESSING AND  
DIVERSION OF MUNICIPAL SOLID WASTE, RECYCLABLE MATERIALS, FOOD  
SCRAPS, YARD TRIMMINGS, CONSTRUCTION AND DEMOLITION DEBRIS AND  
OTHER MATERIALS AND FOR THE COLLECTION, TRANSPORTATION AND  
DISPOSAL OF MUNICIPAL SOLID WASTE**

**BETWEEN**

**THE CITY OF SAN MARINO**

**AND**

---

 2025

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DIVERSION OF MUNICIPAL SOLID WASTE, RECYCLABLE MATERIALS, FOOD  
SCRAPS, YARD TRIMMINGS, CONSTRUCTION AND DEMOLITION DEBRIS AND  
OTHER MATERIALS AND FOR THE COLLECTION, TRANSPORTATION AND  
DISPOSAL OF MUNICIPAL SOLID WASTE**

THIS AGREEMENT is entered into as of the [REDACTED] day of [REDACTED] 2025, by and between the CITY OF SAN MARINO, a municipal corporation (hereinafter referred to as the "City") and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as "Contractor").

**RECITALS**

1. The State of California has found and declared that due to the amount of Municipal Solid Waste (MSW) generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, that there is an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has also found that the recycling or reuse of MSW will conserve not only landfill capacity but also water, energy and other natural resources. The State has, through enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq., as may be amended from time to time, hereinafter referred to as the "Act"), directed responsible State Agencies, and all local agencies, to promote Recycling and to maximize the use of feasible Source Reduction, Recycling and Composting options in order to reduce the amount of MSW that must be disposed of by land Disposal.

2. By enactment of the Act, the California Legislature has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste collection within their jurisdiction. Pursuant to its Municipal Code and California Public Resources Code Section 40059(a) as may be amended from time to time, City has determined that the public health, safety, and well-being require that an exclusive right be awarded to a qualified contractor to provide for the collection processing and disposal of solid waste, recyclable materials, and organic waste materials, in order to achieve the diversion goals and other requirements of the Act.

3. In 2011, AB 341 was approved and signed into law amending the Act. The AB 341 amendments make a legislative declaration that it is the policy goal of the State of California that not less than seventy-five percent (75%) of MSW be source reduced, recycled or composted by the year 2020. As required by AB 341, the California Department of Resources Recycling and Recovery (hereinafter referred to as "CalRecycle") prepared a plan for submittal to the legislature on the methods to accomplish this goal. AB 341 required all businesses generating four (4) or more cubic yards of MSW per week, and all Multi-Family dwellings consisting of five (5) units or more, to arrange for Recycling services on or before July 1, 2012; and required all local agencies to provide a commercial recycling program meeting specified criteria on or before July 1, 2012.

4. In 2014, AB 1826 was approved and signed into law amending the Act. AB 1826 required the City to provide a collection and diversion program for Food Scraps, Yard Trimmings and Wood for all businesses and Multi-Family Complexes on or before January 1, 2016. AB 1826 requires businesses within City to participate in a diversion

program for Food Scraps, Yard Trimmings and Wood according to a specified schedule depending upon the quantity of such materials and the quantity of MSW generated by the business. Businesses generating eight (8) or more cubic yards of Food Scraps, Yard Trimmings and Wood per week must participate as of April 1, 2016. Businesses generating four (4) or more cubic yards of Food Scraps, Yard Trimmings and Wood per week must participate on or before January 1, 2017. All businesses generating two (2) or more cubic yards per week of MSW must participate as of January 1, 2020. AB 1826 further required all Multi-Family complexes of five (5) or more units to participate in a diversion program for Yard Trimmings and Wood as of April 1, 2016.

5. In 2016, SB 1383 was approved and signed into law amending the Act and amending sections of the California Health and Safety Code. SB 1383 required that by January 1, 2028, the State Air Resources Board approve and begin implementing a statewide strategy to reduce emissions of short-lived climate pollutants to achieve a reduction in methane by forty percent (40%), hydrofluorocarbon gasses by forty percent (40%) and anthropogenic black carbon by fifty percent (50%) compared to 2013 levels. This reduction is to be achieved by 2030. In service of this reduction strategy, SB 1383 established a statewide goal of a fifty percent (50%) reduction in the disposal of organic waste (as defined in the legislation) from the 2014 level by 2020, and a seventy-five percent (75%) reduction from the 2014 level by 2025. SB 1383 further requires that a minimum of twenty percent (20%) of the reduction in disposal of organic waste by 2025 be comprised of edible Food Scraps Diverted for human consumption. CalRecycle developed SB 1383 regulations which were approved by the Office of Administrative Law

in 2020 and codified in the California Code of Regulations (“CCR”) Title 14, Division 7, Chapter 12, “Short-Lived Climate Pollutants”.

6. In 2022, SB 54 the “Plastic Pollution Prevention and Packaging Producer Responsibility Act” was approved and signed into law amending the Act. SB 54 requires that by January 1, 2032, all single-use packaging and plastic single-use food service ware (“covered materials”) offered for sale, distributed or imported into the state, be recyclable or compostable as defined by the Act. SB 54 requires the following recycling rates be achieved statewide for covered materials: thirty percent (30%) by January 1, 2028; forty percent (40%) by January 1, 2030; and sixty-five percent (65%) by January 1, 2032. SB 54 provides for funding to local governments to offset the costs of this recycling and monitoring effort. SB 54 requires that CalRecycle promulgate final regulations to implement all aspects of the legislation by January 1, 2025. Local government agencies have been notified to begin tracking estimated and actual costs for compliance with SB 54 from 2023 onward, and to be prepared to submit such costs to CalRecycle by the dates specified by the statute and the final regulations.

7. City’s existing agreement with Arakelian Enterprises, Inc., DBA Athens Services was entered into on October 1, 2003 and has been amended four times, most recently in October 2023. The existing agreement expires December 31, 2025, unless earlier terminated by either party.

8. On February 24, 2022 the City received a letter from CalRecycle notifying the City it was deficient in implementing the mandatory commercial organics recycling (MORE) Program required by AB 1826. If the City did not submit an action plan with milestone dates for correcting the deficiency, the City would receive notification from the

Jurisdiction Compliance Unit indicating the start of consideration of a compliance order. On March 22, 2022 the City responded with a letter to CalRecycle stating that it was in the process of negotiating a new or amended contract with Athens Services which it planned to complete by May 31, 2022. The City continued to communicate with CalRecycle on the status of the negotiations and on diversion program implementation for SB 1383.

9. Pursuant to the terms in the Fourth Amendment to the agreement, City entered into exclusive negotiations with Athens Services in late 2023 to attempt to reach mutually agreeable terms and rates for a new or amended agreement for recycling and solid waste services. After fourteen months of negotiations, the City and Athens Services were unable to reach an agreement. On February 28, 2025 the San Marino City Council authorized the issuance of a Request for Proposals for solid waste and recycling services.

10. Also on February 28, 2025, at the request of Athens Services, the City Council appointed a two-person Ad Hoc Committee to meet a final time to attempt to reach mutually agreeable terms and rates for a new or amended contract. The Ad Hoc Committee met with Athens Services on March 18, 2025 to discuss terms and rates. The parties were unable to reach agreement on terms and rates.

11. On March 24, 2025 the City received a letter from Athens Services stating the company was exercising its right, pursuant to the Fourth Amendment to the agreement, to terminate the existing contract as of May 30, 2025.

11. Through its existing contract with Athens Services, City has implemented Residential, Multi-Family and Commercial Recycling and Diversion programs for

Recyclable Materials, Yard Trimmings, Food Scraps and Edible Food at some generators. City wishes to arrange for the operation, expansion and enhancement of its existing Recycling and Diversion programs and implementation of new comprehensive Recycling and other Diversion programs for Single and Multi-Family Residential Premises, Commercial and Business Establishments and other operations in the City, which entails the Collection of Recyclable Materials, Yard Trimmings, Food Scraps, Construction and Demolition Debris and other materials and the delivery of these materials for processing and Diversion at Processing Facilities. These Recycling, Composting and other Diversion programs are integral and important components of the City's strategy for complying with the Act, including compliance with AB 1826 and SB 1383 requirements, and are, therefore, of paramount importance to the City. Due to the complexity and specificity of the SB 1383 regulations, new contracts for solid waste and recycling services must contain very detailed and specific performance requirements, metrics to measure performance, and detailed reporting requirements to enable the City to comply with the SB 1383 regulations.

9. City issued a Request for Proposals on April 11, 2025 and [REDACTED] proposals were received on [REDACTED]. The City has evaluated the proposals submitted and has determined that the Contractor has proposed to provide such services in a manner and on terms which are in the best interests of the City, its residents and businesses, taking into account the qualifications and experience of the Contractor, the financial capability of the Contractor, the Contractor's demonstrated commitment to Recycling and Diversion of materials from Disposal, and the cost of providing such services.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the parties agree as follows:

## **AGREEMENT**

## **ARTICLE 1: DEFINITIONS**

**1.01 Definitions.** Unless otherwise defined in this Agreement, capitalized terms used in this Agreement shall have the meanings set forth in the definitions contained in Attachment A.

## **ARTICLE 2: REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

**2.01 Legal Status.** Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and is qualified to do business in the State of California.

**2.02 Authority.** Contractor has the authority to enter into and perform its obligations under this Agreement. Contractor has taken all actions required by law, or otherwise to authorize the execution of this Agreement.

**2.03 Agreement Duly Executed.** The Persons signing this Agreement on behalf of Contractor have been authorized to do so, and this Agreement constitutes a legal, valid and binding obligation of Contractor.

**2.04 No Conflict with Applicable Law or Other Documents.** Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates or will result in a violation of any Applicable Laws, as of the Effective Date; or (ii) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which Contractor is a party, or by which Contractor is bound.

**2.05 No Litigation.** There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against Contractor, or otherwise affecting Contractor, wherein an unfavorable decision, ruling, or

finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor.

**2.06 Financial Condition.** Contractor has made available to City information on its financial condition. City has relied on this information in evaluating the sufficiency of Contractor's financial resources to perform this Agreement. To the best of Contractor's knowledge, this information is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

**2.07 Expertise.** Contractor has the expertise and professional and technical capability to perform all of its obligations under this Agreement.

**2.08 Contractor's Investigation.** Contractor has made an independent investigation and analysis, the results of which are satisfactory to Contractor, of the conditions and circumstances surrounding the Agreement, its content and preparation, and the work to be performed by Contractor under the Agreement. The Agreement accurately and fairly represents the intentions of Contractor, and Contractor enters into this Agreement on the basis of that independent investigation and analysis.

**2.09 Statements and Information in Proposal.** The Proposal submitted to City and information submitted to City supplementary thereto, does not contain any untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not

misleading. Contractor's Proposal is attached hereto as Attachment Y. To the extent that Contractor's Proposal includes promises to perform services in addition to, or at a higher standard of service than those required by the Request for Proposals, those promises are incorporated into this Agreement and Contractor hereby ratifies its agreement to perform as promised.

## **ARTICLE 3: TERM OF AGREEMENT**

**3.01 Effective Date.** The Effective Date of this Agreement shall be  , 2025.

**3.02 Term.** The Term of this Agreement shall commence on the Effective Date and shall end at midnight on June 30, 2035, unless earlier terminated. Contractor's obligation to collect MSW, Recyclable Materials, Food Scraps/Yard Trimmings, Source-Separated Food Scraps, Source-Separated Yard Trimmings and other materials shall begin on June 1, 2025 at 12:01 a.m.

### **3.03 Conditions to Effectiveness of Agreement.**

**3.03.A Obligation of City to Perform.** The obligation of the City to perform under this Agreement is subject to satisfaction, on or before the Effective Date, of each of the conditions set out below, each of which may be waived in whole or in part by City:

**3.03.A.1 Accuracy of Representations.** The representations and warranties made by Contractor in Article 2 of this Agreement shall be true and correct on and as of the Effective Date.

**3.03.A.2 Absence of Litigation.** There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement or seeking to restrain or enjoin its performance.

**3.03.A.3 Furnishing of Bond.** Contractor has furnished the performance bond required by Section 13.03 which meets the requirements of that section.

**3.03.A.4 Furnishing of Evidence of Insurance.** Contractor has furnished satisfactory evidence of insurance required by Section 13.02.

**3.03.A.5 Effectiveness of City's Approval.** The approval of this Agreement by City shall have become effective, pursuant to California law, on or before the Effective Date.

**3.03.A.6 Reimbursement of City Procurement Costs.** Concurrent with executing this Agreement, Contractor shall have paid to City the sum of [REDACTED] (\$ [REDACTED]) to reimburse City for its costs for conducting the competitive procurement process for this Agreement. ***[Amount will be provided via an Addendum to the RFP]***

City may waive the satisfaction of the conditions described in Section 3.03.A.3 and Section 3.03.A.4, allow this Agreement to become effective, and exercise its rights and remedies under this Agreement for Contractor's failure to furnish the bond or the evidence of insurance.

**3.03.B Obligation of Contractor to Perform.** The obligation of Contractor to perform under this Agreement is subject to the satisfaction on or before the Effective Date of both of the conditions set forth below, each of which may be waived in whole or in part by Contractor.

**3.03.B.1 Absence of Litigation.** There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement, or seeking to enjoin its performance.

**3.03.B.2 Effectiveness of City's Approval.** The approval of this Agreement by the City shall have become effective, pursuant to California law.

**3.03.C Notice.** If either party wishes to assert that a condition for its benefit has not been satisfied and has not been waived, it must deliver written notice to that effect to the other party prior to the Effective Date. If no such notice is received, the Agreement will become effective on the Effective Date. Each party is obligated to perform in good faith the actions, if any, which this Agreement requires it to perform before the Effective Date and to cooperate towards the satisfaction of the conditions set forth above.

## **ARTICLE 4. EXCLUSIONS FROM SCOPE OF WORK**

**4.01 Exclusions From Scope of Work.** Contractor shall perform the work described in Article 5, Attachment B “Scope of Work” and all other tasks described in the Agreement. The scope of work to be performed by Contractor shall exclude all of the following and Contractor hereby agrees that City may permit the Collection, Transportation, Recycling, Processing, Composting, Diversion and/or Disposal of the following materials generated from Premises in City including, all of the following materials without seeking or securing any approval of Contractor:

**A.** Recyclable Materials which are separated by the Customer and donated or sold to youth, civic, or charitable organizations or any other Person;

**B.** MSW, Recyclable Materials, Food Scraps and/or Yard Trimmings generated at, and removed from, any Premises by the property owner or occupant and self-hauled by the property owner or occupant (or by his or her full-time employees) to a Processing Facility or to a Disposal Facility;

**C.** Food Scraps and/or Yard Trimmings which are generated at, and removed from, any Premises by the property owner or occupant and which are transported by the property owner or occupant (or by his or her full-time employees) and

Composted at a Processing Facility a Community Composting Site and/or a community garden;

**D.** Food Scraps and/or Yard Trimmings which are Composted on-site by the property owner or occupant using an outdoor composting method, an in-vessel composting method, vermicomposting and/or a Compost Appliance.

**E.** Recyclable Materials which are generated at, and removed from, any Premises by the property owner or occupant and which are transported by the property owner or occupant (or by his or her full-time employees) to a permitted Recycling drop off or buy-back center or to a Processing Facility;

**F.** Edible Food for Human Consumption that is Collected by any Person.

**G.** Food Scraps that are separated by the Customer for use as Edible Food for Human Consumption and are donated, sold or the Customer pays for Collection and delivery of the Food Scraps to food banks, shelters, churches, civic organizations, schools, individuals or any Person for human consumption.

**H.** Food Scraps that are separated by the Customer and are donated, sold or the Customer pays for Collection and/or delivery and/or use of the Food Scraps by a third party for (i) use as animal feed; and/or (ii) for use in making new food products for human consumption and/or for Composting at a local third-party community Compost program, Community Compost Site, a community garden, or other similar facility.

**I.** Glass, plastic, and/or aluminum beverage containers and all other containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, *et seq.*, of the California Public Resources Code;

**J.** Construction and Demolition Debris self-hauled by a Person or a Person's employees from a Premises that is owned or controlled by such Person, including a tenant of residential or commercial property.

**K.** Yard Trimmings removed from a Residential, Commercial, or any other Premises by a gardening, landscaping or tree trimming company utilizing its own equipment as an incidental part of a total service offered by the company rather than as a hauling service;

**K** The casual or emergency Collection and Disposal of MSW by City employees in the normal course of their employment;

**L.** Hazardous Waste, regardless of the source; and

**M.** MSW removed from a Premises by cleanup and junk removal services, and who: (a) hauls only the MSW which the cleanup service cleans up and no other MSW; (b) performs cleanup services such as removing junk from Residential and Commercial Premises; (c) uses its own vehicle(s) to haul the MSW which the cleanup service cleans up; and (d) does not use a Bin, Roll Off Box or other Container, whether or not such Bin, Roll Off Box or Container is left at the cleanup site, to accomplish the cleanup, Collection or transportation of the MSW.

**N.** Construction and Demolition Debris Collected and/or hauled by another entity, company, or Person holding the required permits, licenses and/or other approvals of City.

## **ARTICLE 5: COLLECTION OF MUNICIPAL SOLID WASTE RECYCLABLE MATERIALS, FOOD SCRAPS, YARD TRIMMINGS, CONSTRUCTION AND DEMOLITION DEBRIS, AND OTHER MATERIALS**

**5.01 Scope of Work – General.** Except as otherwise provided herein, Contractor shall (a) collect Municipal Solid Waste generated at Residential Single Family Dwellings, Residential Estates, any future Multi-Family Dwellings, Commercial and Business Establishments (including City facilities) and Special Events within the City and deliver it to the Disposal Site approved by City, and (b) collect Recyclable Materials, Co-collected Food Scraps/Yard Trimmings, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Construction and Demolition Debris and other items specified in Attachment B placed for Collection by Residential Single Family Customers, Residential Estate Customers, Multi-Family Dwelling Customers, Commercial and Business Establishments (including City facilities), and Special Events within the City and deliver each type of material to the Processing Facility designated by City. (Note: see the definitions of “Residential Single Family Dwelling”, “Residential Estate”, “Multi-Family” and “Commercial and Business Establishments” in Attachment A. For purposes of this Agreement, Multi-Family complexes with centralized Collection service are considered “Multi-Family Dwellings” and those with individual Cart Collection service are considered “Single Family Dwellings”.)

Notwithstanding the foregoing, the City does not guarantee that any particular type or quantity of Municipal Solid Waste, Recyclable Materials, Food Scraps, Yard Trimmings, Construction and Demolition Debris or any other material will be available for Collection at any time during the Term of this Agreement. Contractor acknowledges that the City

does not control the content of the waste stream generated within the City. Contractor further acknowledges that future changes in laws, regulations, packaging, the economy, consumption of goods, geopolitical conditions, and/or technology may affect the type and quantity of material that will be available for Collection by Contractor, and agrees that it will not be entitled to any cost or rate increases or other compensation of any kind due to such changes in the types and quantities of materials available for Collection. The City shall have no obligation to affirmatively defend Contractor's rights granted under this Agreement, but shall reasonably cooperate with Contractor, at Contractor's expense, in Contractor's efforts to defend its rights.

The work to be done by Contractor includes the furnishing of all labor, supervision, equipment, materials, supplies, vehicles and equipment, storage and maintenance facilities, and all other items necessary to perform the services required under this Agreement in a thorough, workmanlike and efficient matter, so that Residents, businesses, and public and private institutions within the City are provided reliable, courteous and high-quality services at all times. 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 that may be required, whether enumerated or not. In the event of a conflict between requirements in the Agreement and in the attachments to the Agreement, the decision of the City shall govern.

Contractor shall provide and perform all Collection services, Diversion Programs, Special Services, City services and Public Outreach and Education in accordance with Attachment B, whether or not such provisions are specifically referred to in any other section of this Agreement.

**5.02 Growth and Changes in City During the Term.** The parties acknowledge that changes to existing structures and new developments in the City may occur during the Term. Contractor shall provide all services described in this Agreement to all newly constructed and occupied Premises during the Term in accordance with rates in Attachment D in effect at the time the services are provided.

**5.03 Contractor's Plan for Interim Period and Contractor's Implementation Plan.**

The parties recognize that numerous tasks and activities must be accomplished by Contractor in order to initiate Collection operations in City on June 1, 2025 and to establish Customer accounts, billing, service levels, and respond to Customer questions and concerns. This will be followed by acquisition of new Containers and new vehicles which will then be deployed during the Interim Period. This includes providing a three (3) Container system with all Customers being provided Containers for MSW, Recyclable Materials and Food Scraps/Yard Trimmings. Contractor has prepared "Contractor's Plan for Interim Period" (which is Attachment H to the Agreement) showing the key tasks, activities and milestones to be accomplished during the Interim Period.

In addition, substantial and detailed planning and preparation will be required to ensure that all Diversion programs are Fully Implemented at all Customers, Public Education and Information is distributed, characterizations are commenced, and all other requirements in the Agreement including Attachment B are being completed during the period January 1, 2027 through December 31, 2028. To that end, Contractor has prepared the detailed Implementation Plan in Attachment C.

Contractor shall diligently adhere to both Contractor's Plan for Interim Period and the Implementation Plan and shall meet periodically, whenever City requests, to review

its progress. Failure to adhere to Contractor's Plan for Interim Period and to the Implementation Plan, including the schedules therein, shall constitute a material breach of this Agreement, which, if uncured, shall constitute a default under Section 15.01.

With regard to any specific plans and other materials required to be submitted to City for review and approval in either Contractor's Plan for Interim Period or in the Implementation Plan, City will endeavor to take actions, make decisions, and provide directions to Contractor in accordance with the schedule and time allowances set forth in Attachments H and C, so as not to delay Contractor's adherence to the schedules in said plans.

**5.04 Residential Collection Services.** Contractor shall collect all MSW, Recyclable Materials, Food Scraps and Yard Trimmings generated at Residential Single Family Dwellings within the City and placed for Collection at backyard/sideyard locations by Customers. Contractor shall Collect the same materials from Residential Estates within the City. Said materials shall be collected from Residential Single Family Dwellings and Residential Estates Premises at the frequencies and in the manner described in Attachment B, Section 2. Tonnage of each type of materials (MSW, Recyclable Materials, and Co-collected Food Scraps/Yard Trimmings) Collected from Estates shall be recorded by material type and weight and reported separately from Single Family Residential, Multi-Family or Commercial Tons.

**5.05 Commercial/Business Collection Services.** Contractor shall collect all MSW, Recyclable Materials, Food Scraps and Yard Trimmings generated at Commercial and Business Establishments within the City and placed for Collection. Said materials shall

be collected from such Premises at the frequencies and in the manner described in Attachment B, Section 3.

**5.06 Collection Services at City-Sponsored Special Events.** Contractor shall Collect all MSW, Recyclable Materials and Food Scraps generated, at up to twenty (20) City-sponsored Special Events per calendar year during the Term at no charge to the City as described in Section 4 of Attachment B.

**5.07 Other Services and Special Services.**

**5.07.A Other Services.** Contractor shall provide other Collection services as requested by Customers in the City on an on-call basis, including Bin, Roll Off Box and Compactor service described in Attachment B, Section 3.

**5.07.B Collection of MSW and Divertible Materials at Non-City Sponsored Special Events.** Contractor shall also provide Containers and Collection service for Recyclable Materials and Food Scraps at non-City sponsored special events (whether for profit, non-profit or private gatherings) as described in Section 4 of Attachment B. Such services shall be provided at the rates in Attachment D.

