

**NON-EXCLUSIVE FRANCHISE AGREEMENT**

**BETWEEN**

**THE CITY OF PETALUMA**

**AND**

**M&M Services, Inc. dba; Pacific Sanitation**

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**FOR**

**DROP BOX COLLECTION AND RECYCLING  
OF CONSTRUCTION AND DEMOLITION DEBRIS AND COMMERCIAL  
RECYCLABLE MATERIALS**

**Scope of Agreement: (check all that apply)**

- Construction and Demolition Debris (C&D)**
- Commercial Recyclable Materials**

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## LIST OF EXHIBITS

- A Contractor’s Application
- B Schedule for Liquidated Damages
- C Secretary’s Certification
- D Statement of Applicant’s Understanding and Representations
- E Acknowledgment and Certification Pursuant to City of Petaluma Living Wage Ordinance

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RECYCLABLE MATERIALS**

This non-exclusive franchise agreement (Agreement) is made and entered into this 9 day of October, 2018, by and between the City of Petaluma, a charter city, (City) and M&M Services, Inc. dba; Pacific Sanitation (Contractor.)

This Agreement grants Contractor the rights to Collect the following types of materials pursuant to the terms and conditions of this Agreement: (check all that apply)