**5.07.C Special Services.** Contractor shall provide special services as described in Attachment B that include, but are not limited to:

- Bulky Goods Collections
- Special Events Collections
- Holiday Greenery Collection and Recycling
- Community Shredding Events

- Compost Giveaway Events

**5.08 Hours of Collection.** Collection of MSW, Recyclable Materials, Co-collected Food Scraps/Yard Trimmings, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Construction and Demolition Debris, and all other Collection operations may occur only within the hours authorized by the City. Contractor may not conduct Collection operations earlier than 7:00 a.m. local time or later than 6:00 p.m. for Single Family and Multi-Family Dwellings, and no earlier than 7:00 a.m. local time or later than 6:00 p.m. for Commercial and Business Establishments. The City Manager or his/her designee, if requested by Contractor, may grant temporary site and route-specific exceptions. At the sole discretion of the City Manager, Contractor shall adjust the early morning start point of Collection routes to address and minimize Customer complaints, when warranted. The decision of the City Manager or his/her designee shall be final.

Contractor shall not conduct any Residential, Commercial, permanent or temporary Roll Off Collections or any other Collections on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. No Collections shall occur on Saturdays for Single Family and Multi-Family Dwellings except for missed pick-up service and for a holiday that falls on a preceding Friday. When a holiday falls on a weekday, Collection service will be performed on the following day. For example, if a holiday falls on a Monday, service scheduled for Monday will be provided on Tuesday, service scheduled for Tuesday on Wednesday and so on. If a holiday falls on a Saturday, service will be provided the following Monday.

Commercial Collections may occur all seven (7) days of the week.

Contractor shall coordinate with the City Manager or his or her designee to ensure that the Collection of MSW, Recyclable Materials, Food Scraps/Yard Trimmings, and Construction and Demolition Debris is compatible with, and does not interfere with, City's street sweeping operations.

#### **5.09 Collection Standards.**

**5.09.A Care of Property.** Contractor shall use due care when handling MSW, Recycling, and Food Scrap/Yard Trimmings Carts and Bins. Carts shall not be thrown from trucks, roughly handled, damaged or broken. Containers shall be returned to the Collection point upright, with lids properly closed.

Contractor shall ensure that its employees close all gates opened by them in making Collections, unless otherwise directed by the Customer, and avoid crossing landscaped areas and climbing or jumping over flower beds, hedges, fences, and other building appurtenances.

City shall refer complaints about damage to private property, including common areas in common-area subdivisions, and common areas and parking areas in Multi-Family Dwellings to Contractor. Contractor shall promptly and at its sole expense repair, or arrange for the repair of, all damage to private property caused by its employees, including but not limited to vehicles, overhangs, carports, streets, curbs, sidewalks, driveways and paved areas.

**5.09.B Noise.** All Collection operations shall be conducted as quietly as possible and shall conform to City noise level regulations. The noise level during the stationary compaction process shall not exceed 75 decibels at a distance of 25 feet from the

Collection vehicle measured at an elevation of five (5) feet above ground level using the “A” scale of the standard sound level meter at slow response. Contractor shall test all Collection vehicles used in City annually during the months of June and July beginning June of 2027 and shall submit to City a certificate of vehicle noise testing by an independent testing facility showing the results of the tests. The City may also conduct random checks of noise emission levels to ensure such compliance.

**5.09.C Private and Public Streets.** Contractor shall use its best efforts to prevent damage to all streets (public and private) over which its Collection equipment may be operated, and Contractor shall obtain all required approvals for operation of its Collection vehicles on private streets. In the event Contractor damages public streets (including but not limited to creation of potholes, holes in asphalt, damage to curbs, gutters and storm drains), including, but not limited to, damage caused by Contractor operating vehicles in violation of requirements in this Agreement, City will notify Contractor and Contractor shall be responsible for the City’s costs of repairing the damage, which will be performed by City. Contractor shall comply with all requirements for placement of Containers, including Roll Off Boxes, in the public right of way, including compliance with encroachment permits pursuant to the City’s Municipal Code.

Contractor shall use all available industry best practices to prevent spills of fuel and fluids (such as oil, hydraulic fluid, brake fluid, etc.) on streets; including, but not limited to, installation of a hydraulic fluid pressure monitoring system on all new Collection vehicles as described in Section 8.03.M. A liquid spill kit shall also be carried at all times on each Collection vehicle. If such a spill occurs, Contractor shall immediately notify the

City (including the Director of Public Works or his/her designee and the City's NPDES Coordinator) and all proper regulatory authorities of said spill and release of fluids. Upon a release of such fluids, the driver shall immediately park the vehicle and it shall remain parked until the leak is repaired. In such event Contractor shall not park the leaking vehicle within two hundred (200) feet of a waterway or storm drain and shall utilize absorbent material, sand bags, "socks" and/or other appropriate means to prevent leaking fluids from entering storm drains. In the event of any type of spill or other emergency, Contractor shall be responsible for securing the immediate safety of the vehicle driver, all other employees of Contractor and all persons and property in the surrounding vicinity. Contractor shall clean, at Contractor's expense, the spilled fluids in coordination with, and to the satisfaction of, City and applicable regulatory agencies.

As of the Effective Date, Contractor shall initiate and provide continuous (at least monthly) training of all collection employees, route supervisors, dispatch personnel and all management employees in the proper handling of any leaked liquid or spills to prevent such liquids and/or spills from entering storm drains, waterways or otherwise creating environmental damage or any damage to Persons, property, wildlife, animals, vegetation, the ocean, waterways, or releases to the atmosphere. Such trainings shall include a simulation of a spill with employees physically performing the appropriate actions and activities to contain spilled fluid(s) and notify the City and all appropriate regulatory agencies, at least one (1) time each year. Contractor shall provide a quarterly report to City on the trainings held with each employee group including the topics covered, and the

employees or third parties that provided each training, as further described in Section 11.03.

**5.09.D Customer Privacy.** Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying the contents and composition of a Customer's MSW, Recyclable Materials, Food Scraps/Yard Trimmings, Source-Separated Food Scraps, Source-Separated Yard Trimmings or Construction and Demolition Debris shall not be revealed to any Person, governmental unit, private agency or company (other than photographs, video, and other information required to be submitted to City pursuant to this Agreement; required to be submitted to CalRecycle; and photographs, video and other information required to be submitted to a regulatory agency in connection with a spill described in Section 5.09.C), unless authorized by the Customer or by any Applicable Laws. This includes, but is not limited to, data, written information or descriptions, notes, photographs, video footage, GIS data identifying Customer, Customer's address, location, Contamination identified in Customer's Containers, other materials identified in Customer's Containers and other information on the contents of Customer's MSW, Recyclable Materials, Yard Trimmings, Food Scraps or Construction and Demolition Debris Containers obtained through on-site observations, aerial photography, GIS systems, satellite photographs or video, drone photographs or video, conversations with Customers, and documents received by Contractor from Customers. In the event one (1) or more employees remove documents or any other material from Customer Containers, other than specifically for the purposes of (a) an on-site field audit or characterization, (b) transferring overflowing materials from one Container to another Container, or (c) for Collecting, Disposing of, or Diverting the

materials as described in this Agreement, Contractor shall assign a different employee(s) to perform the work in the City.

This provision shall not be construed to prohibit Contractor from (i) preparing, participating in, or assisting in the preparation of characterization studies, and waste stream analyses of MSW and Divertible Materials that may be required by the Act or requested by City; (ii) performing the characterizations required pursuant to Article 11 and Attachment N of this Agreement; (iii) taking photos and/or video of Contamination in Containers or of overfilled, blocked or otherwise uncollectable Containers, or of Uncontainerized materials; (iv) providing information necessary for City to comply with the Act and SB 1383; and (v) providing information requested by police, sheriff, public safety or other law enforcement; or to obtain information required to be submitted to City in order for City to exercise its police powers and enforce City's Municipal Code. Contractor shall not market or distribute customer data, information or mailing lists to any party except where required by the provisions of this Agreement, and additionally, Contractor shall make available customer mailing lists to the City upon request.

#### ***5.10 Litter Abatement.***

##### **5.10.A Minimization and Cleanup of Dropped, Scattered or Blown Materials.**

Contractor shall use due care to prevent MSW, Food Scraps/Yard Trimmings, Recyclable Materials and Construction and Demolition Debris from being dropped, scattered or blown during the Collection or transportation process. Contractor shall tarp all open Roll Off Boxes while transporting the Box. If any MSW, Yard Trimmings, Wood, Food Scraps, Construction and Demolition Debris or Recyclable Material is dropped, scattered or blown

out of a vehicle or Roll Off Box, Contractor shall promptly clean up all such materials whether on private or public property. Each Collection vehicle shall carry all industry-standard equipment for this purpose. Failure to clean up all dropped, scattered, or blown materials within four (4) hours of notification of the existence of dropped, scattered or blown materials or litter resulting from Collection operations reported by a Customer, the City, or any other Person (when reported during regular business hours) shall result in the assessment of liquidated damages as described in Section 15.09.

Contractor shall not transfer loads from one vehicle to another on any public street or private roadway, unless it is necessary to do so because of mechanical failure or damage to a Collection vehicle that renders it inoperable and the vehicle cannot be towed.

**5.10.B Clean Up of Existing Litter.** The Contractor shall clean up existing litter in the immediate vicinity of any MSW, Recyclable Materials, Food Scrap, or Yard Trimmings Collection area (including enclosures and in all areas on private and public property where Containers are delivered for Collection) whether or not Contractor has caused the litter. Contractor shall notify the Customer and the City after the second occurrence of existing litter and shall send City a photograph of the littered area. City's Code Enforcement Officer, or other City representative, and Contractor's Recycling Coordinator will make an on-site inspection to discuss the situation with the Authorized Customer Representative responsible for the property. If the litter and debris is being caused by illegal dumping, the City and Contractor's City Day-to-day contact person will work with the Authorized Customer Representative. Contractor shall recommend options to the Customer including but not limited to, using locked enclosures and/or Bins with locking lids to prevent entry. Upon Customer request, Contractor shall provide Bins with

locking lids. If the cause of the litter is under-subscription to the Collection service, the City and Contractor's City Day-to-Day contact person will work with the Authorized Customer Representative to identify options for solving the problem including Diversion of more Divertible Materials, source reduction, flattening cardboard boxes, and other options. In the event Contractor recommends a change in the size of Container(s) and/or the frequency of service, and the Customer objects, the City shall determine the appropriate resolution. The decision of the City shall be final.

**5.10.C Clean Up of Illegal Dumping.** Contractor shall respond to all calls from City regarding spilled or illegally dumped MSW, Yard Trimmings, Wood, Food Scraps, Recyclable Materials, Electronic Waste, U-Waste and/or Bulky Items that are identified in locations other than Customer MSW enclosures (such as empty parking lots, on City streets, sidewalks, etc.) during regular business hours Monday through Friday. Contractor shall collect and deliver such material to the City designated Disposal Facility (or, in the case of Recyclable Materials, Yard Trimmings, Wood, concrete, asphalt or other inert materials, to the City-designated MRF, Compost Facility, or Construction and Demolition Debris Processing Facility; and in the case of Electronic and Universal Waste, to a fully-permitted, City-Approved Processing Facility). Contractor shall utilize appropriate vehicles, equipment and labor to accomplish Collection of illegally dumped materials in a safe and timely manner in accordance with all Applicable Laws.

**5.10.D Covering of Loads.** Contractor shall place covers on all open Roll Off Box Containers and transfer trucks during transport to the Disposal facility, Materials Recovery

Facility, Compost Facility, Construction and Demolition Debris Processing Facility and all other Processing Facilities.

**5.10.E Overfilled Carts and Bins.** Contractor shall not charge Customers any extra fee or charge for Overfilled Bins or Overfilled Carts. In no event shall Contractor force, coerce, pressure, threaten, or require a Customer to increase the frequency of their service or subscribe to a larger size Container due to Overfilled Carts and/or Overfilled Bins. If Overfilled Carts and/or Bin(s) are a chronic problem and Contractor has photo-documentation of at least two (2) events of Overfilled Carts and/or Bins within a thirty (30) day period, Contractor shall work with the Customer(s) to develop options for a solution, which may include flattening boxes, increasing Diversion of Divertible Materials, source reduction and other options. Contractor shall report the incidents and the results of working with the Customer to the City in the monthly reports.

In the event Contractor encounters an overweight temporary clean up Bin that cannot be safely lifted and emptied into Contractor's Collection vehicle, Contractor may charge the Customer the 'cleanup Bin overweight charge' listed in Attachment D. This charge applies only to temporary cleanup Bins.

**5.10.F Compactor and Roll Off Box Overages. Roll Off Box Overweight Charges.** Contractor may charge the Compactor and Roll Off Box per Ton overage fees listed in Attachment D for Compactors and Roll Off Boxes that exceed the maximum allowable weight for Collection and/or exceed the California maximum legal

highway weight limits. Contractor may charge the overweight Roll Off fee listed in Attachment D if a special vehicle is needed to haul the contents of a Roll Off Box that weighs in excess of ten (10) Tons loaded weight. The overweight Roll Off fee may be charged in addition to the standard Roll Off rate in Attachment D.

### **5.11 Hazardous Waste**

**5.11.A General.** Contractor shall be aware of, and comply with, all laws, rules, and regulations relating to the handling and transportation of Hazardous Waste, including those requiring training and documentation. Contractor shall implement a Hazardous Waste exclusion program that includes, at a minimum, a visual check of all Containers Collected to protect against Collection of Hazardous Waste. Said visual check may occur at the time of Collection and/or at the time the load is dumped at the Disposal site or Processing Facility. If Contractor observes any substances that it believes to contain Hazardous Waste within the City, including but not limited to in Containers designed for MSW, Yard Trimmings, Wood, Food Scraps, Recyclable Materials or Construction and Demolition Debris, Contractor shall not collect such Hazardous Waste but shall immediately notify the appropriate regulatory agencies and the City. The preceding sentence shall not apply to prevent Contractor's Collection of Bulky Goods (i.e. refrigerators) that contain Freon, in accordance with Applicable Laws.

In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Waste unlawfully disposed of or released on private property or on public property, including, but

not limited to, storm drains, streets, or other public rights of way, Contractor shall notify City Manager, or the City Manager's designee immediately.

**5.11.B Notice to Customers.** Contractor shall notify all Customers at least once each year with a mailing separate from other notices and brochures, of: (i) the prohibition against the Disposal of Hazardous Waste in authorized Containers, Bins, Carts, Compactors or Roll-off Boxes; and (ii) the obligation of each Customer to provide for the proper handling and disposition of Hazardous Waste. To the extent that Contractor has actual knowledge of the existence of such Hazardous Waste in a Container placed for Collection, Contractor shall not collect such Container. Contractor shall, prior to leaving the location where such Hazardous Waste has been observed, leave a tag at least 2" x 6" that informs the customer why the Collection was not made and lists the telephone number for the appropriate local agencies to contact for proper disposal of the Hazardous Waste.

**5.11.C Contractor to Segregate and Dispose.** In the event Contractor inadvertently collects any Hazardous Waste, and during the course of transportation and disposition at a Disposal Facility, Materials Recovery Facility, Compost Facility, Construction and Demolition Debris Processing Facility or other Processing Facility, and becomes aware that it has collected such Hazardous Waste, Contractor shall segregate the Hazardous Waste, and shall arrange for its transport and Disposal to a properly permitted Recycling, treatment or disposal facility of Contractor's choosing at Contractor's sole expense. Contractor shall be solely responsible for the transport and disposition of all Hazardous Waste that is collected by Contractor. City will cooperate with Contractor's

attempts to locate and collect the costs of such transport and disposition from the responsible Customer.

**5.11.D Operating Procedures and Employee Training.** Contractor shall establish, implement and maintain written operating procedures designed to ensure Contractor's utilization of techniques generally accepted in the recycling and waste hauling industry for cities of the size and nature of the City of San Marino to handle and dispose of Hazardous Waste and its compliance with the provisions of this Agreement and all applicable laws, rules, and regulations. Contractor shall establish, implement and maintain an employee training program and shall ensure that employees responsible for the identification of Hazardous Waste are fully trained to properly handle and dispose of Hazardous Waste. Contractor shall maintain documentation that describes the training received by its employees.

**5.11.E Hazardous Waste Diversion Records.** Contractor shall maintain records showing the types and quantities, if any, of Hazardous Waste found in MSW, Recyclable Materials, Yard Trimmings, Wood, Food Scraps, and/or Construction and Demolition Debris at Residential Single Family Dwellings, Residential Estates, Commercial and Business Establishments, and at Construction and Demolition sites and which was inadvertently collected from Customers within the City, but discovered and segregated at (a) the point of Collection, (b) at a Processing Facility, or (c) at a Disposal Site. Said records shall include the ultimate disposition of the Hazardous Waste. A summary of said records shall be provided to City with each monthly report submitted by Contractor

pursuant to Section 11.03 and Attachment K. The complete records shall be maintained by Contractor in written or electronic format for the duration of the Term.

**5.12 City's Right to Change Scope of Work.** The City shall have the unilateral right, without amending this Agreement, to direct Contractor in writing to cease performing one or more of the services described in this Agreement, may direct Contractor to modify the scope of one or more of such services, may direct Contractor to perform additional Collection services and/or processing services, and may similarly modify Contractor's obligations under any provisions of this Agreement. This Section 5.12 shall not be interpreted to mean that Contractor may request changes. This Section 5.12 applies only to changes directed by the City during the Term.

The changes that City may direct include, but are not limited to, program expansions, new Diversion Programs to comply with the Act, modifying or stopping certain Diversion programs and/or specified portions of programs, change of Processing Facility, providing pilot programs and innovative services which may entail new Collection methods, different types of services, equipment and/or new requirements for Customers, new technology, and compliance with new laws, rules, and regulations.

If such changes cause an increase or decrease in the cost of performing the services, an appropriate adjustment in the rates set forth in Attachment D will be made as provided in Section 14.07. Contractor shall continue to perform the new or changed service while the appropriate adjustment in the rates, if any, is being determined.

**5.13 Attendance At Meetings With City.** Contractor shall attend monthly status meetings with City staff, representatives and agents beginning within one calendar week

of the Effective Date of this Agreement. The date, time and location for meetings will be established by the City, in consultation with the Contractor. Contractor shall provide all necessary and appropriate personnel to attend each meeting such that the topics on the agenda can be addressed fully and completely. At the sole discretion of the City, additional meetings may be convened during the Term to continue to address issues not resolved at the monthly meetings and to address specific events, issues or concerns as needed by the City. Topics to be covered at the monthly meetings include progress on the Implementation Plan, progress toward the achievement of program implementation as described in Attachment B, Contamination levels in Customer Containers, results from waste characterizations as described in Attachment N, “trace back” of Contamination found in waste characterizations, review of implementation of all items in the Scope of Work, review of monthly reporting documents including the Red/Green Tracking Spreadsheets, and/or Scaleware, Zapple, SMART 1383 (or other similar software program) data and information, planning for upcoming Special Events, and any other items relevant to the accomplishment of all tasks and attainment of all performance standards contained in the Agreement.

**5.14 Ownership of Municipal Solid Waste and Recyclable Materials.** Ownership and the right to possession of all MSW, Co-collected Food Scraps/Yard Trimmings, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Construction and Demolition Debris and Recyclable Materials shall be deemed to transfer to Contractor from the Customer once such materials are placed in Containers and properly placed at the designated Collection location. At no time shall the City hold any right of ownership or possession of MSW, Yard Trimmings, Food Scraps, Recyclable Materials,

Construction and Demolition Debris or Hazardous Waste placed for Collection and nothing in this Agreement shall be construed as giving rise to any inference that City has such rights.

**5.15 Containers at City Yard, City Hall and Community Center.** In addition to Collection at City facilities described in Attachment EE, Contractor shall, at no additional charge, provide Containers at City Yard, City Hall and/or Community Center (as directed by City) as described in Attachment B, Scope of Work, Section 4.7.5.

**5.16 Contamination Warning Notice/Prohibition on Contamination Fees.** Contractor shall follow the procedures described in Attachment B, Sections 2 and 3 “Procedure for Observation and Issuance of Contamination Notices to Customers” at any time a driver observes Contamination in a Container placed for Collection. Contractor is prohibited from charging any Customer, account and/or any Authorized Customer Representative a “Contamination fee”, or any type of charge or fee related to Contamination observed in any Container.

**5.17 Proposals for New Diversion Programs.**

Contractor shall, at no additional cost, within forty-five (45) days of each request by City, submit a written proposal on providing additional or expanded Diversion services. The proposal shall contain a complete description of the following: (A) Collection methodology to be employed; (B) equipment to be used and staffing requirements by number and classification; (C) type of Container(s) to be used; (D) informational/promotional campaign; (E) projection of annual operating costs and revenues (if applicable), including documentation of and support for key assumptions

underlying projections. In the event City decides to proceed with implementation of such additional and/or expanded Diversion service(s), the provisions of Section 5.12 of the Agreement shall apply.

## **ARTICLE 6: TRANSPORTATION AND DISPOSAL OF MSW AND PROCESSING OF RECYCLABLE MATERIALS**

**6.01 Transportation and Disposal of MSW.** City-designated Disposal Site as of the Effective Date is: **[selected Proposer's Disposal Site to be filled in here]** If at any time during the Term, Contractor becomes aware that any City-designated Disposal Site is not properly permitted and in compliance with all Applicable Laws, including but not limited to Public Resources Code Sections 43000 through 44820, all regulations promulgated pursuant thereto, and all other applicable state and local laws and regulations, Contractor shall immediately notify City in writing of the specific issues, violations and all other information known to Contractor. In the event the City-designated Disposal Site becomes unavailable for Disposal of MSW from City due to lack of proper permits, and/or lack of compliance with Applicable Laws and/or for any other reason, Contractor shall assist City in identifying and researching possible alternate Disposal Sites and shall cooperate with City in switching to the alternate Disposal Site(s) identified by City. In such event, Contractor shall transport and deliver all MSW collected pursuant to the Agreement to such other Disposal site designated in writing by the City Manager or his/her designee, and the provisions of Sections 5.12 and Section 14.07 shall apply if the change in Disposal Site creates a change (either an increase or decrease) in the cost of transport or Disposal of MSW.

Contractor shall cooperate with the operator(s) of the City-approved Disposal Site with regard to operations therein, including by way of example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, complying with the operator's

Hazardous Waste exclusion program, and fully and transparently cooperating with the operator's tonnage tracking system including reporting of allocation methods.

**6.02 Transportation of Recyclable Materials.** Contractor shall transport and deliver for processing all Recyclable Materials to the ***[fill in name and address of selected Proposer's MRF here]*** which is the City-approved Clean MRF.

**6.03 Transportation of Yard Trimmings and Food Scraps.** Contractor shall transport and deliver all Yard Trimmings, Food Scraps, Co-collected Yard Trimmings/Food Scraps and all Source-Separated Yard Trimmings to ***[fill in name and address of selected Proposer's Processing Facility for these materials here]*** which is the City-approved Yard Trimmings and Food Scrap Processing Facility.

**6.04 Transportation of Source-Separated Food Scraps.** Contractor shall transport and deliver all Source-Separated Food Scraps collected from Carts, Bins, Roll Off Boxes and Compactors pursuant to this Agreement to ***[fill in name and address of selected Proposer's Processing Facility here]*** which is the City-approved Source-Separated Food Scrap Processing Facilities.

**6.05 Transportation of Construction and Demolition Debris.** Contractor shall transport and deliver all Construction and Demolition Debris collected from Bins and Roll Off Boxes pursuant to this Agreement to the ***[fill in name and address of selected Proposer's C&D Processing Facility here]*** which is the City-approved Construction and Demolition Debris Processing Facility.

**6.06 City Right to Unilaterally Direct Change in Disposal or Processing Facility.** City reserves the right to unilaterally direct a change in any of the Disposal or Processing

Facilities described in this Article 6 for any reason, during the Term. In such event, City shall provide a minimum of six (6) months written notice to Contractor of the change. In such event, the provisions of Section 5.12 shall apply if changes in the designated Processing Facility result in increased mileage of more than ten (10) miles one way.

**6.07 Designated Processing Facilities Unavailable.** If any of the Processing Facilities described in Sections 6.02, 6.03, 6.04, and/or 6.05 become unavailable for use by the City during the Term, City may designate a new Processing Facility. The parties agree that a Processing Facility shall only be deemed to be “unavailable” if one or more of the following has occurred: (i) a Force Majeure event as described in Section 16.12 has occurred; or (ii) a Processing Facility has lost one or more permits to operate; or (iii) a Processing Facility has exhibited a pattern of violation through the receipt of repeated notices of violation from one or more regulatory agencies. Further, the parties agree that a Processing Facility shall only be deemed to be “unavailable” if the lack of availability of the Processing Facility is not due to Contractor’s negligence, illegal activity, neglect or willful misconduct. At City’s request, Contractor shall research and propose alternate Processing Facility(ies) for the material(s) requiring Processing, and shall submit a written analysis and recommendation to the City within five (5) working days concerning the cost for use of alternate facilities and any logistical changes that would be required to utilize such alternate facilities. City and Contractor will discuss the advantages and disadvantages of use of the potential alternate Processing Facilities and City will designate a selected facility. The decision of the City shall be final. In the event a Processing Facility becomes unavailable due to the negligence, illegal activity, neglect or willful misconduct of Contractor, Contractor shall bear all additional costs for use of an

alternate Processing Facility including increased processing costs, transportation costs, transfer costs and all other costs for as long as said alternate Processing Facility is used for Processing of materials Collected in City. In the event that a Processing Facility has become unavailable and the cause is not due to the negligence, illegal activity, neglect or willful misconduct of Contractor, the rates charged by Contractor that are set forth in Attachment D shall be adjusted (up or down) as described in Sections 5.12 and 14.07.

**6.08 Contractor Request for Change of Processing Facility.** In the event Contractor proposes the use of a new or different Processing Facility than those currently in use, Contractor shall provide the City with a detailed description of the proposed facility including but not limited to, the location, owner and operator, current facility users, technical capacity, processing methodology, diversion capabilities, potential advantages to the City, cost of use of the facility including impacts of transportation costs and tipping fees, and shall provide copies of all permits for the facility. In presenting the costs for use of the proposed facility, Contractor shall provide the City with both basic cost information and with proposed revisions to the rates in Attachment D showing the breakdown of costs for Collection, processing, transportation and Disposal for each rate category (Residential Single Family Dwellings, Residential Estates, Commercial, Multi-Family and Roll Off) incorporating use of the proposed facility, as well as the total proposed rate change for each rate category incorporating use of the proposed facility. The City will evaluate the proposal and may, in its sole discretion, choose not to use the proposed facility if any one of the following issues is not addressed to the satisfaction of the City:

- (a) Costs are not acceptable.
- (b) The facility does not have all required state, federal and local permits, and land use approvals and/or the facility is not operating in compliance with all state, federal and local permits, regulations and land use approvals.

- (c) Performance of the facility is not acceptable (e.g. the diversion achieved or proposed is not adequate, the quality of the materials created at the facility is substandard, etc.).
- (d) The actual or proposed end use for the processed materials created by the facility is not the highest and best use as dictated by regulatory and market conditions.
- (e) The City is subject to a binding agreement or other legal commitment with another entity that directs the use of a specific Processing Facility that prevents the use of the Contractor's suggested facility.
- (f) Use of the proposed facility is not in the best interest(s) of the City or its ratepayers, as determined in the City's sole discretion.

The parties will meet and discuss use of the proposed facility and the Contractor will provide prompt responses to City questions, concerns and requests for any additional information. City will inform Contractor in writing of its decision concerning use of the proposed facility within sixty (60) days of receipt of all of the information requested by the City. The decision of the City shall be final.

In the event City chooses to utilize a new or different Processing Facility, Attachment D shall, for the remainder of the Term, (if desired by City) be revised to include additional columns such that the new table shows the breakdown of costs for Collection, processing, transportation and Disposal for each category of service.

## **ARTICLE 7: PROCESSING AND MARKETING OF RECYCLABLE MATERIALS**

**7.01 Processing and Marketing Duties.** The costs proposed by Contractor shall include the costs of furnishing of all labor, supervision, equipment, materials, supplies and all other items necessary to perform the processing and materials marketing services required in this Article 7 in a thorough, workmanlike and efficient manner. Contractor shall provide processing and marketing services for all Divertable Materials Collected in City. In the event Contractor fails to provide processing services for any material type (Recyclable Materials, Co-collected Food Scraps/Yard Trimmings, Source-Separated Food Scraps, Source Separated Yard Trimmings and/or Construction and Demolition Debris, the liquidated damages in Section 15.09 shall apply. If Contractor fails to provide processing services for any material type for over fifty-six (56) days, Contractor shall be found to be in default of this Agreement.

**7.02 Permits.** Contractor shall utilize only Processing Facilities that are fully licensed and permitted under all applicable federal, state, regional and local laws, rules, and regulations. Within fifteen (15) calendar days after execution of the Agreement by both parties, Contractor shall deliver to City a package containing copies of all of the permits for the Clean MRF, the Compost Facility, the Yard Trimmings/Wood Processing Facility, the Food Scrap Processing Facility and the Construction and Demolition Debris Processing Facility and for any other Processing Facility approved by City that Contractor will use to process materials collected within City.

**7.03 Delivery of Residue to Landfill.** Contractor shall deliver, or arrange to be delivered, all non-recyclable Residue from the operations at all Processing Facilities including but

not limited to the Clean Materials Recovery Facility, the Compost Facility, and the Construction and Demolition Debris Processing Facility to the landfill designated by City in accordance with Section 6.01.

**7.04 Processing Facility Operating Requirements.** Contractor shall operate all Processing Facilities it owns in compliance with all applicable federal, state, regional and local laws and regulations and shall adhere to the requirements of all permits for each facility. If Contractor is using Processing Facilities it does not own, it shall be Contractor's responsibility to investigate and determine that said facilities are operating in compliance with all Applicable Laws, rules, regulations and permit requirements. If, at any time during the Term, said facilities are not operating in compliance with all legal requirements, it shall be the duty of Contractor to immediately report the situation to the City. Upon receipt of such information, City may conduct an independent investigation of the situation, may require Contractor to utilize a different Processing Facility while City is conducting its investigation, or may take other actions City deems reasonable and necessary to protect the interest of the City, its customers, public health and safety and the environment.

**7.04.1 Clean MRF.** The Clean MRF described in Article 6 must include processing lines for cleanup of Recyclable Materials, sorting of all Recyclable Materials and must be capable of processing and marketing all the Recyclable Materials collected by Contractor in the City.

**7.04.2 Compost Facility.** The Compost Facility described in Article 6, must be capable of processing all the Yard Trimmings (including Source-Separated Yard Trimmings) Collected by Contractor in the City, all Source-Separated Food Scraps Collected by Contractor in the City and all Co-collected Food Scraps/Yard Trimmings

Collected by Contractor in the City. Said facility shall handle Food Soiled Paper, shall be capable of removing any non-Compostable “biodegradable” and “compostable” bags, utensils and serving ware as described in Section 6 of Attachment B. If said items are Compostable, the materials shall be Composted at the Compost Facility. If said items are not Compostable, the items shall be Disposed at the City-approved Disposal Site. The end product(s) produced at the facility must be capable of being used for agricultural and landscaping applications and shall meet all federal, state, regional and local laws and regulations for such uses. Compost produced must be certified by the U. S. Composting Council Seal of Testing Assurance Program (“STA”). Contractor shall provide City with documentation evidencing such certification annually on or before January 1 of each year beginning January 1, 2028.

**7.04.3 Construction and Demolition Debris Processing Facilities.** The Construction and Demolition Debris Processing Facilities described in Article 6 must be capable of processing all of the Construction and Demolition Debris that is collected by the Contractor in the City.

**7.05 Contractor To Meet All Food Scrap and Yard Trimmings Processing Facility Specifications.** Contractor shall take all actions required to ensure that the Source-Separated Food Scraps, Source-Separated Yard Trimmings, and Co-collected Food Scraps/Yard Trimmings Collected and delivered to the Processing Facilities provided by Contractor and approved by City, meet all specifications required by said Facility(ies) for use as feedstock material, including but not limited to, amounts of Contaminants allowed. In no event shall the Source-Separated Food Scraps, Source-Separated Yard Trimmings, or Co-collected Food Scraps/Yard Trimmings Collected in City be delivered to any

alternate Processing Facility or any other type of facility that has not been previously approved in writing by City, nor shall any of said materials Collected in City be Disposed (except as provided in Section 7.04.2).

**7.06 Processing Requirements.** Contractor shall process all Recyclable Materials, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Co-collected Food Scraps/Yard Trimmings and Construction and Demolition Debris Collected in City in a manner that satisfies the Diversion requirements identified in Attachment B and in applicable regulations of CalRecycle.

**7.07 No Use of Biomass, Transformation, or Dirty MRF Facilities.** Contractor shall not deliver any materials Collected in City pursuant to this Agreement to a biomass, Transformation, or waste to energy facility. Contractor shall not deliver any MSW or other materials Collected pursuant to this Agreement to a dirty MRF. *[The following text will be inserted if applicable to the selected proposer:] Notwithstanding the foregoing, in the event it is necessary for Contractor to utilize a Dirty MRF during the Interim Period until the three (3) Container system is implemented at all Customers, City will allow use of the Dirty MRF. In such event, Contractor shall make all reasonable efforts to obtain and distribute the new Containers in Attachment E-2 and to obtain and utilize the new vehicles in Attachment F-1 as soon as possible during the Interim Period, in order to minimize the use of a Dirty MRF. Use of a Dirty MRF shall be prohibited beginning January 1, 2027. and Contractor shall use a Clean MRF for processing Recyclable Materials, and a Compost Facility/Anaerobic Digestion*

***Facility (whichever is proposed by the selected proposer) for processing Food Scraps and Yard Trimmings”]***

***7.08 Marketing of Recovered Materials, Compost and Other Products.*** Contractor shall be responsible for marketing, or arranging for the marketing, of all Recovered Materials, all Compost product(s) and all other products generated or produced from the Processing Facilities utilized to process materials collected in City, including, but not limited to, the Materials Recovery Facilities, Compost Facility, Food Scrap Processing Facilities and the Construction and Demolition Debris Processing Facilities.

***7.09 Limits on Modes of Disposition.*** City may direct Contractor, at any time, to stop delivering Recovered materials for uses that do not qualify as Diversion for purposes of the Act. Contractor is prohibited from delivering any material Collected in City to a solid waste landfill for use as Alternative Daily Cover. This prohibition includes, but is not limited to, Recyclable Materials, Source-Separated Yard Trimmings, Source-Separated Food Scraps, Co-collected Food Scraps/Yard Trimmings, Construction and Demolition Debris, Compost, MRF “fines”, MRF “overs” and all other products, byproducts and Residue from Processing Facilities utilized to Process materials pursuant to this Agreement.

This prohibition applies even if CalRecycle or any other agency allows such materials used as to qualify as Diversion for purposes of the Act.

No MSW of any kind may be disposed of on land at any location other than by delivery to the City-designated landfill as designated under Section 6.01. No MSW of any kind may be disposed of in water or in the atmosphere.

**7.10 City Access to Processing Facilities.** In addition to City's rights under other provisions of this Agreement, City and its agents shall have the right at all reasonable times to enter each of the Processing Facilities to (a) observe operations, (b) observe compliance with permit requirements, (c) observe tonnage allocation and tonnage tracking procedures, (d) observe and participate in the characterizations described in Attachment N, and (e) for any other reasonable purpose.

## **ARTICLE 8: EQUIPMENT, FACILITIES AND PERSONNEL**

**8.01 General.** Contractor shall furnish all facilities, vehicles and equipment necessary to perform safely and efficiently the services required by this Agreement. Contractor shall provide Collection vehicles, Bins, Carts, other Containers and other equipment as described in Sections 8.03 and 8.04.

### **8.02 Facilities.**

**8.02.A General.** Contractor shall provide all facilities required for storage, maintenance, repair and deployment of all vehicles and equipment required to perform the services required by this Agreement. Contractor shall also provide the necessary facilities and office space for personnel of Contractor providing the services required by this Agreement. The facility or facilities used by Contractor to perform the required services shall be fully permitted in compliance with all Federal, State and local laws, rules, and regulations. In the event the City receives complaints about the facilities (whether for noise, odor, litter, traffic problems or any other issue), Contractor shall promptly take action to address the issue(s) and shall resolve the problem within five (5) business days.

### **8.03 Vehicles.**

**8.03.A General.** On or before June 1, 2025, Contractor shall provide Interim Collection Vehicles and Interim Auxiliary Vehicles of the type, size and configuration, and in the quantities shown on Attachment F-2. On or before January 1, 2027 (at the end of the Interim Period) Contractor shall provide new Collection and Auxiliary Vehicles of the type, size and configuration, and in the quantities shown on Attachment F-1. For purposes of this section, “new” means the truck chassis, body and all other parts and components

of the vehicle shall be new and unused. All Interim and new Collection vehicles used by Contractor to perform services pursuant to this Agreement shall be suitable in design and construction for arduous heavy-duty service.

#### **8.03.A.1 Technological Equipment and Capabilities for New Vehicles**

All new Collection vehicles listed in Attachment F-1 shall be equipped with a system that provides surveillance, monitoring, auditing, recording and tracking including video and still photo equipment, GPS system, i-pads (or equivalent), backup cameras, and communication devices.

Contractor shall utilize the Collection vehicles listed in Attachment F-1 (including Roll-Off Collection vehicles) for Collection operations in City except for the percentage of use in other jurisdiction(s) indicated in Attachment F-1.

Collection routes that operate solely within the City for Collection of MSW, Recyclable Materials, Co-collected Food Scraps/Yard Trimmings, Source-Separated Food Scraps, Source-Separated Yard Trimmings and Construction and Demolition Debris, shall Collect only materials from within City such that when the Collection vehicles are weighed at the Disposal facility and/or at the Processing Facilities, all material in each vehicle shall originate solely from City. For vehicles on routes Collecting materials in the City of San Marino as well as in other jurisdictions, Contractor shall record the city of origin of each lift and calculate the tonnage of the material Collected in City and in the other jurisdiction(s). The tonnages allocated to City along with the supporting data and

calculations of the tonnage allocations for each material type shall be reported in the monthly reports described in Attachment K.

**8.03.B Compliance With Air Quality Requirements.** All Collection vehicles described in Section 8.03.A (including all Residential BYS Vehicles, front loaders, side loaders, Roll Off, Bin and Cart delivery vehicles, and all auxiliary vehicles) [***if BYS vehicles are not the option selected by the City for use by the selected proposer, reference to that type of vehicles will be deleted***] shall operate in full compliance with all federal, state and local requirements for clean air vehicles including but not limited to the requirements of the California Air Resources Board and the South Coast Air Quality Management District's rules and regulations. Said requirements, rules and regulations include, but are not limited to, the Advanced Clean Fleet Regulation issued by the California Air Resources Board and Rule 1193 issued by the South Coast Air Quality Management District. Route supervisor's vehicles and all other ancillary vehicles that will operate on a routine basis in the City shall also be in compliance with said federal, state and local air quality regulations.

**8.03.C Vehicle Identification.** The name of Contractor, Contractor's local telephone number, and a unique vehicle identification number for each vehicle shall be prominently displayed on all Collection vehicles. Clean Air Vehicles shall display a statement as to the type of Clean Air Vehicle fuel being used. City shall approve all details, including size, color and location of text, identification numbers and logo. During the Interim Period, Interim Collection and Interim Auxiliary vehicles shall display the information required in this Section 8.03.C within one-hundred twenty (120) days of being

placed into service in City. Temporary magnetic placards or similar methods may be utilized for this purpose during the Interim Period. New Collection and auxiliary vehicles shall be in compliance with the requirements of this section on the date they are placed in service in City on or before January 1, 2027.

#### **8.03.D Cleaning and Maintenance.**

**8.03.D.1 General.** Contractor shall maintain all of its equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.

**8.03.D.2 Cleaning.** The exterior and interior of vehicles used in the Collection of MSW, Recyclable Materials, Co-collected Food Scraps/Yard Trimmings, Source-Separated Food Scraps, Source-Separated Yard Trimmings and Construction and Demolition Debris shall be thoroughly washed by Contractor at least once a week or more often as needed to maintain a clean appearance and thoroughly steam cleaned at least once a month or more often as needed to maintain a clean appearance. In addition, the interior collection compartment of vehicles used for the collection of any Food Scraps shall be thoroughly washed on a daily basis. City may inspect vehicles at any time to determine compliance with sanitation requirements and aesthetic conditions. Contractor shall make vehicles available for inspection by other local agencies that have jurisdiction over solid waste and recycling vehicles, at the frequencies required.

**8.03.D.3 Painting.** All vehicles used in Collection of MSW, Co-collected Food Scraps/Yard Trimmings, Source-Separated Food Scraps, Source-Separated Yard Trimmings and Construction and Demolition Debris shall be repainted by Contractor at least once every five (5) years, unless the City determines that repainting specific vehicles

at that frequency is not necessary because the vehicle's appearance is satisfactory or unless the City determines that repainting a specific vehicle earlier (due to graffiti, wind damage, etc.) is necessary to ensure that the vehicle gives the appearance of having been repainted within the preceding sixty (60) months. All graffiti shall be removed or painted over within forty-eight (48) hours of discovery.

**8.03.D.4 Maintenance.** Contractor shall inspect each vehicle daily to ensure that the vehicle and all equipment is operating properly and in compliance with this Agreement. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly. Contractor shall perform or cause to be performed all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded according to part or vehicle identification, date, and mileage, and shall make such records available to the City upon request.

**8.03.D.5 Repairs.** Contractor shall repair, or arrange for the repair of, all vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all vehicles and equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the part or vehicle identification, date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

**8.03.D.6 Storage.** Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s) owned by Contractor or licensed by Contractor for Contractor's use. Facilities used for storage shall comply with all zoning and land use

requirements applicable to the facility. Contractor shall not store vehicles or equipment (including Bins, Carts, and Roll Off Boxes) in publicly accessible parking lots, vacant lots or any other similar areas. City shall have access to Contractor's regular vehicle and equipment storage facilities at all times.

**8.03.D.7 Leaking Vehicles.** In the event that City or Contractor receives a report of a leaking vehicle, Contractor shall, upon notification by City, Customer or other Person, immediately take the vehicle out of service and repair the leak. Contractor shall be responsible for immediate cleanup of any leaked or spilled fluids whether on public streets, private streets, public property or private property, to be completed not later than one hour of notification or Contractor's own detection, unless such leaks or spills are of such magnitude that such work cannot be completed within one hour. Contractor shall also immediately notify City and all applicable regulatory agencies (as listed in Section 5.09.C of this Agreement) of any leaked liquid or spill that is near or that reaches, or that City or Contractor reasonably believes could reach, a storm drain, waterway, the bay or ocean, stream, wetland, or any other body of water. Vehicles collecting Source-Separated Food Scraps or Co-collected Food Scraps/Yard Trimmings shall be specially designed and manufactured to contain liquid and to prevent leaking.

**8.03.E DMV Registration/BIT Inspections/Brake Inspections.** All vehicles utilized by Contractor in the performance of this Agreement shall be registered with the California Department of Motor Vehicles. All vehicles shall pass the required California Highway Patrol biennial inspection of the terminals ("BIT"). Within fifteen (15) calendar days after each BIT inspection, Contractor shall submit records to City from all of the

terminal(s) responsible for the maintenance and repair of equipment used in City, showing the results of the inspection(s).

The brake system of each Collection vehicle used in performance of this Agreement (including all rear loaders, side loaders, single-pass vehicles, and the Household Hazardous Waste and Bulky Item Collection vehicles) shall be inspected and certified annually. Notice of certification for each vehicle shall be filed with the City within thirty (30) calendar days after each certification, but in no event later than May 1 of each year of the Term beginning May 1, 2027. Failure to submit the required certification shall be grounds for termination of this Agreement.

**8.03.F Vehicle Mirrors.** All vehicles used by Contractor for providing services pursuant to this Agreement with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or more shall be equipped with a convex mirror on the front of each vehicle, adjusted so as to enable the operator to see all points on an imaginary horizontal line which:

- (a) Is three feet (3') above the road;
- (b) Is one foot (1') directly forward from the midpoint of the front of the vehicles; and
- (c) Extends the full width of the front of the vehicle.

**8.03.G Collision Avoidance System.** All vehicles used by Contractor for providing services pursuant to this Agreement with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or more shall be equipped with the best available industry standard collision avoidance system that is capable of detecting adjacent pedestrians, bicyclists, scooters, motorcycles and vehicles. City reserves the right to inspect

Contractor's vehicles, at any time, to confirm that the installation and capability of Contractor's collision avoidance system is consistent with the requirements herein. As of the Effective Date Contractor plans to install and utilize the collision avoidance system described in Attachment F-3. During the Interim Period if Contractor is able to provide the required collision avoidance systems on vehicles with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or more, Contractor shall do so. Contractor shall provide collision avoidance systems on vehicles as required in this Section on or before January 1, 2027.

On or before February 1, 2027 and on or before February 1 of each year of the Term thereafter, Contractor shall submit to City a certification signed and dated by an authorized corporate officer under penalty of perjury, containing the following and stating that the information provided is true and correct and contains no false or misleading statements or information as of the date on the certification:

- i. List of all Collection vehicles Contractor uses in City that exceed twenty-six thousand pounds (26,000) gross vehicle weight.
- ii. Collision Avoidance System installed on each vehicle listed in (ii) above including name of system, manufacturer, date installed, name of Person who installed the system, name of Person(s) who tested the system to ensure proper installation and operation of system.
- iii. Capabilities of the installed Collision Avoidance System for each vehicle.

- iv. Changes or upgrades to the installed Collision Avoidance System and/or any partial or complete replacement of the installed Collision Avoidance System for each vehicle since the last certification was submitted.

**8.03.H Other Required Vehicle Technological Capabilities.** All vehicles operated by Contractor in the City to Collect MSW, Recyclable Materials Source-Separated Food Scraps, Source-Separated Yard Trimmings and Co-collected Food Scraps/Yard Trimmings ***[if BYS trucks are selected by City for use by the selected proposer, an appropriate exception will be inserted here]*** shall be equipped with a system that provides surveillance, monitoring, auditing, recording and tracking including video and still photo equipment; GPS system; i-pads (or tablet equivalent); ability to track serial numbers using bar code scanners, QR codes or similar technology; backup cameras; and communication devices. Collection vehicles in service in the City shall be equipped with 1) on-board modules for operational Customer relationship management (“CRM”) functionality; 2) truck telematics systems that provide real-time truck data, location, video and monitoring; and 3) communications systems for contact with dispatch, the Route Supervisor, and other Persons as needed.

The on-board operational CRM module shall be available to the driver via in-cab functionality. The operational CRM system shall capture driver, route and service confirmation in real-time, which can be accessed remotely by customer service and dispatch groups. The on-board operation CRM system shall allow drivers to view and scroll through route listings, confirm service completions, note service exceptions (i.e. Contamination, non-containerization, blocked Cart or Bin access, non-set out, etc.), and

receive additional dispatched work in real-time. The on-board operational CRM system shall be accessible to the driver via electronic communication that can be instantly transmitted to customer service and/or dispatch, who also use the operational CRM platform. The operational CRM system shall also be able to compute route statistics in real time, such as route productivity, work orders, billing, and follow-up. The tablets hosting the on-board operational CRM system shall also be dismountable by the driver for mobility purposes which will allow the driver to use the tablet as a digital camera to photo-document service exceptions, link the exception to the Customer's account, and report serious operational issues to the City in real-time. The operational CRM system shall allow the Contractor to note overloaded Carts and Bins, blocked access, non-containerization, and contamination events and document them on the Customer's account. The operational CRM system shall also generate template notification alerts regarding service exceptions to the Customer, the City, the Route Supervisor, and Recycling Coordinator (when applicable). These template notifications shall be emailed directly to the Customer.

The on-board vehicle telemetric system shall be connected to a network using wireless data and shall also be connected to each collection vehicle's on-board computer. The on-board vehicle telemetric system shall include the GPS, video surveillance, driver behavior, hours of service, and maintenance integration described herein, to provide increased safety, service, and efficiency to vehicle operations. The on-board vehicle telemetric system shall also allow the Contractor to monitor driver behavior, such as speeding, hard braking, hard acceleration, and area violations. The Route Supervisor and other responsible parties shall receive notifications when such events occur so they may

be addressed with the driver. The video capture component of the on-board DVIR system shall be able to be viewed in real-time or stored as a means to review past safety or service events. Video capture shall include in-cab, front, rear and side-views. Contractor shall provide said video footage to City within five (5) business days of request; except in the event of a crash, injury, fatality or other incident, Contractor shall provide said video footage immediately to the City and to law enforcement in the timeframe requested by law enforcement representatives and/or agencies. Contractor's failure to provide video footage within the required timeframes will result in the assessment of liquidated damages described in Section 15.09. Contractor's failure to provide proof of vehicles with the above-described technological capabilities will result in the assessment of the liquidated damages described in Section 15.09.

**8.03.I Operation.** Vehicles shall be operated in compliance with the California Vehicle Code and all applicable safety regulations and local ordinances. Vehicles shall be operated only by employees of Contractor who are appropriately licensed by the California Department of Motor Vehicles for the class of vehicle they drive. All drivers employed by Contractor and operating vehicles in the City shall be enrolled in the Department of Motor Vehicles Employee Pull Notice ("EPN") program and shall abide by all State and federal regulations for driver hours and alcohol and controlled substance testing. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles including, but not limited to, legal axle load weight limits. Contractor is solely responsible for paying any fines imposed by the California Highway Patrol, or other regulatory agencies, for violation of these or any other requirements.

#### **8.04 MSW, Recyclable Materials and Food Scrap/Yard Trimmings Containers.**

**8.04.A General.** Contractor shall provide Containers to Customers as described in this Section and in Sections 1 and 2 of Attachment B.

**8.04.A.1 Use of Interim Containers.** During the Interim Period (June 1, 2025 through December 31, 2026) Contractor shall provide to Customers Interim Containers for storage of MSW, Recyclable Materials and Co-collected Food Scraps/Yard Trimmings. Due to the lack of any lead time prior to the commencement of Collection operations on June 1, 2025, Contractor may use any type(s) of Container(s) that Contractor has available or can rapidly obtain. The colors and labeling do not have to match nor do the colors and labeling have to be SB 1383 compliant. If necessary, the Containers may have markings or labeling from another City. Contractor is aware that, as of the Effective date, Customers may own some or all of their own Containers. The Interim Containers to be provided by Contractor are listed in Attachment E-3.

**8.04.A.2 Distribution of New Containers.** Effective January 1, 2027 (end of the Interim Period), Contractor shall have completed distribution of the new Containers listed in Attachment E-2 and Contractor shall have put in place a 3-Container system (MSW, Recyclable Materials and Food Scraps/Yard Trimmings) at all Customers in the City. All new Containers shall comply with the requirements in Attachment E-1 (Cart Specifications) and in Attachment B.

All such Containers shall be new and unused as of January 1, 2027. The type, size and number of containers shall be sufficient to contain, with the lid closed, all MSW, Recyclable Materials, Source-Separated Yard Trimmings, Source-Separated Food

Scraps and Co-collected Food Scraps/Yard Trimmings generated between collections. Roll Off Boxes need not have lids but shall not be filled above the top of the container. Contractor shall tarp all Roll Off Boxes prior to transporting them, if said Boxes contain any material(s) that may blow out of the Box or if required by the Disposal or Processing Facility where the Box will be unloaded.

**8.04.B Container Ownership.** Contractor shall own all of the Carts provided to Customers. If requested by City at the end of the Term, Contractor shall remove all Carts from the City at a timing mutually agreed upon with City.

**8.04.C Failure to Distribute New Containers to All Customers.** In the event Contractor fails to distribute the Containers to Customers according to the required schedule, the liquidated damages in Section 15.09 shall apply.

**8.04.D Repair, Replacement, and Exchange.** Contractor shall repair or replace any Container that is damaged, broken, lost or stolen. Contractor shall also repair or replace all Containers that do not meet the City-required specifications set forth in Attachment B and Attachment E. Contractor shall repair Customer-provided Compactors (small or large) if Contractor is able to do so. Contractor shall charge the rates in Attachment D for this service for non-Contractor-owned Compactors.

Upon request from a Customer, Contractor shall exchange a Container that is in Customer's possession and not damaged, broken, lost or stolen for a new Container within fourteen (14) calendar days of request.

Contractor shall not be required to replace a non-repairable Compactor not owned or leased by it to a Customer.

Upon request from a Residential Customer with Individual Cart Service, Contractor shall clean the Cart (or provide a clean Cart of the same size and color) for the rate in Attachment D.

**8.04.E Cleaning, Painting and Maintenance of Contractor-Furnished Containers.** Contractor shall maintain all Contractor-furnished Containers in a functional condition and so as to present an attractive appearance. All Contractor-furnished Bins shall be permanently labeled on the front (in a contrasting color so as to present an attractive appearance) with the size of the Bin (e.g. "3 Yard"). Such Containers shall be painted and repainted as requested by City, or Contractor shall replace any Container with a new or re-conditioned Container, of like-size, as directed by City. Contractor-furnished Containers that have been painted or marked with graffiti shall be repainted or removed from the Premises by Contractor within forty-eight (48) hours of notification by the Customer or City. At the same time as such Containers are removed, they shall be replaced by like-sized Containers furnished by Contractor without evidence of graffiti. (Merely painting over graffiti is not acceptable; any Container marked with graffiti shall be repainted by Contractor prior to being re-delivered for use in City.) Contractor shall clean and maintain all Contractor-furnished Containers in a safe and sanitary condition and

whenever the City, or another agency with jurisdiction, determines that cleaning is required to abate a health concern or nuisance condition.

**8.04.F Periodic Container Audit.** Contractor shall conduct an audit of all Bins, Carts, and Roll Off Boxes at all Estates, Commercial and Business Establishments and at all Multi-Family complexes with centralized Bin or Bin/Cart Collection service, to assess their physical appearance, need for maintenance and repair, and overall functionality every three years during the Term. The first audit shall be conducted in April 2029. Contractor shall perform any of the following as needed to ensure all Containers meet the requirements of Sections 8.04.D and 8.04.E: wash, steam clean, paint and/or repair the Container. Contractor shall provide a report to City on or before July 15 of each year the audit is performed, beginning July 15, 2029, listing the type, size and location of each Container that was washed, steam cleaned, painted, repaired and/or replaced. At all times during the Term, Contractor shall comply with the requirements in Sections 8.04.D and 8.04.E. Contractor shall conduct a second Container audit in April 2032.

## **8.05 Personnel.**

**8.05.A General.** Contractor shall furnish such competent and qualified drivers, laborers, mechanical, supervisory, clerical, managerial, customer service and other personnel as may be necessary to provide the services required by this Agreement in a safe, efficient, reliable and courteous manner. The minimum complement of employees which Contractor shall provide for the scope of work described in this Agreement shall be as set forth in Attachment G. Contractor shall provide fully qualified and experienced

management personnel as named in Attachment G and shall not substitute those indicated by a star (\*) on Attachment G without the prior written consent of City. I

**8.05.B Driver Qualifications.** All drivers shall be trained and qualified in the operation of MSW, Recyclable Materials, Food Scrap/Yard Trimmings and Roll Off Box Collection vehicles, including front loader, rear loader, side loader, Residential BYS Vehicles and single-pass vehicles [*List of vehicle types to be modified to reflect the vehicles proposed by the selected proposer*] and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Each driver shall carry his/her license during work hours.

**8.05.C Uniforms.** Contractor shall require its drivers, and all other employees who come into contact with the public in the City during working hours, to wear standardized uniforms bearing the Contractor's name, and to carry an identification badge or other means of identifying the employee. Such uniforms shall present a freshly cleaned appearance. Employees shall be instructed to present employment identification cards to City staff, customers, security guards and law enforcement officers upon request, during work hours.

**8.05.D Written Operating Procedures.** Contractor shall establish, implement and maintain written operating procedures designed to ensure Contractor's utilization of techniques generally accepted in the solid waste and recycling industry including but not limited to, procedures for handling and disposal of Hazardous Waste and hazardous substances and procedures for Contractor's compliance with all the provisions of this Article 8.

**8.05.E Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for Collection or processing of MSW, Recyclable Materials, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Co-collected Food Scraps/Yard Trimmings, Construction and Demolition Debris, and/or who are otherwise directly involved in such Collection or processing. Such training shall include, but not be limited to, the following: (i) safety training for drivers regarding pedestrian safety and driving where other vehicles are present; (ii) special safety protocols to be implemented when driving past or near any school and in any area where children may be present on their way to or from any school; (iii) step-by-step handling of Hazardous Waste found in or on trucks, Containers, streets, alleys or any other location including training on specific contact names and direct dial telephone numbers to contact immediately in the event of a Hazardous Waste incident or spill including but not limited to the City Public Works Department, City Fire Department and the County of Los Angeles; (iv) handling of on-board fires in vehicles and fires in all types of Containers; (v) proper protocols for handling leaks or spills of any fluid or liquid, any MSW, Food Scraps/Yard Trimmings and/or Recyclable Materials on or leading to any street, alley or parking lot and into any area where there is a likelihood of the spill entering any waterway or pipe, channel or drain that leads to any waterway including storm drains, sewers, the bay, the ocean, creeks, tidal estuaries, wetlands, channels, or any other waterway or water source including names and direct dial telephone numbers to be immediately contacted at the City Public Works Department, City Fire Department, County of Los Angeles, and other responsible agencies in the event of such a spill; (vi) training on the dangers of impaired driving due to alcohol, drugs, lack of sleep, fatigue

and/or other factors; (vii) training on the dangers of distracted driving and protocols prohibiting the use of texting, telephone and other on-board electronic devices while the vehicle is in motion.

**8.05.F No Gratuities.** Contractor shall not permit any officer, agent or employee to demand or solicit, directly or indirectly, or to accept, either directly or indirectly, any additional compensation or gratuity from members of the public, any City representative or employee, or any other Person or entity for the Collection of MSW, Recyclable Materials, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Co-collected, Food Scraps/Yard Trimmings, Construction and Demolition Debris or any other material under this Agreement.

**8.05.G Employee Conduct and Courtesy.** Contractor shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy shall prohibit the use of loud or profane language and shall instruct Collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures, including, but not limited to assigning a different employee to perform the work in the City.

**8.05.H Provision of Recycling Coordinator.** Contractor shall provide a Recycling Coordinator assigned fifty-percent (0.5 FTE) which time shall be dedicated solely to the City of San Marino to implement Diversion programs and to carry out related

duties in the City. (“The Coordinator”) The minimum duties, work tasks, and requirements for the Recycling Coordinator shall be as described in Attachment AA.

**8.05.H.1 Recycling Coordinator Experience, Background and Training.** The Coordinator shall have a minimum of two (2) years of experience in the design, implementation and operation of Recycling, Composting and Diversion Programs, interaction with the public, and detailed knowledge of the requirements of the Act. The Coordinator shall have special expertise in SB 1383 requirements including, but not limited to, the required Diversion programs, Contamination minimization, CalRecycle regulations and reporting requirements and public outreach and communication. This shall not be an entry-level position.

Contractor shall provide 1.0 FTE Recycling Coordinator that is fully trained and experienced as described herein on or before October 1, 2025. At City request, Contractor shall designate a different Coordinator if a Coordinator does not meet the requirements enumerated herein or does not perform all the duties listed in Attachment AA in the manner described therein. City reserves the right to prioritize the tasks to be completed as needed throughout the Term of this Agreement and Contractor shall re-direct the work efforts of the Coordinator accordingly.

**8.05.H.2 Deadline for Providing Recycling Coordinator.** If Contractor fails to provide the 1.0 FTE Recycling Coordinator on or before October 1, 2025 the liquidated damages in Section 15.09 shall apply.

**8.05.I Provision of City’s Day-to-Day City Contact Person.** In addition to (i) the Recycling Coordinator; (ii) Contractor’s representative designated pursuant to Section

16.07 B, and (iii) the customer service representatives of Contractor, Contractor shall also designate an employee to be the City's Day-to-Day Contact Person to resolve difficult and/or chronic Customer complaints, persistent, repeated and/or complex Customer billing and payment issues, and other Customer service or City issues that are not being resolved by Contractor's customer service representatives or the Recycling Coordinator in a timely manner. The Day-to-day Contact Person shall work and communicate directly with the City's designated staff person(s) to resolve issues as needed by the City. The Day-to-Day Contact Person shall support and assist Contractor's Recycling Coordinator in the performance of their duties; personally make site visits and/or telephone calls to Residents of Single Family Dwellings, and to managers, owners and Authorized Customer Representatives of Estates, Commercial and Business Establishments, and Multi-Family complexes and dwelling units that have recurring Contamination in any streams (MSW, Recyclable Materials Source-Separated Food Scraps, Source-Separated Yard Trimmings and/or Co-collected Food Scraps/Yard Trimmings) and/or Overfull Containers or Uncontainerized MSW or Divertible Materials; educate Residents and businesses about City ordinance requirements and options for source reduction, additional Carts, additional Bins, Split Bins, locking bins and other service options; personally conduct site visits and/or make telephone calls to Single Family Dwelling Residents with repeated service issues to troubleshoot and resolve; coordinate with Contractor's operations, dispatch staff, customer service staff, Recycling Coordinator, executive management and other departments to resolve Customer issues.

The Day-to-Day Contact Person shall dedicate the amount of time required such that all service disputes and issues are addressed in one (1) business day.

Contractor's designated Day-to-Day Contact Person shall make all reasonable efforts to return calls from the City (that are received during normal working hours, except in case of emergency) within four (4) business hours of receipt of the call and in no event later than one (1) business day after receipt of the call.

The designated Day-to-Day Contact Person identified in Attachment G shall have a minimum of three (3) years' experience in Collection operations for MSW, Recyclable Materials, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Co-collected Food Scraps/Yard Trimmings, Construction and Demolition Debris, knowledge about excluding Household Hazardous Waste, Sharps, E-Waste and Universal Waste from Containers and Disposal, and all other material types, dispatch and operational logistics, Customer billing and payments, Processing Facilities, implementation and operation of Recycling, Composting and Diversion Programs, interaction with the public, and detailed knowledge of all the requirements of the Act. This shall not be an entry-level position.

Upon City request, Contractor shall designate a different Day-to-Day Contact Person if the current designee does not meet the requirements enumerated herein and/or if the City is otherwise dissatisfied with the performance of the designated Day-to-Day Contact Person.

**8.05.J Initial Hiring.** Throughout the Term of the Agreement, Contractor shall hire and train the necessary complement of employees. Contractor shall conduct a background check of each applicant or employee, which will, at a minimum, include a check of his/her driving record through the California Department of Motor Vehicles, record of criminal convictions, and references. All applicants shall be required to take a

standard test for use of illegal drugs and alcohol as a condition of employment. Drivers shall be required to demonstrate proficiency in the English language; at least one person proficient in spoken English shall be on every Collection vehicle when that vehicle is in service. Contractor will furnish City with a copy of its training manual and schedule of training of new employees. City may attend and observe any safety or operational training classes. Nothing in these Sections 8.05.G, H, I and J shall be construed to give City control over the selection or supervision of Contractor's employees.

***[The following paragraphs will be included in the contract as required by AB 1669, if the selected Contractor is not the incumbent and if the selected Contractor received a 10% preference in the RFP process.]*** “Contractor received a ten percent (10%) preference in the Request for Proposals process for agreeing to abide by all of the following requirements regarding the hiring of employees of the former incumbent contractor, Athens Services. Pursuant to California Labor Code Section 1070, Contractor shall request from Athens Services a list of the number of employees who perform(ed) services for the City of San Marino under the City's prior contract, (as of the Effective Date of this Agreement) including the wage rates, benefits and job classifications of each of those employees, and also whether each employee will continue to be employed by Athens Services upon termination of Athens' contract with the City. Contractor shall make an offer of employment to employees that were employed by Athens Services who perform(ed) services for the City of San Marino under the City's contract with Athens Services (“the prior contract” which includes employees of any City-approved subcontractors to Athens Services) who meet the following criteria: (1) the employee will be terminated by Athens Services at the end of the prior contract; (2) the

*employee passes Contractor's tests for controlled substances and alcohol, physical examination, criminal background check and any other tests or requirements required by law as a condition of employment; (3) the employee passes Contractor's other standard hiring qualifications lawfully required for the position; and (4) the employee possesses any license that is required by law to operate the equipment that the employee will operate as an employee of Contractor.*

*Contractor shall make a written offer of employment to each employee to be retained stating the time within which the employee must accept that offer (which shall in no event be less than ten (10) days). The offer shall state that the duration of the employment will be at least ninety (90) days. In the event Contractor determines that fewer employees are required to perform the services required by this Agreement than were required under the prior contract, Contractor shall retain qualified employees by seniority within the job classification. In determining those employees that are qualified, Contractor may require an employee to possess any license that is required by law to operate the equipment that the employee will operate as an employee of Contractor. Contractor shall not be required to pay the same wages or offer the same benefits provided by Athens Services under the prior contract.*

*Contractor shall not be required to comply with the foregoing in the following circumstances: (a) Contractor would be required to terminate or reassign an existing employee covered by a collective bargaining agreement with Contractor or any of Contractor's City-approved subcontractors, in order to hire the employee of Athens Services; (b) to the extent the actual number of employees being terminated by Athens Services exceeds the number of employees communicated to proposers during the RFP*

*process, as providing services pursuant to the prior contract; (c) Contractor chooses to not offer employment to a former Athens Services employee for a reasonable and substantiated cause which is limited to the particular employee's performance or conduct while working under the prior contract, or the employee's failure of any controlled substance or alcohol test, physical examination, criminal background check required by law as a condition of employment, or other standard hiring qualification lawfully required by Contractor.*

*In addition to the foregoing, Contractor may employ or otherwise engage current employees of Athens Services without conducting the background check described in this Section 8.05.J, if City receives a statement, signed by a responsible officer of Athens Services that the employee has worked for that company for at least two consecutive years and has performed satisfactorily. All other elements of this Section 8.05 shall apply to such employees.*

*Due to the brief period of time between award of the Agreement and the commencement of Collection operations in City, Contractor shall have sixty (60) days in which to conduct background checks, drug and alcohol testing, review licensing and driving records and to conduct all other necessary review of Athens Services employees that worked in the City of San Marino under the prior contract, and whose employment with Athens Services will be terminated at the end of the prior contract, and to make offers of employment to eligible employees of Athens Services as described herein".*

**8.05.K Ongoing Training and Testing.** Contractor shall provide regular safety training on an ongoing basis including, but not limited to, the safety training listed in Section 8.05.E and shall conduct random drug and alcohol testing of employees in safety-sensitive positions in compliance with regulations issued by the U.S. Department of Transportation.

**8.05.L Use of Workers Not Employed by Contractor.** If Contractor engages any independent contractors, it shall ensure that such independent contractors:

1. Comply with the nondiscrimination requirements in Section 17.15; and
2. Maintain Comprehensive General Liability, workers compensation and Employer's Liability insurance covering such workers in the amounts required by Section 13.02.A.1 and 13.02.A.2, and with policies meeting the other requirements of Section 13.02.

Contractor is responsible for providing qualified and competent staffing to ensure the adequate performance of all requirements in this Agreement, regardless of whether such work is performed by employees or furnished by independent contractors. Contractor is also responsible for providing sufficient training to all persons performing work so that they can perform the work in a safe and competent manner and are thoroughly familiar with the work that Contractor is required to perform and the standards it is required to meet under this Agreement.

All drivers, mechanics, supervisory and managerial workers, the Recycling Coordinator and the City's Day-to-Day Contact Person shall be direct employees of Contractor.

**8.05.M Notification to City In Event of Impending Strike, Labor Unrest, Picketing or Similar Action**

In the event Contractor becomes aware, by any means, that a labor strike, labor unrest, picketing or any similar action by Contractor's employees or contractors is planned, being discussed, threatened, or otherwise may occur, Contractor shall notify City within twenty-four (24) hours. Contractor shall include in such notification all information that Contractor has concerning the potential strike or other labor unrest, and shall inform City of the potential types, duration and other pertinent details about potential interruptions in Collection, Processing or other services being provided by Contractor pursuant to this Agreement that may occur. Said notification shall include notification of strikes, labor unrest, or similar actions that may make Processing Facilities being used for City's materials unavailable whether or not said facilities are owned by Contractor or a third party.

In the event that Collection operations and/or Processing operations may be affected, Contractor shall provide City with Contractor's plan to address the potential interruption in services to mitigate or eliminate any disruption in the provision of services required by this Agreement. If services are interrupted, Contractor shall take reasonable and legal action to mitigate or eliminate the disruption of service. Contractor shall continue to keep City informed as frequently as there are changes or updates in the situation. Contractor shall meet with City at City's request, and as frequently as requested

by City. Contractor shall also appear at City Council meeting(s) and/or City Council Committee and/or Subcommittee meetings as requested by City to discuss and address the situation.

## **ARTICLE 9: OTHER COLLECTION-RELATED SERVICES**

### ***9.01 Billing.***

**9.01.A Direct Billing of All Customers.** As of June 1, 2025 Contractor shall: (i) bill all Customers for Collection of MSW, Recyclable Materials, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Co-collected Food Scraps/Yard Trimmings, Construction and Demolition Debris and all other materials according to the rates listed in Attachment D (and in Attachment D-1 for the period June 1, 2025 through September 30, 2025), as adjusted per the terms of this Agreement; (ii) maintain accurate billing and payment records; and (iii) bill Customers on a monthly, bimonthly or quarterly schedule as approved by City. Customers' bills shall be itemized showing the charges for each classification of services. Customer billing shall be performed pursuant to the requirements contained in Attachment B, Section 1 and an annual Billing Audit shall be performed as described in Section 1 of Attachment B.

During the first ninety (90) days of the Interim Period Contractor, if Contractor identifies any Customers that pre-paid the previous hauler for services beyond May 30, 2025. Contractor shall provide City with any information obtained concerning such Customers and the amount(s) each had pre-paid for services not rendered by the previous hauler. Contractor shall not be responsible for reimbursing Customers for any such pre-payments, but shall cooperate with City's efforts to obtain reimbursement for Customers from the previous hauler.

**9.01.B City Inserts.** City may direct Contractor to produce and insert mailers with billings relating to City-sponsored events, integrated waste management activities,

Diversion programs and other environmental programs, at least six (6) times per year. If a postage increase is incurred for the City insert, the City will be responsible for paying said increase. For Customers who are billed by Contractor electronically, such inserts shall be produced electronically by Contractor and included with the electronic billings.

**9.01.C Delinquent Accounts.** Contractor shall be responsible for collecting delinquent charges for services it renders to Customers. Contractor shall employ measures, consistent with federal and California laws regulating the collection of debts, to obtain payment of charges including use of its own employees to obtain judgments in Small Claims Court, and to enforce such judgments.

**9.02 Billing Records.** Contractor shall keep records of all billing documents and Customer account records including, but not limited to, invoices, Customer payment coupons mailed with the invoice, collection notices, records of online payments, credit card payments and all other billing and payment documents for the entire Term of the Agreement, and for a period of two (2) years following the termination of the Agreement. Contractor may, at its option, maintain those records in electronic form, hard copy, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification by City or City's agents in a timely manner.

**9.03 City Access to Billing Information.** Contractor shall provide City with prompt access to all current and up-to-date billing information necessary to allow the City to respond to Customer inquiries or complaints or as otherwise required by City. At request of City, Contractor shall provide "read only" electronic access to Contractor's Customer billing records such that City employees can research billing inquiries and Customer

account history from city hall. Contractor shall cooperate with City to establish this “read only” function and shall ensure that City has access to Customer billing information in “real time.” In the event City requests such access, Contractor shall bear all costs for any hardware and software to be located at Contractor’s office(s) in order to establish access to Contractor’s computer and server equipment, and City shall bear all costs of the hardware and software required at city hall to connect access to Contractor’s computer system. If specialized technical computer consulting assistance is required beyond that of City staff and Contractor’s staff, Contractor shall pay for the required assistance.

***9.04 Public/Customer Service and Accessibility.***

**9.04.A Office Hours and Location.** Contractor shall maintain an office located either in the City or within a twenty-five (25) mile radius of the City limits. The office will be available for customers to pay bills, subscribe to service, change service, stop service and otherwise contact Contractor. Contractor’s office shall be open to the public from 8 a.m. to 5 p.m. Monday through Friday. The office may be closed on Saturdays, Sundays and holidays as defined in this Agreement.

**9.04.B Availability of Representative.** A representative of the Contractor possessing detailed knowledge about all the services provided in the City and the rates listed in Attachment D for all such services, shall be available during office hours to communicate with the City and members of the public in person, by telephone and by electronic mail and to assist Customers making payments in person.

**9.04.C Telephone.** Contractor shall maintain telephone lines in operation at its office(s) during office hours. Contractor shall provide a telephone number specific to only

San Marino Customers in the 626 area code. This telephone number shall be listed in all correspondence, outreach materials of all types, billing invoices, billing notifications, billing statements, digital communications of all types, advertisements and any/all communications in relation to City and its Customers. Contractor shall ensure that telephone calls to it from locations within the City are billed as “local calls” by all telephone companies including mobile carriers.

**9.04.C.1 . Telephone System.** Contractor shall, at all times, provide a telephone system, staffed by adequate personnel, including customer service representatives, and with toll-free telephone line capacity, to ensure that a minimum of ninety percent (90%) of all incoming calls shall be answered by a receptionist, operator or customer service representative, in person and not by machine or other automated method, before the fourth (4th) ring. Ninety percent (90%) of all callers for service shall not be required to wait on hold more than sixty (60) seconds before being connected with a customer service representative and callers will receive a telephone busy signal less than three percent (3%) of the time on average. In order to adequately and objectively document Contractor’s performance and provide for the convenience of Customers, Contractor shall require that the telephone system provided and maintained, whether leased or owned, is capable of: measuring the time a caller is waiting on hold before being connected with a customer service representative (after the call has been initially answered); measuring the total number of incoming callers, callers answered and callers receiving a busy signal; specifying the day of week and time of day call distribution, and similar information. Failure by Contractor to achieve the required

average hold times and other metrics in this Section 9.04.C.1 shall result in the assessment of liquidated damages listed in Section 15.09.

The telephone system provided by Contractor shall comply with all federal, State or local laws or regulations related to accessibility or ability for members of the public to communicate with that system and with Contractor. Contractor shall also maintain a toll-free emergency telephone number answered locally by a live Person for Customer use during other than normal business hours. Contractor shall have a representative, or an answering service to contact such representative, available at the Customer emergency telephone number during hours when the office is closed. Contractor shall arrange for both the regular and emergency numbers to be listed in all telephone directories generally distributed in the City and on all Contractor's bills and schedules of services or rates.

**9.04.C.2 . Emergency Contact Person For First Responders.** Contractor shall provide a designated emergency contact Person available twenty four (24) hours a day, seven (7) days per week, for contact by the City's police, fire and emergency preparedness teams and other emergency personnel. Contractor's designated emergency contact for first responders shall be a management level employee with the authority to mobilize Contractor's equipment and employees immediately in the event of an emergency. Contractor's designated emergency contact Person shall be available by cellular telephone and/or pager at all times. Contractor shall provide City with the name and contact information for the designated emergency contact Person on or before July 1, 2025. During times the designated emergency contact Person is on vacation, sick or otherwise unavailable, Contractor shall notify City of the name and

contact information for an alternate emergency contact Person who meets all the requirements in this section. The contact information for the emergency contact person for first responders will not be released to the general public.

**9.04.D Correspondence.** Contractor shall respond to all written correspondence including all faxes and e-mail or other electronic correspondence from City or Customers within two (2) business days. The correspondence shall include a meaningful, specific answer to the Customer's complaint, request, and/or problem and shall not be a non-specific "form" response, a "robo" call or response or an automatically-generated communication indicating Contractor will respond at a future date. In the event the research or development of a response or solution to the Customer's problem, complaint or request takes longer than two (2) business days, Contractor's correspondence shall indicate the specific steps Contractor is taking to research and resolve the Customer's specific issue(s) and the date the Customer can expect an answer. Such date shall be within five (5) business days.

**9.04.E Electronic and Non-Electronic Payment of Bills.** Contractor shall provide electronic access to Customers for the following functions: (i) Signing up for service, (ii) Changes to service, (iii) Discontinuation of service, and (iv) Payment of Bills. Contractor shall accept major credit cards and direct debit service for payment of bills. Contractor shall also provide the options for payment by mail-in check and in-person payment by cash, credit or debit card for all services.

**9.04.F Maps, Schedules, Consumer Information.** Contractor shall furnish the City with maps and schedules for all Collection routes pursuant to the schedule and requirements in Section 1 of Attachment B, and shall update such maps and schedules

whenever a change occurs. Contractor shall have current maps and schedules available for inspection by the public at its business office. Contractor shall submit a new revised set of maps and schedules to City on May 1 of each year of the Term commencing May 1, 2026.

Contractor shall submit drafts of the maps, schedules and brochures to City prior to distribution and will incorporate City's comments in the final version distributed to the public.

**9.04.G Web Site.** Contractor shall provide a web site customized for the City. The web site shall include, but not be limited to, descriptions of all of Contractor's services in the City; the rates listed in Attachment D for all services; notices of special events (such as holiday greenery collection rules and dates); information on acceptable items in MSW, Recyclable Materials, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Co-collected Food Scraps/Yard Trimmings, and Construction and Demolition Debris Containers and what materials constitute Contamination of each material stream; information on starting, stopping, changing service, and vacation stops; information on electronic access as described in Section 9.04.E; information on available Container sizes; FAQ's with responses; and updates for local special circumstances and events including holiday Collection schedules. Contractor shall maintain the web site in good working order and shall frequently update the web site to ensure it reflects the current rates for all services listed in Attachment D, all available services and upcoming special service events at all times.

**9.05 Service Complaints.** Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints relating to

service and billing. Contractor shall record in a separate log, the format of which is approved by the City, all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution. This complaint log shall be available for inspection by City. In addition, Contractor shall compile a summary statistical table of the complaint log (or a copy of the log if requested by City) and submit the table, or copy, to City as part of the monthly reports described in Attachment K.

Contractor shall respond to all complaints from Customers within eight (8) working hours of its receipt of notice of the complaint. In particular, if a complaint involves a failure to collect MSW and/or Food Scraps (including Source-Separated Food Scraps and Co-collected Food Scraps/Yard Trimmings) from a Premises as required by this Agreement, Contractor shall collect the MSW and all Food Scraps in question within such eight (8) working hour period, provided it has been placed for Collection in accordance with the City's Municipal Code. If the complaint is received after normal working hours, Contractor shall respond to the complaint within eight (8) working hours of the time Contractor's employees receive the complaint information (i.e. for a complaint left at 7:00 p.m. on a weekday, Contractor's employees would receive the complaint at 8:00 a.m. the following morning and would resolve the complaint before 4:00 p.m. the same day).

Complaints that are not resolved by the customer service representatives through Contractor's usual process within five (5) business days shall be referred to Contractor's City Day-to-Day contact person for concentrated research and resolution. Contractor's City Day-to-Day contact person shall work with the Customer, Contractor's operations, dispatch, billing and all other personnel required to resolve the complaint. The City Day-

to-Day contact person shall work with the City representative as needed to discuss and identify options to resolve the complaint. Once the complaint is resolved the City Day-to-Day contact person shall provide photo evidence of the resolution to the City and shall follow up to make sure the complaint is truly resolved for a period of four (4) weeks. This follow up will include re-contacting the customer to ensure the complaint is resolved and the problem(s) reported have not recurred. Failure by Contractor to achieve the metrics in this Section 9.05 regarding responsiveness to Customers shall result in the assessment of liquidated damages listed in Section 15.09.

**9.06 Change in Collection Schedule.** Contractor shall obtain written approval from City prior to any change in Collection operations which results in a change in the day on which Collection occurs at Single Family Dwellings and/or Estates. Contractor shall comply with the requirements in Attachment B regarding notice to customers of changes in operations.

**9.07 Report of Accumulation of MSW or Unauthorized Dumping.** Contractor shall direct its drivers to note: (i) the addresses of any Premises at which they observe that MSW is accumulating and is not being placed for Collection, and (ii) the address, or other location description, at which MSW has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within two (2) working days of such observation.

## **ARTICLE 10: CONTRACTOR SB 1383 PERFORMANCE STANDARDS**

In order for City to comply with the Act including SB 1383, (i) Diversion Programs required by the Agreement must be Fully Implemented and maintained throughout the Term, and (ii) Contamination levels must be minimized in all streams of materials Collected by Contractor. In the event the percentage of Diversion Programs that are Fully Implemented and/or the level of Contamination in Collected materials is not attained or maintained by Contractor as required by the Act including SB 1383, such failure would subject the City to enforcement action by CalRecycle and would be considered a breach of this Agreement.

### **10.01 Performance Standard for Minimization of Contamination**

Characterizations of each material stream in each Sector (Residential, Commercial and Multi-Family) shall be completed by Contractor according to the schedule and detailed protocols in Attachment N. As noted in Attachment N, the City will use the results of the characterizations to evaluate the average level of Contamination achieved by Contractor during each of the evaluation periods. As described in Attachment N, the initial characterizations conducted during calendar year 2027 shall be used for informational purposes to plan and modify Diversion programs, to target Public Education and to assist Customers with Contamination minimization. Results of the characterizations conducted beginning January 1, 2028 shall be used to evaluate Contractor's achievement of the Contamination levels required in this Article 10.

## **10.01.A Required Contamination Levels to be Achieved**

### **10.01.A.1 Thirty Percent (30%) Contamination Levels to be Achieved During the Period January 1, 2028 Through December 31, 2029**

During the period January 1, 2028 through December 31, 2029 Contractor shall achieve thirty percent (30%) or lower Contamination in all Residential and Commercial streams for Recyclable Materials, Source-separated Food Scraps, Co-collected Food Scraps/Yard Trimmings and MSW as follows [Note: Contamination levels are calculated by weight]:

- **Residential (Single Family Dwellings and Estates)**
  - Recyclable Materials Contamination level: 30% or lower
  - MSW Contamination level: 30% or lower. (Note: The 30% Contamination level includes the combined weight of Recyclable Materials, Yard Trimmings and Food Scraps found in MSW)
  - Co-Collected Food Scraps/Yard Trimmings Contamination level: 30% or lower
- **Commercial**
  - Recyclable Materials Contamination level: 30% or lower
  - MSW Contamination level: 30% or lower. (Note: The 30% Contamination level includes the combined weight of Recyclable Materials, Yard Trimmings and Food Scraps found in MSW)
  - Source-separated Food Scraps Contamination level: 30% or lower

The above levels of Contamination shall be maintained at or below 30% throughout the entire Term of the Agreement.

- **Multi-Family**

- Recyclable Materials Contamination level: 30% or lower
- MSW Contamination level: 30% or lower. (Note: The 30% Contamination level includes the combined weight of Recyclable Materials, Yard Trimmings and Food Scraps found in MSW)
- Source-separated Food Scraps Contamination level: 30% or lower
- Co-Collected Food Scraps/Yard Trimmings Contamination level: 30% or lower
- Contractor shall achieve the above levels of Contamination at Multi-Family dwellings within one (1) year and nine (9) months of the date the City issues the Certificate of Occupancy for the Multi-Family property. Contractor shall maintain Contamination levels at or below 30% throughout the entire Term of the Agreement.

#### **10.01.A.2 Twenty-Five Percent (25%) Contamination Levels to be Achieved**

##### **During the Period January 1, 2030 through December 31, 2033**

During the period January 1, 2030 through December 31, 2033 Contractor shall achieve twenty-five percent (25%) or lower Contamination levels (calculated by weight) for all Residential and Commercial streams for Recyclable Materials, Source-separated Food Scraps, Co-collected Food Scraps/Yard Trimmings and MSW as follows:

- **Residential (Single Family Dwellings and Estates)**
  - Recyclable Materials Contamination level: 25% or lower

- MSW Contamination level: 25% or lower. (Note: The 25% Contamination level includes the combined weight of Recyclable Materials, Yard Trimmings and Food Scraps found in MSW)
- Co-Collected Food Scraps/Yard Trimmings Contamination level: 25% or lower
- **Commercial**
  - Recyclable Materials Contamination level: 25% or lower
  - MSW Contamination level: 25% or lower. (Note: The 25% Contamination level includes the combined weight of Recyclable Materials, Yard Trimmings and Food Scraps found in MSW)
  - Source-separated Food Scraps Contamination level: 25% or lower
  - Source Separated Yard Trimmings Contamination level 25% or lower
  - Co-Collected Food Scraps/Yard Trimmings Contamination level: 30% or lower
- **Multi-Family**
  - Recyclable Materials Contamination level: 25% or lower
  - MSW Contamination level: 25% or lower. (Note: The 25% Contamination level includes the combined weight of Recyclable Materials, Yard Trimmings and Food Scraps found in MSW)
  - Source-separated Food Scraps Contamination level: 25% or lower
  - Co-Collected Food Scraps/Yard Trimmings Contamination level: 25% or lower

**10.01.B City Evaluation of Contractor's Attainment of Performance Standards for Contamination Minimization.** Beginning with the period of January 1, 2028 through December 31, 2029 and thereafter according to the schedule in Attachment N, City will evaluate Contractor's performance to determine whether or not the performance standard for Contamination minimization has been met for period being evaluated. In order to make a determination concerning Contractor's performance City will utilize the results of the characterization studies performed at all Processing Facilities and for the MSW being delivered for Disposal during the timeframe stated in Attachment N. The methodology for the studies is described in Attachment N, Section 1 ("Characterization Protocols for Divertible Materials and MSW"). The City will review the study results for all characterizations performed during the evaluation period for all material streams for all sectors (Residential, Commercial and Multi-Family). The process for calculating Contamination levels achieved using the characterization data is described in Section 2.2.1 of Attachment N ("Assessment of 30% Maximum Levels of Container Contamination".) and Section 2.2.2 ("Assessment of 25% Maximum Levels of Container Contamination").

As described in Attachment N, characterization data on the Contamination levels is averaged for the entire evaluation period. Contractor may conduct up to one additional re-characterization for each stream where the Performance Standard for Contamination minimization was not met, using the process described in Attachment N, Section 2.2.1 ("Assessment of 30% Maximum Levels of Container Contamination") and Section 2.2.2 ("Assessment of 25% Maximum Levels of Container Contamination").

In the event Contractor fails to achieve the performance standard(s) for Contamination minimization, the liquidated damages in Section 15.09 shall apply.

#### ***10.02 Performance Standard for SB 1383 Program Implementation***

On or before January 1, 2028 Contractor must have Fully Implemented an SB 1383 Diversion program for ninety-five percent (95%) of the Commercial and Business Establishments and Multi-Family dwelling complexes in City as described in Section 3 of Attachment B. For Multi-Family dwelling complexes this requirement applies beginning nine (9) months after the date the Multi-Family property is issued a Certificate of Occupancy from the City. Contractor shall maintain Fully Implemented Diversion programs at a minimum of 95% of all Commercial and Business Establishments and all Multi-Family properties throughout the entire Term of the Agreement.

Per Attachment B, Contractor may be relieved of the requirement to Fully Implement an SB 1383 diversion program at a Commercial and Business Establishment or a Multi-Family Dwelling complex if, after taking the steps outlined in Attachment B, Section 3.7, the Customer still refuses to implement the SB 1383-mandated program. These accounts shall be referred to the City for enforcement action. Similarly, the Contractor may refer non-compliant accounts to the City that may be eligible for SB 1383 Waivers for de minimis quantities and/or physical space constraints. Customers that are issued either de minimis or physical space constraint SB 1383 Waivers by the City, will be excluded in determining the Contractor's overall SB 1383 compliance percentage.

**10.02.A City Evaluation of Contractor's Attainment of Program Implementation Standards.** During the period January 1, 2028 through March 31, 2028,

and each January 1 through March 31 thereafter, City will evaluate Contractor's performance to determine whether or not the required level of Diversion program implementation has been achieved. City will review the Red/Green Tracking Spreadsheet and/or CRM System, time and work logs of the Recycling Coordinator, all the Monthly, Quarterly, and Annual Reports listed in Attachment K, submitted by Contractor up to and including the Monthly Report for December 2027. City and/or City's agents may also conduct site visits at Customers' Premises to determine whether Contractor has achieved the required Diversion program implementation. The onsite assessment process to evaluate Contractor's attainment of the program implementation standards is described in Section 3.1 of Attachment N ("Assessment of Percentage of SB 1383 Diversion Programs Fully Implemented as Required by Section 10.02A").

On or before October 1, 2028 the City shall notify the Contractor, in writing, of the percentage of compliant Commercial and Multi-family SB 1383 accounts based on its evaluation. In the notification, the City will identify the number of accounts that were identified as non-compliant. Contractor shall have 45 days from the date on which the City notifies it of the non-compliant Accounts to attempt to implement a SB 1383-compliant program. If, 45-days after the Contractor is notified and the overall SB 1383 compliance rate is still below 95%, the liquidated damages in Section 15.09 of the Agreement shall apply. The City has the right to conduct such SB 1383 compliance assessments at any time.

## **ARTICLE 11: RECORD KEEPING, REPORTING AND INSPECTIONS**

**11.01 General.** Contractor recognizes that maintenance of accurate and complete records of its operations and timely submission to City of accurate and complete reports is an essential aspect of the services to be provided by it under this Agreement. Contractor further acknowledges that information reported by Contractor for compliance with SB 1383 (i) shall become part of the City's Implementation Record as required by Section 18995.2 of the SB 1383 regulations, and (ii) all data and information required to be included in the Implementation Record shall be placed in the Implementation Record within sixty (60) days of creation of the record or information.

**11.02 Record Keeping.** Contractor shall maintain accurate records of: (i) personnel; (ii) equipment; (iii) Collection operations; (iv) tonnages of Disposed MSW and Disposal of Residue from the following facilities: Clean MRF, Composting Facility, Anaerobic Digestion Facility **[Note: any facility(ies) that do not apply to selected proposer will be removed for the final contract]** and Construction and Demolition Debris Processing Facility; (v) Diverted Tons of Recyclable Materials, Source-Separated Yard Trimmings, Source-Separated Food Scraps, Co-collected Food Scraps/Yard Trimmings and Construction and Demolition Debris; (vi) customer service; (vii) billing and payment; (viii) sale of Recyclable Materials, Compost, Construction and Demolition materials, and any and all energy, and all other revenue-generating products created from Processing materials Collected in City; (ix) financial matters; and (x) other matters in such detail and format necessary to compile the reports required by this Agreement, including, but not limited to, all reports listed in Attachments K and N. All records of activities of Contractor

in fulfilling the requirements of this Agreement, including but not limited to the above-listed records, shall be maintained by Contractor for the entire Term of the Agreement and for five (5) years thereafter. Contractor may, at its option, maintain those records in electronic form, hard copy, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner in order to comply with requests from CalRecycle for production of any records in the Implementation Record within ten (10) days of request.

**11.03 Reporting.** Contractor shall compile and submit to City complete and accurate reports required by this Agreement, including but not limited to the following:

**11.03.A Reports Listed in Attachment K.** Monthly, quarterly and annual reports of Tonnages, Collection and Diversion operations, and other items.

**11.03.B Monthly Recording of Information in the Red/Green Tracking Spreadsheet and in the Online CRM System.** The City is planning to use a third-party vendor-licensed software (“Recyclist which is now “Scaleware”, “Zapple” or similar) to provide Customer Relationship Management (“CRM”) software to track Diversion program implementation and to comply with certain CalRecycle SB 1383 reporting requirements. The City anticipates that much of the customer interaction reporting that is required to be included in the Red/Green listing may no longer be needed if and when said software is fully implemented. During the first two (2) years of the Term, Contractor shall utilize the Red/Green Tracking Spreadsheets as described in this Article 11. The City will evaluate potential software during this time. In July 2027 City will meet with Contractor to discuss the results of City’s evaluation of available software. At that time,

City may direct Contractor to track all Customer interactions using both the Red/Green Spreadsheets and the new software CRM system for a one-year period (or as directed by the City). During the timeframe directed by the City, Contractor shall utilize both the Red/Green Excel Spreadsheets and the new software CRM system. Contractor shall report to City on the functionality, ease of use, pros and cons of the new software system. If and when the City is satisfied that the new software is comparable to the Red/Green Spreadsheet reports and data, a meeting will be held between City and Contractor and, at the sole discretion of the City, either one or both of the reporting systems will be utilized for the next year of the Term. This process will be repeated each year of the Term to determine the reporting system(s) to be utilized for the upcoming calendar year. The parties anticipate that the types, functions and costs of CRM software will continue to evolve over the Term and City may direct Contractor to utilize new, different and/or enhanced CRM reporting system(s) in the future.

City will acquire and own the license for the CRM software and provide access to Contractor. City will inform Contractor at any time it is replacing the initially selected software system with another CRM system and coordinate with Contractor to switch to the new CRM system. The decision of which software system to be utilized shall be at the sole discretion of the City and the decision of the City shall be final.

**11.03.B.1 Information to Be Recorded in the Red/Green Tracking Spreadsheet/CRM System.** Contractor shall create, maintain and update the Red/Green Tracking Spreadsheet and/or the CRM System (as directed by City pursuant to Section 11.03.B) as described in Attachment K at least monthly during the Term and more frequently as needed. The purpose of the Red/Green Tracking Spreadsheet and/or

CRM System is to document all contacts made with Customers concerning implementation of Diversion programs, and Contractor's completion of the program implementation tasks listed in Section 3.7 of Attachment B. Each Diversion program that is fully implemented and operating at a Customer's premises shall be coded in green on the spreadsheet and marked on the CRM System. Each Customer premises that does not have each specific required Diversion Program for the materials being Generated (Collection of Recyclable Materials, Co-collected Food Scraps/Yard Trimmings, Source-Separated Food Scraps, Source Separated Yard Trimmings and any other required program(s)) fully implemented and operating as required by this Agreement, shall be color-coded in red. Contractor shall make detailed notes in the Red/Green Tracking Spreadsheet and/or CRM System about all Customer contacts (telephone, mail, e-mail, on-site meetings, observations and inspections) and all pertinent information on issues, problems, troubleshooting and solutions concerning program implementation at each Customer's location(s).

The description of the Red/Green Tracking Spreadsheet in Attachment K is the template and format that Contractor shall use to create the electronic version of the Red/Green Tracking Spreadsheet. On or before January 1, 2026 Contractor shall create a complete and up-to-date version of the electronic Red/Green Tracking Spreadsheet that lists all Commercial and Business Establishments in the City. Residential accounts and neighborhoods shall also be input into the spreadsheet/CRM system. Additionally, all Customer data shall be uploaded to the CRM System on or before January 1, 2026 or within seventy-five (75) days of the City providing the City-selected CRM system, whichever occurs last. When MultiFamily dwellings are constructed and occupied in City,

those Customers shall be added to the Red/Green Tracking Spreadsheet and/or CRM system. The status of each entry's program implementation in the spreadsheet shall be indicated and shall note actions taken and any next steps required for implementation and/or continuation of program operation. All tenants of Commercial and Business Establishments shall be identified and included in the listing as individual line items. For example, a strip mall or plaza may be shown as the Master Account and individual tenants located in the strip mall or plaza would be listed in separate rows. The program implementation status for each of the tenants shall be shown in the spreadsheet on its individual line. Over time, new businesses will open, and existing businesses will close or may change locations. As this occurs, Contractor shall notify City of changes made to the Red/Green Tracking Spreadsheet and/or CRM System by noting thereon, the change in location, business, owner/manager, and new contact information. Contractor shall not delete any Customer or business from the Red/Green Tracking Spreadsheet and/or CRM System without written approval by City. Contractor shall add new businesses that open within City and shall note such new additions to the spreadsheet/CRM system to City in the monthly meetings and shall note the month and year the new business opened, on the spreadsheet and/or CRM System.

**11.03.C Reports Listed in Attachment N.** Contractor shall report results of Characterization Studies of all Processing Facilities as required by Attachment N by the dates listed in Attachment N.

**11.04 Inspection by City.** The City (and/or City's agents) shall have the right, but not the obligation, to observe and inspect all of the Contractor's operations involved in providing services under this Agreement to determine whether Contractor is performing

in accordance with this Agreement and Applicable Laws. Contractor shall cooperate fully with such inspections, including inspections and observations of operations at all Processing Facilities, and where necessary, obtain such permissions and right of entry for inspection on behalf of City for facilities used by, but not owned by, the Contractor. In connection therewith, the City shall have the right to enter any of Contractor's facilities and Processing Facilities owned or operated by third parties at which Contractor has contracted to process materials Collected in City, observe operations as desired by City, photograph operations and record by both written and electronic media such observations measurements and quality of Recovered and/or processed materials. Access shall be scheduled during normal business hours, however, in the case of observation and/or participation in waste characterizations, City shall have access to observe all steps of the protocols and techniques used in the sampling process. Such protocols and techniques include, but are not limited to, selection of routes, selection of materials from trucks utilizing an X and Y axis as described in Attachment N, actual sampling, weighing of samples and recording of data utilizing data sheets as described in Attachment N. Contractor shall accommodate early morning and late evening access to coincide with the characterizations, including sampling and all techniques and protocols associated therewith. City access shall be granted even during high traffic and high-volume times of the day at the facility. Appropriate safety precautions and procedures shall be employed.

The City shall have the right to speak with any of Contractor's employees, where it is necessary to obtain clarification or pertinent detail that can best be provided by the employee(s), and to receive a response to any inquiries directed to such employees; and review and make copies (at City's expense) of any and all Contractor's operational and

business records related to this Agreement. If City so requests, Contractor shall make specified personnel available to accompany City employees and/or City's agents on inspections. City's access to, and observation of activities and operations at each Processing Facility shall not be restricted or impaired in any way by Contractor.

City may periodically investigate Contractor's financial status to determine Contractor's financial capacity to continue to perform in accordance with this Agreement. Such investigations will be done at the sole expense of City, using such City employees or independent agents as City deems appropriate. Contractor shall cooperate during such investigations and shall make available for inspection such records as the City, or its agents or authorized personnel, may request.

Contractor shall maintain a complete roster of employees and independent contractors providing service under this Agreement. The roster shall contain the name, job classification and such other information as City may require. The City may inspect the roster, and make a copy thereof at its expense, at any time during business hours. City shall have the right to observe Containers of MSW, Recyclable Materials, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Co-collected Food Scraps/Yard Trimmings, Construction and Demolition Debris and all other materials for the purpose of conducting Container minimization observations as needed during the Term.

**11.05 Compliance Reporting.** Contractor shall submit monthly, quarterly and annual reports to the City documenting the disposition of MSW, Recyclable Materials, Yard Trimmings, Food Scraps, Compost, and Residue from all Processing Facilities and shall format such reports so that they may be used by the City for City's compliance with the

reporting requirements of the Act, SB 1383 and all Applicable Laws, including any other subsequently enacted federal, state or local laws, rules, or regulations governing integrated waste management. Contractor shall also comply with all requirements of AB 901 (PRC Sections 41821.5-41821.8) as it may be amended, and all regulations promulgated thereto, regarding reporting Tons to CalRecycle, the City and other agencies. The aggregation of tonnages permitted by AB 901 shall not alter any of Contractor's reporting requirements in this Agreement. The confidentiality provisions of AB 901 shall not apply to any of Contractor's reports submitted pursuant to this Agreement. All Contractor's reports are subject to audit by City, or by a third-party designated by City. The accuracy of all required reports to be submitted by Contractor are of paramount importance to City. Such reports show how Contractor is tracking and allocating diverted Tons, Disposed Tons, Residue Tons and Tons delivered to, and marketed from, Processing Facilities. The number of Tons diverted and Disposed directly impacts both the City's Diversion rate as calculated by the Act, and SB 1383, the City's costs of Diversion, and of compliance with the Act and SB 1383. Therefore, City may take all necessary steps and actions to audit, analyze and review any tonnage discrepancies or any other discrepancies, in Contractor's calculations, allocations, tonnage tracking and submitted documentation and records.

**11.05.A Reporting of Estate, Multi-Family and Commercial Tons Separately.**

Contractor shall report all Tons collected at Estates, Multi-Family Dwelling Premises and Commercial Businesses separately by weight. This includes but is not limited to, Tons of MSW, Recyclable Materials, Source-Separated Food Scraps, Source-Separated Yard Trimmings, Co-collected Food Scraps/Yard Trimmings, and Construction and Demolition

Debris. Contractor shall accomplish the separate tracking and reporting of Estate, Multi-Family Dwelling and Commercial Tons from Bins by recording the weight and the method used to determine the weight, type of Customer for each Bin lift (Estate, Multi-Family Dwelling or Commercial), Customer account and report the Tons for each Customer type daily for each route.

For Cart Collection service at Estates, Multi-Family dwellings and Commercial Business Premises, Contractor shall record the origin of each lift (Estate, Commercial or Multi-Family) and allocate the Tons Collected from each sector. Contractor shall report the allocation method used for allocating Tons Collected from Carts in each sector.

The City will review the allocation methods and calculations submitted by Contractor for Bins and Carts lifts, and if the methods are not satisfactory to the City, City may direct that Contractor utilize a different tracking and allocation method.

#### **11.05.B Material Discrepancy in Data Reported.**

In the event that City discovers any material discrepancy in Contractor's reported Diversion, Disposal, Tonnages, or any reported data required by this Agreement, City will notify Contractor and Contractor shall have fourteen (14) calendar days to explain or otherwise resolve the discrepancy or discrepancies to the satisfaction of City. If there remains any doubt or question about the accuracy of Contractor's calculations, allocations, documentation or disposition of Tons of MSW, Recyclable Materials, Yard Trimmings, Food Scraps, Construction and Demolition Debris, Compost, or any other

materials, City may undertake a detailed examination of all information, documentation, calculations and other data.

Contractor shall reimburse City's actual costs up to seventy-five thousand dollars (\$75,000) in each calendar year for such analysis, research, and review. Contractor shall cooperate fully with City's efforts and shall provide in a timely manner all additional City-requested documentation, information, and records (both electronic and hard copy) and shall provide access to all City (and/or City's agents) requested documents and records both of Contractor and of the Processing Facilities used to process Tons Collected in City.

City will invoice Contractor for the actual cost of the additional tonnage and allocation review and Contractor shall pay the invoice within thirty (30) days of receipt. In the event that Contractor fails to pay City's invoice within thirty (30) days of receipt, interest shall accrue at the Prime Rate (as published in the Wall Street Journal as of the due date for payment of the invoice) plus five percent (5%).

**11.06 Annual Route Audit.** Contractor shall conduct an annual audit, during the month of April of each year of this Agreement, of all Collection routes for MSW and Recyclable Materials, Food Scraps and Yard Trimmings. The audit shall include, at a minimum: (i) the route number, (ii) identification number of vehicles servicing each route, (iii) number and type of accounts serviced by route and by truck, (iv) number and sizes of Containers collected together with the frequency of Collection by route and by truck, (v) weight of MSW collected, (vi) weights of Single-Material Recyclables, Single Stream Recyclable Materials, Source-Separated Food Scraps, Source-Separated Yard Trimmings and Co-collected Food Scraps/Yard Trimmings by route and by truck, (vii) densities for all routes audited in pounds per cubic yard, and (viii) any pertinent operational details. Results of

the route audit shall be delivered to City in their entirety, including, but not limited to, maps of routes with each route numbered, survey sheets, logs, route lists, forms used to gather information, and other similar documents, within ten (10) working days of completion of the audit, and in no event later than May 20 of each year of the Term. The initial audit shall be performed in September 2027 with the report due by November 20, 2027. Said audit may be undertaken directly by Contractor or on behalf of Contractor by another party, but in either event shall be completed at Contractor's sole expense.

**11.07 Characterization Studies.** Contractor shall conduct the following characterization studies as described in Attachment N:

**11.07 Characterization Studies.** Contractor shall conduct characterization studies of the streams of materials being delivered to each Processing Facility using the protocols and at the frequencies described in Attachment N. The first Processing Facility characterization studies shall be conducted beginning in calendar year 2027 as described in Attachment N. The characterization study reports shall include the items listed in Attachment N and be submitted to City at the frequencies described therein. City shall have the right to have City staff or City's representatives present during any of the study. Contractor shall give City a minimum of fifteen (15) calendar days written notice of the date and time Contractor shall conduct each study. The characterization studies and the reports on results shall be performed and prepared at Contractor's sole expense.

The results of the characterization study shall be put into use the first day of the month following submittal of the report to the City and approval of the report and allocation method by City, and shall be used to report Tons Diverted and Disposed by

each Processing Facility for the City of San Marino in the monthly reports submitted to City pursuant to Attachment K. Such results shall be used to report Tons Diverted and Disposed by each Processing Facility for the City of San Marino until the results of the next characterization study are approved by City. If and when Contractor is required to report to CalRecycle or any other agency, jurisdiction-specific Tons Diverted and Tons of Residue for each Processing Facility used by Contractor to process City's materials, Contractor shall report using the results of the Processing Facility characterization studies described herein.

**11.08 Annual City Review of Contract Characterizations and Results.** Each year of the Term, City shall have the right, but not the obligation, to conduct a review of the procedures used to perform all characterization studies described in Section 11.07. If City desires to review the characterization procedures, City will contact Contractor to schedule a meeting or series of meetings to discuss the procedures and results. At City's sole discretion, Contractor shall change the characterization protocol, timing and frequency as directed by City and shall put such changes into effect with the next characterization. City's review of characterization procedures may include review of Contractor and Processing Facility records and on-site visits to Contractor's facilities and Processing Facilities. City's (and/or City's agents) access to, and observation of activities and operations at each Processing Facility shall not be restricted or impaired in any way by Contractor.

**11.09 Reporting of Adverse Information.** Contractor shall promptly notify City and shall provide the City with three (3) copies (one to the Public Works Director, one to the City Manager and one to the City Attorney) of all claims, complaints, pleadings, demand

letters, Notices of Violation, communications or other written material that sets forth or discusses Contractor's potential liability with respect to Contractor's performance of services under this Agreement, or with respect to collection services provided by Contractor in any other jurisdiction during the term of this Agreement. This shall include such documents as may be received from or sent by Contractor to the U.S. Environmental Protection Agency, California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission, or any other federal, state or local agency with jurisdiction over Contractor's operations, including but not limited to documents that may be filed in any federal or state court or arbitration. Copies shall be submitted to the City simultaneously with Contractor's filing or submission of such materials with said agencies. Contractor's routine correspondence with said agencies need not be submitted to City but shall be made available to the City promptly upon City's written request.

## **ARTICLE 12: INDEPENDENT CONTRACTOR**

**12.01 Contractor an Independent Contractor.** In the performance of services under this Agreement, the Contractor shall be, and is, an independent contractor, and is not an agent or employee of the City. Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all Persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's employees and other agents.

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

**12.03 No Entitlement to City Benefits.** Neither Contractor nor its officers, employees, agents or subcontractors shall be entitled to any retirement benefits, healthcare benefits, workers' compensation benefits or any other benefits which accrue to any City employees, and Contractor expressly waives any claim it may have to acquire to such benefits. Contractor agrees to defend and indemnify City for any claims brought by Contractor's employees against City for such benefits.

## **ARTICLE 13. INDEMNITY, INSURANCE, BOND**

**13.01 General Indemnification.** To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City ("Indemnity") , its elected or appointed officials, officers, employees, agents, consultants, volunteers, affiliate, assignees, representatives, attorneys, subsidiaries and affiliated entities and their respective heirs and assigns (collectively "Indemnified Parties") from and against any and all claims (individually a "Claim", collectively "Claims") including without limitation, Claims for bodily injury, death, or damage to property, demands, obligations, damages, actions, causes of action, suits, administrative proceedings, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or be in any way related directly or indirectly to City entering into this Agreement with Contractor, Contractor's breach of its obligations under this Agreement, Contractor's performance of, or its failure to perform, its obligations under this Agreement, any other acts, omissions, or conduct (intentional or willful) of Contractor, any Claim concerning the validity of City entering into this Agreement or any ordinance or action based thereon, any Claim challenging City's authority with respect to the entering into Agreements, including the process for the approval of Agreements, exclusive or otherwise, any Claim involving the Collection, Transportation, Processing, or Disposal of Municipal Solid Waste, Recyclable Materials, Food Scraps, and/or Yard Trimmings, arising out of the exercise of this Agreement by Contractor, any Claims by other entities disputing the rights and privileges granted by City in this Agreement, any Claims related to City's failure to meet the solid waste diversion requirements resulting in whole or in part from Contractor's breach or failure to perform

this Agreement (subject to the limitation set forth below) or any Claims specified under the provisions of Section 13.05 below concerning Pollution and/or Hazardous Waste.

The Indemnity shall not apply to the extent that the Claim is caused by the sole negligence or the willful misconduct of the Indemnified Parties. The Indemnity shall apply if the Claim is caused by the joint negligence of Contractor and other Persons. This Indemnity shall apply to all Claims and liability regardless of whether any insurance policies are applicable. The policy limits shall not act as a limitation upon the amount of indemnification to be provided by Contractor. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend (with attorneys reasonably acceptable to City) the Indemnified Parties. Contractor's duty of Indemnity (inclusive of its duty to defend) shall survive the expiration or earlier termination of this Agreement.

Nothing in this section shall be deemed to require Contractor to defend or to indemnify the City for claims where the City is prohibited from imposing such duties on Contractor pursuant to Public Resources Code section 40059.1(c)(1) through (5) inclusive or section 40059.2(d)(1) and (2) inclusive. Where Public Resources Code section 40059.1(c)(1) through (5) inclusive requires City to first affirmatively seek, in good faith, all administrative relief available, except upon a showing of good cause, for imposition of

a penalty based on City's failure to meet solid waste diversion requirements, such action by City shall be a precondition to Contractor's Indemnity obligation solely as to that matter.

### **13.02 Insurance.**

**13.02.A Types and Amounts of Coverage.** Without limiting Contractor's duty of Indemnity described in Section 13.01, Contractor shall procure from an insurance company or companies licensed to do business in the State of California and shall maintain in force at all times during the Term at Contractor's sole expense, the types and amounts of insurance listed in this Section 13.02 in a form acceptable to City. If Contractor maintains higher limits than the minimums listed in this Section 13.02, the City shall be entitled to coverage for the higher limits.

**13.02.A.1 Workers' Compensation and Employer's Liability.** Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or disease. Contractor shall not be obligated to carry workers' compensation insurance if (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (ii) furnishes a certificate of Permission to Self-Insure issued by the Department of Industrial Relations; and (iii) furnishes updated certificates of Permission to Self-Insure periodically, at least annually, to evidence continuous self-insurance.

**13.02.A.2 Comprehensive General Liability and Automobile Liability Policies.** Contractor shall maintain comprehensive general liability insurance and

automotive liability insurance with each policy having limits of not less than Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) annual aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement.

The insurance required by this subsection shall include:

- (i) Premises Operations (including use of owned and non-owned equipment);
- (ii) Products and Completed Operations (including protection against liability resulting from use of Recyclable Materials by another Person);
- (iii) Personal Injury Liability with employment exclusion deleted;
- (iv) Broad Form Blanket Contractual with no exclusions for bodily injury, personal injury or property damage (including coverage for the indemnity obligations contained herein);
- (v) Owned, Non-Owned, and Hired Motor Vehicles;
- (vi) Broad Form Property Damage.

The comprehensive general liability insurance shall be written on an "occurrence" basis (rather than a "claims made" basis) in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG0001). If occurrence coverage is not obtainable, Contractor shall arrange for "tail coverage" on a "claims made" policy to protect City from claims filed within four years after the expiration or termination of this Agreement relating to incidents that occurred

prior to such expiration or termination. Any excess or umbrella policies shall be on a “following form” basis.

**13.02.A.3 Pollution Liability.** Contractor shall maintain environmental / pollution liability insurance, and transportation pollution liability insurance to include onsite, under-site and offsite liability coverage, for bodily injury (including death and mental anguish), property damage, regulatory fines, defense costs and cleanup costs with minimum limits of Five Million Dollars (\$5,000,000) each loss and Ten Million Dollars (\$10,000,000) in the aggregate covering claims arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants in any way related to Contractor’s performance of, or operations under, this Agreement. Non-owned Disposal site coverage shall be provided if Contractor is handling, storing or generating Hazardous Waste or hazardous materials or any material or substance otherwise regulated under environmental laws or regulations.

**13.02.A.4 Physical Damage.** Contractor shall maintain comprehensive (fire and theft) physical damage insurance covering the vehicles and equipment used in providing service to City under this Agreement, with a deductible or self-insured retention not greater than One Hundred Thousand Dollars (\$100,000). The deductible limit may be increased by City with acceptable proof of self-insurance. Notwithstanding the foregoing, Contractor shall be allowed to self-insure for physical damage to its vehicles

provided Contractor provides adequate audited financial information to City and City is reasonably satisfied that Contractor has the financial net worth to cover any losses.

**13.02.B Acceptability of Insurers.** The insurance policies required by this section shall be issued by an insurance company or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best's Insurance Reports of size category VIII or larger and a rating classification of A or better.

**13.02.C Required Endorsements.** Without limiting the generality of Sections 13.02.A and B, the Worker's Compensation, General Liability, Automobile Liability, and Pollution Liability/ Transportation Pollution Liability policies shall contain endorsements making the City and its Indemnified Parties including but not limited to elected or appointed officers, officials, employees, and agents and volunteers an additional insured with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

Endorsement shall also be obtained that state that for any claims related to this Agreement, the Contractor's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 with respect to the City, its officers, officials, employees, agents, and volunteers, and that any insurance or programs of self-insurance (including participation in risk pools) maintained by the City,

its officers, officials, employees, agents, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

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

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

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents, and subcontractors.

**13.02.D Delivery of Proof of Coverage.** No later than ten (10) calendar days after execution of this Agreement by both parties, Contractor shall furnish City one or more certificates of insurance and required endorsements substantiating that each of the coverages and endorsements required hereunder are in force, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall be accompanied by all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City in one complete package. Contractor shall furnish renewal certificates to City to demonstrate maintenance of the required coverages throughout the Term. Each year on or before the renewal date for all

insurance policies required herein, Contractor shall deliver to City a new package containing all insurance certificates with all of the required endorsements and copies of all insurance policies required by this Agreement.

The Contractor shall obtain the written consent of the City prior to changing insurers providing insurance under this Agreement, which consent shall not be withheld or delayed unreasonably.

**13.02.E Other Insurance Requirements.**

1. Contractor hereby grants to City a waiver of subrogation which any insurer may acquire against City, its officers, officials, employees, and volunteers, from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

2. If the Contractor maintains broader coverage and/or higher limits than the minimums limits required above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

3. Self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration,

and defense expenses within the retention. The policy language for all policies shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity. City is not responsible for payment of premiums for or deductibles under any required insurance coverages.

4. In the event performance of any service is delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 13.02.A.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 13.02.

5. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 13.01. If any claim is made by any third Person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to the City.

6. If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due

Contractor. Alternatively, the City may treat the failure as a Contractor Default, and not subject to any applicable cure period.

7. The Parties acknowledge that the market for insurance is subject to unforeseeable events which can affect the amount of coverage needed and pricing therefor. Accordingly, in the event the City determines that the services under this Agreement create an increased or decreased risk of loss to the City, Contractor agrees that the minimum limits of the insurance policies required by this Section may be changed accordingly upon receipt of written notice from the City; provided that Contractor shall have the right to appeal a determination of increased coverage to the City Council of City within ten (10) days of receipt of notice from the City.

**13.03 Faithful Performance Bond.** Not later than ten (10) days after execution of this Agreement by both parties, Contractor shall file with City a bond securing the Contractor's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be Three Million Five Hundred Thousand Dollars (\$3,500,000). The form of the bond shall be as set out in Attachment L. The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of California, regulated by the California Insurance Commissioner and with a financial condition and record of service satisfactory to City.

It is the intention of this Section 13.03 that there be in full force and effect at all times a bond securing the Contractor's faithful performance of the Agreement, throughout its Term.

**13.04 Alternative Security.** City may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 13.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to City and approved by the City Attorney and issued by a financial institution acceptable to City, or (b) a certificate of deposit in the name of the City with a term satisfactory to City and with a financial institution acceptable to City.

**13.05 Hazardous Waste 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 City) reimburse, indemnify, and hold City and its past and present officers, council members, employees, consultants and agents (hereinafter "Indemnified Parties") 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 Indemnified Party is liable, responsible or in any way obligated to

investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Waste (as defined herein); or

2. Relates to material collected, transported, recycled, Composted, 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 the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the California Hazardous Substances Account Act (California Health & Safety Code Sections 25300 et seq.), the California Hazardous Waste Control Laws (California Health & Safety Code Sections 25100 et seq.), the California Porter-Cologne Act (California Water Code Section 13000 et seq.), and any and all amendments and regulations thereto, and any other Federal, State, regional or local environmental statutory or regulatory provision;

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 Agreement, the term "Hazardous Waste" 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 & Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health & Safety Code, Division 20, Chapter 6.8 (Hazardous Substance Account Act); (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(p), (q), and (r) and 25501.1 of the California Health & 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 & 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 Chapter 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 a "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. Section 9601, et seq. (42 U.S.C. § 9601); (xiii) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq.; (xiv) defined as such or regulated by any "Superfund" or "Superlien" law; (xv) any asbestos or asbestos-containing material; (xvi) any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; or, (xvii) 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. The term "Hazardous Waste" shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over Hazardous Waste, the term "Hazardous Waste" shall be construed to have the broader, more encompassing definition.

**E.** 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.

**13.06 Intellectual Property Indemnification.** Contractor agrees to indemnify, hold harmless and defend the Indemnified Parties against any and all liability, including costs, for infringement of any United States' letters patent, trademark or copyright infringement.

## **ARTICLE 14: COMPENSATION TO CONTRACTOR**

**14.01 General.** Contractor shall perform the services required by this Agreement in consideration for: (i) the right to charge customers the rates set forth in Attachment D-1 for the period June 1, 2025 through September 30, 2025, and thereafter the rates set forth in Attachment D as they may be adjusted as provided in this Article, and (ii) the right to retain all revenues, if any, from the sale of Recyclable Materials, Yard Trimmings, Food Scraps, Compost, (including revenue from creation, sale and use of energy) and Construction and Demolition Debris. The revenues received from these sources shall be the full, entire and complete compensation due to Contractor for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. City shall not be obligated to make any payments to Contractor under this Agreement, including, but not limited to, payments to compensate Contractor for delinquent or uncollectible amounts charged to Customers.

**14.02 Initial Rates.** From June 1, 2025 through September 30, 2025 Contractor shall charge Customers the rates in Attachment D-1 which are the rates charged by the City's previous hauler. The rates in Attachment D-1 include a "Waste Management Fee" and a "franchise fee". Contractor may retain all revenue from the rates in Attachment D-1 including the revenues from said fees. During the period from June 1, 2025 through September 30, 2025 the City will issue a Proposition 218 notice and will hold a public hearing for the City Council to consider adoption of the new rates proposed by Contractor

in the City's Request for Proposals process. Once new rates are approved by the City Council, Contractor shall charge Customers the rates in Attachment D. The parties plan that Contractor will begin charging the rates in Attachment D on October 1, 2025.

In the event Contractor is found, during the Term, to be charging any rate that is not listed in Attachment D, Contractor shall, upon realization of this fact or upon receipt of notification from City, refund all such charges to all affected Customers within thirty (30) days. In the event Contractor has charged a higher rate than the rate listed in Attachment D, as may be adjusted under the various provisions of this Agreement, then the difference between the rate charged and the then applicable rate shall be refunded. In the event Contractor has charged a lower rate than the rate listed in Attachment D, Contractor shall not charge the Customer for the difference between the rate charged and the rate in Attachment D; however, Contractor shall notify the Customer and give the Customer the option to continue to receive the service at the rate listed in Attachment D, or to arrange for a different service or level of service. In such event, Contractor shall assist the Customer in selecting the most cost-effective service level and the corresponding rate available in Attachment D.

Contractor shall not bill or otherwise charge any Customer for services that are not rendered. Upon discovery of any billing or charging of a Customer for services that were not rendered, Contractor shall refund the complete amount charged to the Customer within thirty (30) days.

Upon City request, Contractor shall provide City with a summary of any and all instances of (i) rates greater than the rates listed in Attachment D being charged, and (ii)

charges for services not rendered to Customers. Contractor shall report to City the refunds or other adjustments made for each of said Customers.

**14.03 Annual Rate Adjustments.** The rates for services set forth in Attachment D shall be adjusted annually, to be effective July 1, 2026 and the July 1 for each ensuing year of the Term in accordance with Attachment J. If Contractor bills Customers on a monthly basis, thirty days (30) prior to each annual automatic adjustment, Contractor shall provide written notice of the change in the rates to Customers by printing the amount (percentage) of the rate adjustment on the Customer's bill (including both electronic and hard copy bills). Said notice shall include language stating that the Agreement between the City and Contractor provides for this annual adjustment. If Contractor bills Customers on a monthly basis, Contractor shall submit the language to be included on the Customer's bill (including both electronic and hard copy bills) for City's approval sixty (60) days prior to each annual automatic adjustment.

If Contractor bills Customers on a quarterly basis, ninety days (90) prior to each annual adjustment, Contractor shall provide written notice of the change in the rates to Customers by printing the amount (percentage) of the rate adjustment on the Customer's bill (including both electronic and hard copy bills). Said notice shall include language stating that the Agreement between the City and Contractor provides for this annual adjustment.

**14.04 Challenge to Rates.** The parties recognize that rates established under this Agreement may be challenged as fees or charges for property-related services pursuant to California Constitution Article XIID. The City intends to follow the requirements of that

Article when adjusting rates, including, but not limited to, those rates set forth in Attachment D in an abundance of caution and without conceding its applicability. If a proposed rate adjustment may not be enacted as a result of a majority protest pursuant to Article XIIID, Section 6, or if rates in effect are reduced as a result of an initiative measure authorized by Article XIII.C, Section 3, the City's inability to increase or maintain the rates as contemplated shall not constitute a breach of this Agreement. The parties shall promptly meet to discuss and determine how best to respond to such an occurrence.

**14.05 Disposal Charge (Tip Fee) Adjustments.** If the tip fee charged at the City-designated Disposal Site is changed (increased or decreased) for whatever reason including, but not limited to, new or increased taxes or regulatory fees, the Disposal portion of the rates set forth in Attachment D shall be adjusted according to the provisions in Attachment J. Disposal Charges are a pass-through cost and Contractor shall not be entitled to receive or charge any profit, markup, overhead or administrative costs on Disposal Charges

**14.06 City Regulatory Compliance Costs.** In order to offset the City's costs in administering this Agreement to meet state-mandated requirements for Diversion and program implementation including, but not limited to, planning, monitoring and implementation of additional Diversion programs, additional public education on Diversion programs, technical consulting assistance on solid waste, recycling and other related issues, preparation of any studies required by the City or by CalRecycle related to compliance with the Act, preparation of required reports, documentation as well as creation and maintenance of the Implementation Record required by the Act and by SB 1383, monitoring of Contractor's performance under this Agreement, procurement of

compost or other qualifying products as required by SB 1383, costs to enforce Article IX “Refuse” of the San Marino Municipal Code and any other City costs related to compliance with the Act, the rates in Attachment D include [REDACTED] per year for City Regulatory Compliance Costs. ***[The amount of the Regulatory Compliance Costs will be provided to proposers via an Addendum.]*** Commencing October 1, 2025, Contractor shall remit one-twelfth of the annual amount to City on a monthly basis within thirty (30) days of the end of the calendar month for which the amount is being paid. The City may adjust the City Regulatory Compliance Costs on an annual basis (or less frequently) as needed to reflect actual costs, and in such event, the new amount will be included in the annual rate adjustment described in Section 14.03 and Attachments J and W. If any City Regulatory Compliance Cost payment is not made by Contractor within thirty (30) days after the above-stated due date, and in addition to any other remedy provided by law, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) per month, or portion thereof, of the amount owing until paid.

***14.07 Adjustments to Rates in Attachment D Based on City-Directed Changes In Scope of Work.*** If the City has directed a change in the scope of work under Section 5.12, and either party believes that such change will increase or decrease the costs of providing service, the party which believes the rates listed in Attachment D should be adjusted shall, within thirty (30) calendar days after issuance of the notice of scope change, submit to the other party a proposed adjustment to the rates in Attachment D with complete supporting documentation of the cost calculations therein, and the parties shall thereafter meet and discuss the matter. City may request additional documentation, calculations and other information from Contractor in order to analyze information

submitted by Contractor, or in order to make its own internal calculations of the cost change. Once the parties have formulated a cost adjustment, the City Council shall review the proposed adjustment and in the City Council's sole discretion, make the determination as to the appropriate amount of the adjustment. Only changes in Contractor's costs will be considered. No adjustment will be made to Contractor's compensation due to loss or reduction in any of the following: (a) Contractor's profits, and/or (b) decrease in Contractor's revenues at a Contractor-owned and/or Contractor-operated Processing Facility, including, but not limited to, Processing Fees, revenues from sale of Recyclable Materials, Compost, Wood, energy, and/or Processed Construction and Demolition Debris.

In the event the City-directed change of scope results in an increase in rates, the procedures in Section 14.04 for compliance with California Constitution Article XIID shall be followed.

**14.08 Other Fees.** The City shall have the right to establish other fees and to collect such fees from Contractor, as City deems necessary in City's sole discretion, and nothing in this Agreement shall be deemed to limit the City's police/regulatory powers with respect to establishment of new regulations for the collection or disposal of waste or prevention of nuisances in the manner provided for by law. The amount, time and method of payment will be established similar to that described in Section 14.06. City shall provide Contractor with written notice of the establishment of any new fees along with the corresponding change in the rates in Attachment D and the remittance schedule.

## **ARTICLE 15: DEFAULT AND REMEDIES**

**15.01 Events of Default.** Each of the following shall constitute an event of default ("Contractor Default") hereunder:

**A.** (i) Contractor fails to perform its obligations under Articles 5, 6, 7 or 8 of this Agreement and the failure to perform is not cured within two (2) business days after receiving written notice from the City specifying the breach; or (ii) in the case of any other breach of this Agreement, the breach continues for more than fifteen (15) calendar days after written notice from the City for the correction thereof.

**B.** There is a seizure or attachment of, or levy affecting possession of, the operating equipment of Contractor, including without limitation, its vehicles, maintenance or office facilities, of such proportion as to substantially impair Contractor's ability to perform under this Agreement, and which is not released, bonded or otherwise lifted within two (2) business days.

**C.** There is any termination, suspension, or material impairment of Contractor's ability to collect MSW, Recyclable Materials, Yard Trimmings, Food Scraps or Construction and Demolition Debris due to, or arising from, any cause (including labor unrest such as strike, work stoppage or slowdown, sickout, picketing, or other concerted job action).

**D.** Contractor files a voluntary case for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidator, assignee,

trustee, custodian, sequestrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's operating assets or any substantial part of Contractor's property used to provide service to City pursuant to this Agreement, or makes any general assignment for the benefit of Contractor's creditors, or fails generally to pay Contractor's debts as they become due or takes any action in furtherance of any of the foregoing.

**E.** A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor consents to or fails to oppose any such proceeding, and such proceeding remains undismissed or unstayed for a period of ninety (90) days or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor.

**F.** Contractor fails to timely furnish an initial bond, or fails to furnish a replacement bond or a continuation certificate of the existing bond prior to expiration of the performance bond, as required by Section 13.03 of the Agreement, or fails to maintain in force any substitute security authorized by the City in lieu of performance bond at all times this Agreement is in effect, or Contractor fails to maintain all required insurance coverages in force at all times. The default shall occur immediately upon such failure without any necessity for notice from City of the breach. City shall have the right to give notice of termination under Section 15.02 immediately upon such default.

Notwithstanding any other provision of this Agreement to the contrary, Contractor shall not be entitled to an opportunity to cure any default comprising the failure to maintain all required insurance and/or the required bond.

**G.** Contractor fails to provide reasonable assurance of performance required under Section 16.10.

**H.** A representation or warranty contained in Article 2 proves to be false or misleading in a material respect as of the date such representation or warranty was made.

**I.** Contractor engages in, or is reasonably documented to be engaging in, any fraud or deceit upon City, or makes a misrepresentation regarding information provided to City including, but not limited to, falsifying tonnage reports, reports of the results of waste characterization, Customer Diversion program participation data, Contamination percentages, reports of Diverted Tons, reported implementation (or steps toward implementation) of Diversion programs required by this Agreement, or provides information that is materially misleading in any report or documentation provided to the City.

**J.** Contractor fails to honor or perform any of its indemnity or defense obligations as specified in this Agreement.

**K.** Contractor, or any of its officers, directors or employees is found guilty of any crime related to the performance of this Agreement, or of any crime related to anti-trust activities, illegal release, transport or Disposal of Hazardous Waste or toxic

materials, or bribery of public officials. 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”.

**L.** Contractor is found to have violated the Act, any Environmental Law, or any permit, order or rule of any regulatory agency in connection with Contractor’s performance of this Agreement and such finding has become final and not subject to further appeal.

**M.** Contractor empties Containers of properly set out Recyclable Materials or Food Scraps/Yard Trimmings that contain less than twenty-five percent (25%) Contamination into a load of MSW, or transports Recyclable Materials and/or Food Scraps/Yard Trimmings to a Disposal site or other location at which the materials will not be Diverted.

**N.** Contractor fails to complete the annual brake inspection of each Collection vehicle and to submit Notice of Certification to City no later than May 1 of each year of the Term, as described in Section 8.03.E.

**O.** The issuance of four (4) or more vehicle, driver/operator or other citations for moving violations (including, but not limited to, exceeding the speed limit, unsafe speed, unsafe driving, reckless driving, running a red light, and unsafe turns) that relate in any way to operations performed pursuant to this Agreement within a twelve (12) month period.

**P.** Failure of Contractor to adhere to, perform, implement and complete all parts of “Contractor’s Plan for Interim Period” (described in Section 5.03 and Attachment H) and the “Implementation Plan” (described in Section 5.03 and Attachment C.)

**Q.** Any act or omission by Contractor relative to services to be provided pursuant to this Agreement which violates the terms, conditions or requirements of this Agreement, or the Act, or any law or statute, ordinance, order, directive, rule or regulation issued pursuant to the Act. Any failure to correct or remedy any such violation within the time set in the written notice of violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice or in the event Contractor fails to commence to correct or remedy such violation within the time set forth in such notice and fails to diligently effect such correction or remedy thereafter.

***15.02 Right to Suspend or Terminate Upon Default.***

**A.** Upon any Contractor Default, City shall have the right to suspend or terminate this Agreement, in whole or in part. Such suspension or termination shall be effective thirty (30) days after City has given written notice of suspension or termination to Contractor, except that such notice may be effective immediately if the Contractor Default is one which endangers the health, welfare or safety of the public. Contractor shall continue to perform the portion of the Agreement not suspended, in full conformity with its terms.

**B.** City will also have the right to suspend or terminate this Agreement, upon the same written notice provisions, if Contractor’s ability to perform is prevented or

materially interfered with by a cause which excuses nonperformance under Section 16.12, despite the fact that nonperformance in such a case is neither a breach nor default by Contractor.

**15.03 Specific Performance.** By virtue of the nature of this Agreement, the urgency of timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate, and the City shall be entitled to injunctive and declaratory relief to require Contractor to perform its obligations herein.

**15.04 Use of Contractor Property Upon Default.** In the event that Contractor fails to perform any of its obligations under Articles 5, 6, 7, 8 or 9 and fails to perform such work within two (2) business days after notice from City, City shall have the right to use any of Contractor's land, equipment, facilities and other property reasonably necessary for the provision of services hereunder and the billing and collection of fees for those services. The City shall have the right to continue use of such property until other suitable arrangements can be made for the provision of such services, which may include the award of a contract to another service provider.

**15.05 Right to Perform.** If this Agreement is suspended and/or terminated due to a Contractor Default, City shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and to procure labor, equipment, and materials and incur all other expenses necessary for completion of the work and services provided for herein. If such expenses exceed the amounts which would have been payable to Contractor under this Agreement (by and through rates and

customer payments for services rendered by Contractor) if such services had been fully performed by Contractor, then Contractor shall pay the amount of such excess to City.

**15.06 Payment for Use of Contractor's Property.** If the City invokes its rights to use Contractor's land, equipment, facilities, and other property pursuant to Section 15.04, and such use continues after the period of time for which Contractor has already been compensated, Contractor shall be entitled to the reasonable rental value of such property, which shall be offset against the damages due the City as a result of Contractor's Default. Contractor agrees that it will fully cooperate with the City to affect the City's use of such property. The City may immediately engage all or any personnel necessary for the provision of services, including, if the City so desires, employees previously employed by Contractor. Contractor further agrees, if the City so requests, to assist the City in securing the services of any or all management or office personnel employed by Contractor whose skills are reasonably necessary for the continuation of services. The City agrees that it assumes complete responsibility for the proper, normal use of such equipment and facilities while in its possession. Contractor agrees that the City's exercise of its rights under this section: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of the City to Contractor other than the payment of reasonable rental value as provided for in this subsection; and (iii) does not exempt Contractor from the indemnity provisions of Article 13 which are meant to extend to circumstances arising under this Section.

**15.07 Damages.** Contractor shall be liable to City for all direct and consequential damages arising out of Contractor's Default. This section is intended to be declarative of

existing California law. The City may offset such damages against any sums which would otherwise be due to Contractor.

**15.08 City's Remedies Cumulative.** City's rights to suspend or terminate the Agreement under Section 15.02, to obtain specific performance under Section 15.03, to cure under Section 15.04 and to perform under Section 15.05 are not exclusive, and City's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that the City may have, including a legal action for damages, including incidental, consequential and/or special damages under Section 15.07.

**15.09 Liquidated Damages.** The parties acknowledge that consistent, courteous and efficient Collection of MSW, Recyclable Materials, Food Scraps, Yard Trimmings and Construction and Demolition Debris is of utmost importance and City has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement. The parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties further recognize that if Contractor fails to achieve the performance standards, City and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. 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 had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

Contractor Initial Here: \_\_\_\_\_

City Initial Here: \_\_\_\_\_

Contractor agrees to pay to City (as liquidated damages and not as a penalty) the amount set forth below, all of which shall be adjusted upward annually using the procedure and calculations set forth in Section 14.03 of the Agreement and Attachment J. Where liquidated damages apply after a specified number of Contractor's failures to comply within a one (1) year period, the one (1) year or annual period shall mean the preceding twelve (12) months including the month in which the most recent failure occurred.

<b><u>A. Collection Reliability</u></b>		
<b>1</b>	For each failure to commence service to a new Residential, Estate or Commercial Customer account within seven calendar (7) days after order, for (i) the basic Residential level of service including MSW, Recyclable Materials, and Co-collected Food Scraps/Yard Trimmings; (ii) Estate level of service as ordered by Customer; or (iii) Commercial level of service as ordered by Customer in excess of five (5) such failures annually on or after October 1, 2025.	\$150.00
<b>2</b>	For each failure to collect a Container containing MSW, Recyclable Materials, Food Scraps/Yard Trimmings from a Single-Family Residential, Estate or Commercial Customer (access to which is available to Contractor) by an established Customer, on the scheduled Collection day, in excess of two-hundred fifty (250) such failures annually. (Count of failures does not begin until October 1, 2025)	\$100.00 per Container
<b>3</b>	For each failure to collect MSW, Recyclable Materials, Food Scraps/Yard Trimmings (access to which is available to Contractor) from the same Residential, Estate or Commercial Customer on two (2) consecutive scheduled Collection days. (Assessment of liquidated damages does not begin until October 1, 2025)	\$150.00
<b>4</b>	For each instance of collecting MSW, Recyclable Materials, or Food Scraps/Yard Trimmings outside of Collection hours described in Section 5.08	\$150.00
<b>5</b>	Failure to deliver new Carts for MSW, Food Scraps/Yard Trimmings at all Single Family Dwellings and new Carts and Bins at Estates, Multi-Family Dwellings and Commercial Businesses by January 1, 2027	\$5.00 per Customer
<b><u>B. Collection Quality</u></b>		
<b>1</b>	For each occurrence of damage to private property which is not corrected to the satisfaction of the City within thirty (30) days of the damage and which exceed five (5) such occurrences annually	\$250.00
<b>2</b>	For each failure to properly return any empty Single Family Dwelling or Estate Cart back to its original location or failure to place the Cart in an upright position, in excess of twenty (20) such occurrences annually	\$50.00 per occurrence

3	For each occurrence of discourteous behavior to a Customer	\$250.00
4	For each occurrence of excessive noise as defined in Section 5.09.B.	\$500.00
5	For each failure to properly tarp a Roll Off Box during transportation of the Box.	\$100 per incident
6	For each failure to clean up MSW, Recyclable Materials, Food Scraps, Yard Trimmings, or other materials blown, scattered or dropped from Carts or Bins, within the prescribed timeframe in Section 5.10.A, in excess of five (5) such failures annually. Assessment of liquidated damages will not begin until October 1, 2025.	\$150.00
7	For each failure to conform to the requirements of Sections 8.03.E.2, Cleaning; 8.03.E.3, Painting; 8.03.E.4, Maintenance; 8.03.G, Brake Inspections; 8.03.L, Operation; 8.04.E, Cleaning, Painting and 8.05.C, Uniforms, which exceed in any or a combination of categories in excess of five (5) such occurrences annually.	\$150.00
8	Failure to display Contractor's name and Customer service telephone number on each Collection vehicle as described in Section 8.03 (This requirement begins October 1, 2025)	\$100 per incident per day
9	Emptying a Cart or other Container containing Recyclable Materials, Yard Trimmings, Food Scraps or Combined Yard Trimmings/Food Scraps into an MSW Collection vehicle; emptying a Cart or other Container containing MSW into a Recyclable Materials or Food Scrap/Yard Trimmings Collection vehicle; emptying a Cart or other Container containing Food Scraps/Yard Trimmings into a Recyclable Materials Collection vehicle; emptying a Cart or other Container containing into a Collection vehicle dedicated solely to Collecting Yard Trimmings or Food Scraps/Yard Trimmings. [Note: if a non-dedicated Collection vehicle is Collecting both Yard Trimmings or Yard Trimmings/Food Scraps that is permissible and does not constitute a failure. If single pass trucks are utilized, each material must be kept separated within the body of the vehicle. Failure to keep the materials separated shall constitute a failure incident.] If there are more than five (5) incidents within a twelve (12) month period, Contractor shall be in default of the Agreement.	\$1,000 per incident

<b>10</b>	Disposal of Recyclable Materials, Food Scraps and/or Yard Trimmings in a Disposal Facility except as provided in this Agreement	\$1,000 per incident
<b>11</b>	For each Ton of Yard Trimmings used as Alternative Daily Cover	\$150 per ton
<b>12</b>	For each failure to Process all Recyclable Materials Collected in City at the Clean MRF described in Article 6.	\$95 per ton of processing capacity not provided for the initial 14 days; \$200/ton for days 15-42 that capacity is not provided; \$1000/ton for days 43-56 that capacity not provided. Over 56 days Contractor is in default of the Agreement.
<b>13</b>	For each failure to Process all Co-Collected Food Scraps/Yard Trimmings and Source Separated Yard Trimmings Collected in City at the Facility(ies) described in Article 6.	\$95 per ton of processing capacity not provided for the initial 14 days; \$200/ton for days 15-42 that capacity is not provided; \$1000/ton for days 43-56 that capacity not provided. Over 56 days Contractor is in default of the Agreement.

<b>14</b>	For each failure to Process all Source-Separated Food Scraps Collected in City at the Facility(ies) described in Article 6.	\$95 per ton of processing capacity not provided for the initial 14 days; \$200/ton for days 15-42 that capacity is not provided; \$1000/ton for days 43-56 that capacity not provided. Over 56 days Contractor is in default of the Agreement.
<b>15</b>	For each failure to Process all Construction and Demolition Debris Collected in City at the Facility described in Article 6.	\$95 per ton of processing capacity not provided for the initial 14 days; \$200/ton for days 15-42 that capacity is not provided; \$1000/ton for days 43-56 that capacity not provided. Over 56 days Contractor is in default of the Agreement.
<b><u>C. Responsiveness to Customer</u></b>		
<b>1</b>	For each failure to initially respond to a Customer complaint within eight (8) working hours:	\$100.00
<b>2</b>	For each failure to conform to the litter abatement requirements of Section 5.10.	\$250.00
<b>3</b>	Failure of Contractor to maintain an average hold time of sixty (60) seconds or less for ninety percent (90%) of all callers calculated on a monthly basis as required by Section 9.04.C.	\$500 per month that 60-second average hold time for 90% of callers is exceeded
<b>4</b>	Contractor's use of a "robo" or automated voice return call to a Customer instead of a live customer service representative making the promised return call as described in Section 9.04.C	\$500 per incident in excess of 5 incidents within a 12-month period

5	Failure or neglect to resolve a Customer complaint relating to missed Collection within the time set forth in Section 9.05.	\$100.00 per incident per Customer
6	Failure to notify Customers of changes in route days as required in Attachment B, Section 1.	\$500.00 per occurrence
7	Failure to resolve customer complaint to satisfaction of City within 5 business days in excess of 3 incidents per year.	\$500.00 per occurrence
8	Failure to resolve customer complaint such that the Customer calls City to resolve issue.	\$100 per customer call in excess of 5 calls per month
9	For each failure to repair or replace a missing or damaged Cart within 2 business days of request from City or Customer	\$50 per day
10	For each failure to remove graffiti from Carts, or to replace with Carts bearing no graffiti, within 2 business days of request from City or Customer after October 1, 2025.	\$50 per day
11	For each failure to deliver a Roll Off Box to a Customer within forty-eight (48) hours of Customer request.	\$200 per incident, plus \$100 per day for each business day the Box is not delivered
12	Failure to have Contractor drivers in uniform identifying them as employees of Contractor	\$100 per incident

**D. Timeliness of Submissions to City**

1	Any report required to be submitted to City by Contractor pursuant to this Agreement shall be considered late until such time as an accurate, correct and complete report is received by City. Monthly, quarterly and annual reports must contain all information required in Attachment K. All other required reports must contain the information specified in this Agreement. For each business day (excluding weekends and the holidays listed in Section 5.08 of the Agreement) a report is late, the daily liquidated damage amount shall be:	
	1. Monthly report	\$1000.00 per day
	2. Quarterly report	\$2500.00 per day

	3. Annual report	\$5000.00 per day
	4. All other reports	\$1000.00 per day
2	Failure to provide records requested by City within 30 days of City request	\$2500 per day until completed
3	Failure of Contractor to provide requested access to on-board GPS data or video camera footage within five (5) business days of City request. In the event of a crash/injury/fatality, failure to provide access to on-board GPS data or video camera footage to law enforcement within the timeframe requested by police, sheriff, public safety or other law enforcement.	\$500.00 per day
<b><u>E. Accuracy of Billing</u></b>		
1	Each Customer billing that is not prepared in accordance with list of rates in Attachment D:	\$250.00 per occurrence
<b><u>F. Personnel</u></b>		
1	Each day after October 1, 2025 City does not receive services of 1.0 FTE Recycling Coordinator (excluding Coordinator's holiday, vacation and sick leave days) during the Term as required by Section 8.05.H.	\$500.00 per business day
2	Failure of Contractor Representative or City Day-to-day contact person to timely respond to City within 24 hours of a written, email, or telephone request.	Fifty dollars (\$50) per business day until response is received
3	Failure to have a vehicle operator properly licensed.	\$250 per incident per day
<b><u>G. Vehicles and Equipment</u></b>		
1	Each day Contractor fails to have in service Clean Air Vehicles as required by Article 8.	\$500.00/vehicle
2	Failure to label all Carts and Bins (Residential, Commercial and Multi-family) with labels, hot stamp, and/or decals as described in Attachment B Sections 1 and 2; and/or failure to provide SB 1383 color-coded Carts and lids, and SB 1383 color-coded Bins as required in Attachment B, Sections 1 and 2 and in the timeframes in Attachment B and Article 8.	Fifty dollars (\$50) per cart per business day until corrected

<b>3</b>	Failure to provide all trucks and other vehicles listed in Attachment F-1 (including all required on-board equipment, electronics and technology listed in Agreement Section 8.03) on or before January 1, 2027.	One thousand dollars (\$1,000.00) per vehicle not placed in service per business day until completed. Five hundred Dollars (\$500) per vehicle per business day without the required technology until it is supplied.
<b>4</b>	Failure to install collision avoidance system on vehicles operating in the City per Section 8.03 by January 1, 2027.	\$500.00 per vehicle per day
<b>5</b>	Failure to provide each customer with the three (3)-Container system which includes at least one (1) Container for MSW, one (1) Container for Recyclable Materials and one (1) Container for Food Scraps/Yard Trimmings by January 1, 2027. This includes all Single Family Residential, all Estates and all Commercial (and all Multi-Family if constructed and occupied by January 1, 2027) Customers.	\$1,000 per day until all Customers in all sectors have the 3-Container system in place
<b><u>H. Diversion Program Implementation, Compliance Reporting and Audits</u></b>		
<b>1</b>	Failure to distribute public education materials to all Single Family Dwellings and Estate Customers on routes within the timeframe specified in Attachment N, Section 1 after finding a Contamination rate of higher than twenty-five percent (25%) for that route during each semi-annual Residential waste characterization study for Single Family Residential and for Estate Residential beginning January 1, 2028.	\$100/per route per month until materials distributed.
<b>2</b>	Failure to perform required number of waste characterizations per contract year as described in Attachment N.	\$5,000 per missed characterization
<b>3</b>	Failure to submit reports on characterizations within required timeframe in Attachment N.	\$100/report for each day the report is late
<b>4</b>	Failure to notify City of date(s) and time(s) for characterizations at least 30 days prior to the characterization.	\$250 per day that is less than 30 days

5	Failure to achieve the Contamination levels required in Article 10 and Attachment N by the dates specified (30% or lower for the period January 1, 2028 through December 31, 2029 and 25% or lower for the period January 1, 2030 through December 31, 2033) and to maintain at or below 25% throughout the remaining Term of the Agreement. Liquidated damage applies if the required level is not achieved for <u>any</u> material stream (MSW, Recyclable Materials or Food Scraps/yard Trimmings) in <u>any</u> sector (Residential, Estate, Commercial, Multi-Family).	\$500/week per material stream in any sector that exceeds the required Contamination level
5	Failure of Contractor to “fully implement” one or more of the required Diversion Programs at a Multi-Family or Commercial or Business Establishment (as described in Attachment B, Section 3.7) after thirty (30) day warning notification from City as required in Section 3 of Attachment B. If the failure continues after the initial assessment of liquidated damages, the liquidated damages are re-assessed for each additional thirty (30) day period the failure continues.	\$2000 per failure
<b><u>I. Cooperation with Service Provider Transition</u></b>		
1	For each day routing information requested by City in accordance with Section 16.13 is not received after City established due dates, both for preparation of a request for proposals and for new service providers implementation of service.	\$1,000 per day
2	For each day delivery of keys, access codes, remote controls, or other means of access to Customer carts is delayed beyond 1 day prior to new service provider servicing Customers requiring special access, as described in Section 16.13.	\$1,000 per day
3	For delay in not meeting the requirements contained in Section 16.13 in a timely manner, in addition to the daily liquidated damages in Subpart I (“Cooperation with Service Provider Transition”), numbers 1 and 2.	\$25,000
<b><u>J. Public Education and Outreach</u></b>		
1	For each failure to provide the initial residential outreach materials required in Section 5 of Attachment B by the dates required in Section 5 of Attachment B.	\$2 for each subject matter brochure per household/unit that did not receive the outreach material(s)

<b>2</b>	Failure to produce the social media content for distribution via the City social media channels as described in, and by the dates contained in, Section 5 of Attachment B	\$2,000 for each failure to produce the content by the date(s) specified in Section 5, Attachment B
<b>3</b>	For each failure to provide the annual residential outreach materials as described in Section 5 of Attachment B by the dates contained in Section 5 of Attachment B	\$2 for each subject matter brochure per household/unit that did not receive the outreach material(s)
<b>4</b>	For each failure to provide the annual commercial outreach materials as described in Section 5 of Attachment B by the dates contained in Section 5 of Attachment B	\$2 for each subject matter brochure per business that did not receive the outreach material(s)
<b>5</b>	For each failure to provide the initial commercial outreach materials required in Section 5 of Attachment B by the dates contained in Section 5 of Attachment B.	\$2 for each subject matter brochure per business that did not receive the outreach material(s)

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees, agents or representatives; through photo-documentation, audio recordings and other records created by Contractor; and/or through information, audio recordings, and photo-documentation provided by Residents, other Persons and/or Customers or through City's investigation of Customer complaints, or any other evidence made available to City.

Prior to assessing liquidated damages, City 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 non-

confidential information in the possession of the City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with the City Manager or his or her designee. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager or his or her designee will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager or his or her designee shall be final.

**15.09.1 Amount.** The City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

**15.09.2 Payment.** Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed.

City's right to recover liquidated damages for Contractor's failure to meet the service performance standards shall not preclude City from obtaining equitable relief for persistent failures to meet such standards nor from terminating the Agreement for such persistent failures.

**15.10 No Actions for Damages Against City.** Contractor acknowledges that City's approval of this Agreement is a legislative act. No action for damages shall exist in any situation in which Contractor asserts City has failed to comply with any of its obligations

hereunder, and Contractor's sole remedy in any such situation shall be to bring a writ of mandate to seek to compel City to comply with its obligations under this Agreement.

## **ARTICLE 16: OTHER AGREEMENTS OF THE PARTIES**

**16.01 Compliance with Law; Non-Discrimination.** In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State of California and City, with all applicable rules and regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term and with all permits affecting the services to be provided. Contractor shall not discriminate nor permit discrimination against any Person in a manner prohibited by federal or state law.

**16.02 Assignment.** Contractor acknowledges that this Agreement involves rendering a vital service to the City's residents and businesses, and that the City has selected Contractor to perform the services specified herein based on: (i) Contractor's experience, skill and reputation for conducting their operations in a safe, effective and responsible fashion, and (ii) Contractor's financial resources to maintain the required equipment and services and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

**16.02.A City Consent Required.** Contractor shall not assign its rights or delegate or otherwise transfer its obligations under this Agreement to any other Person (including an Affiliate) without the prior written consent of City, which shall be rendered by City at its

sole and absolute discretion. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a Contractor Default.

**16.02.B Assignment Defined.** For the purpose of this Section, “assignment” shall include, but not be limited to: (i) a sale, exchange or other transfer to a third party of substantially all of Contractor’s assets dedicated to service under this Agreement; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor, to a third party which results in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or reissuance, 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 insolvency or bankruptcy, an assignment for the benefit of creditors, a 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.

**16.02.C Consent Requirements.** If Contractor requests City’s consideration of and consent to an assignment, City may deny or approve such request in its absolute discretion. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

**16.02.C.1** Contractor shall undertake to pay City its reasonable expenses for consultants, attorneys’ fees and investigation costs necessary to investigate the suitability

of any proposed assignee, and to review and finalize any documentation or contracts required as a condition for approving any such assignment;

**16.02.C.2** Contractor shall furnish City with audited financial statements of all of the proposed assignee's operations for the immediately preceding three (3) operating years;

**16.02.C.3** Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of solid waste/recycling collection and management experience on a scale equal to or exceeding the scale of operations conducted by Contractor; (ii) that in the last five (5) years, the proposed assignee has not been the subject of any administrative or judicial proceedings initiated by a federal, state or local agency having jurisdiction over its operations due to an alleged failure to comply with federal, state or local laws or that the proposed assignee has provided City with a complete list of such proceedings and their status; (iii) that the proposed assignee conducts its operations in a safe and environmentally conscientious manner, in accordance with sound solid waste and recycling management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of MSW, Recyclable Materials, Food Scraps, Yard Trimmings, Wood and Construction and Demolition Debris and all Environmental Laws; and (iv) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

**16.03 Subcontracting.** Contractor shall not engage any subcontractors or independent contractors to perform any of the services required of it by this Agreement without the

prior written consent of City. Contractor shall notify the City no later than ninety (90) days prior to the date on which it proposes to enter into a subcontract. City may approve or deny any such request in its sole discretion.

Contractor may, in cases of emergency, engage subcontractors for up to seven (7) consecutive calendar days. Contractor shall give prompt notice to City of any such emergency subcontracting and any such engagement must be approved by City in writing if it is to extend beyond seven (7) calendar days, or if Contractor wishes to renew it after an interval of less than thirty (30) calendar days.

**16.04 No Affiliated Entity.** Contractor will not form or use any Affiliated Entity to perform any of the services or activities which Contractor is required or allowed to perform under this Agreement, other than as a subcontractor approved by City under Section 16.03.

**16.05 Contractor's Investigation; No Warranties by City.** Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding the Agreement and the work to be performed by it, and the Recycling, Source Reduction and other Diversion programs now in effect in the City.

Contractor has carefully reviewed the information in the Request for Proposals and Addenda, if any, and the Source Reduction and Recycling Element adopted by the City under the Act.

City makes no warranties in connection with this Agreement, including but not limited to the accuracy or completeness of the information contained in the Request for Proposals and Addenda **Numbers xx (xx) through xx (xx).** The City also expressly disclaims any warranties, either express or implied, as to the merchantability or fitness

for any particular purpose of Recyclable Materials, Yard Trimmings, Wood, Food Scraps, Wood, Construction and Demolition Debris and all other materials to be Collected pursuant to this Agreement.

**16.06 Notice.** All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall, except as provided in Section 15.02, 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 (certified mail, return receipt requested), addressed as follows:

If to City:           City Manager  
                            City of San Marino  
                            2200 Huntington Drive  
                            San Marino, California 91108

with a copy to the City Attorney at the same address

If to Contractor:   name, title  
                            Company Name  
                            Address  
                            \_\_\_\_\_, California

A notice given in accordance with this Section may change the address physical address and/or the email address to which communications may be delivered from time to time.

In the event of a public safety event, life threatening event, threat to public health, natural disaster, and other emergency situations, the initial notice may be given by email at the email addresses noted herein (or as updated periodically throughout the Term).

Email may also be used as a secondary method for providing notices required herein, in addition to physical delivery or use of the United States mail.

***16.07 Representatives of the Parties.***

**16.07.A Representatives of City.** References in this Agreement to “City” shall mean the San Marino City Council and all actions to be taken by City shall be taken by the City Council except as provided herein. The City Council may delegate, in writing, authority to the City Manager, and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them. City hereby delegates administration of the Agreement to the City Manager, who may delegate in writing specified authority to subordinate officers and staff of City. City may change such delegation of administration of the Agreement at any time and in such event shall notify Contractor in writing of the change.

**16.07.B Representative of Contractor.** Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Contractor (“Contractor Representative”) in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Contractor. City may rely upon action taken by such designated representative

as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to City.

**16.08 Right to Inspect Contractor Operations.** City (and/or City's agents) shall have the right, but not the obligation, to observe and inspect all of the Contractor's operations under this Agreement. In addition, upon reasonable notice and without interference with Contractor's operations, City may review and copy any of Contractor's operational and business records related to this Agreement. If City so requests, Contractor shall make specified personnel available to accompany City employees (and/or City's agents) on inspections and shall provide electronic copies of records stored in electronic media.

**16.09 Maintenance and Review of Records, Submission of Reports.** Contractor shall compile, on a daily basis, accurate records of its operations in sufficient detail to allow for accurate determinations of all matters that require periodic determination under this Agreement. City (and/or City's agents) shall have the right during regular business hours to review and make copies of (at City's expense) any documents relevant to this Agreement, including, but not limited to, Contractor's billing and Collection records, tonnage reports, Diversion records, weight tickets, route lists, maps and records maintained in electronic, magnetic and other media.

Contractor shall prepare and submit complete, accurate and timely reports on forms provided or approved by City as described in Attachment K.

**16.10 Right to Demand Assurances of Performance.** If Contractor: (i) persistently suffers the imposition of liquidated damages under Section 15.09; (ii) is the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted

job action; (iii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (iv) is the subject of a civil or criminal proceeding brought by a federal, state, regional or local agency for violation of an Environmental Law, City 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 the City may require.

**16.11 Contractor Designated As City's Authorized Recycling Agent.** Pursuant to Public Resources Code Section 40105 and California Code of Regulations Title 14, Division 2, Chapter 5, Subchapter 8, City designates Contractor as City's "Authorized Recycling Agent" for purposes of receiving payments for Contractor-Collected Recyclable Materials including but not limited to California Redemption Value payments.

**16.12 Force Majeure.** Neither party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations within City or parts thereof, due to an "act of God" (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, or other similar cause not the fault of, and beyond the reasonable control of, the party claiming excuse (each, a "Force Majeure event"). The following are not force majeure events: epidemics, pandemics, labor unrest, picketing, strikes, work stoppage or slowdown, sickouts or other concerted job actions. A party claiming excuse under this Section must (1) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (2) notify the other party in writing within five (5) calendar days after the occurrence of the event specifying the nature of the event, the expected length of time that the party expects to be prevented from performing, and the steps which the party

intends to take to restore its ability to perform. The party claiming excuse under this Section shall use its best efforts to remedy its inability to perform as quickly as possible.

**16.12.A Force Majeure.** Neither party shall not be excused from the performance of its obligations under this Agreement except where a party's failure to perform is due to a Force Majeure event, as defined in this Agreement.

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

**16.12.C Notice.** The party claiming excuse shall deliver to the other party a written notice of intent to claim excuse from performance under this Agreement by reason of a Force Majeure event. Notice required by this Section shall be given promptly in light of the circumstances, but in any event not later than five (5) calendar days after the occurrence of the Force Majeure event. Such notice shall describe in detail the claimed Force Majeure event, the services impacted by the claimed Force Majeure event, the expected length of time that the party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform, and such other information as the other party reasonably requests.

**16.12.D City's Rights in the Event of Force Majeure.** The partial or complete interruption or discontinuance of Contractor's services caused by a Force Majeure event

shall not constitute an event of default under this Agreement. Notwithstanding the foregoing: (i) the City shall have the right to make use of Contractor's facilities and equipment in accordance with Sections 15.04 and 15.06 of this Agreement in the event Contractor is unable to collect and dispose of MSW as required herein and such non-performance is excused by a Force Majeure event; (ii) if Contractor's excuse from performance for reason of Force Majeure continues for a period of thirty (30) calendar days or more, the City shall have the right, in its sole discretion, to immediately terminate this Agreement; and (iii) if Contractor's inability to collect and dispose of MSW continues for fourteen (14) days or more from the date by which Contractor gave or should have given notice under Section 16.12.C above, the City may terminate this Agreement.

**16.13 Cooperation During Transition.** At the expiration or earlier termination of the Term, Contractor shall cooperate fully with the City to ensure an orderly transition to any and all new service providers. In addition, during the last twelve (12) months of the Term, Contractor shall allow prospective operators to observe its operations and shall make available to City all records and reports required to be submitted by this Agreement for use in the transition including, but not limited to, complete route lists and maps, customer account lists including customer name, address, type and frequency of service, billing information, and number, type and location of all Containers deployed by Contractor within City.

**16.14 No Damages for Invalidity of Agreement.** If a final judgment of a court of competent jurisdiction determines that this Agreement, or any portion thereof, is illegal or

was unlawfully entered into by the City, neither party shall have any claim against the other for damages of any kind (including but not limited to loss of profits) on any theory.

**16.15 Diversion Programs Not Restricted.** Nothing in this Agreement shall restrict City's participation or non-participation, or the nature or extent of its participation in, any Recycling and Diversion program(s), developed or operated by City, other agencies, or by one or more residents, businesses, commercial, industrial or retail operators, or other Persons, within City or other jurisdictions.

**16.16 Reports as Public Records.** The reports, records and other information submitted (or required to be submitted) by Contractor to City are public records within the meaning of that term in the California Public Records Act, Government Code Section 6250 *et seq.* Unless a particular record is exempted from disclosure by the California Public Records Act, it must be disclosed to the public by the City upon request.

## ARTICLE 17: MISCELLANEOUS PROVISIONS

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

**17.02 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.

**17.03 Binding on Successors.** The provisions of this Agreement shall inure to the benefit of, and be binding on, the successors and permitted assigns of the parties.

**17.04 Parties in Interest.** Nothing in this Agreement is intended to confer any rights on any Persons other than the parties to it and their permitted successors and assigns.

**17.05 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 or violation of the same or any other provision. The subsequent acceptance by either party of any monies that 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.

**17.06 Attachments.** Each of the attachments, identified as Attachments A through AA is attached hereto and incorporated herein and made a part hereof by this reference.

**17.07 Entire Agreement, Integration.** This Agreement, including the Attachments, represents the full and entire agreement between the parties with respect to the matters

covered herein and supersedes all prior negotiations and agreements, either written or oral.

**17.08 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.

**17.09 Interpretation.** This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

**17.10 Amendment.** This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

**17.11 Severability.** If a court of competent jurisdiction holds any non-material provision of this Agreement 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.

**17.12 Costs and Attorneys' Fees.** The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs expended in connection with such an action from the other party.

**17.13 References to Laws.** All references in this Agreement to laws, rules, and regulations shall be understood to include such laws, rules, and regulations as they may be subsequently amended or re-codified, unless otherwise specifically provided. In

addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

**17.14 City's Municipal Code.** Contractor is aware of the provisions of City's Municipal Code relating to the Collection and Disposal of solid waste, specifically Chapters IX and XXVII of the San Marino Municipal Code including the right of City to amend those provisions. Contractor shall comply with all provisions of Chapters IX and XXVII as they may be amended.

City may, in its sole discretion, determine whether and in what circumstances enforcement of provisions of the City's Municipal Code relating to the obligation of owners and occupants of Premises to use the services of Contractor is in the public interest. City undertakes no obligation, by virtue of this Agreement, to Contractor to enforce such provisions through civil actions, or termination of other utility services provided by City.

**17.15 Non-Discrimination.** Contractor shall not discriminate, nor permit any City-approved subcontractor to discriminate, in the provision of services or the employment of Persons engaged in the performance of this Agreement on account of race, color, religion, sex, age, national origin, ancestry, physical handicap, sexual orientation, marital status or medical condition in violation of any applicable federal, state or local law.

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

CONTRACTOR

CITY OF SAN MARINO

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

By: \_\_\_\_\_  
Gretchen Shepherd Romey, Mayor

ATTEST:

CITY CLERK

By: \_\_\_\_\_  
Alison Walker, City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Joseph Montes, City Attorney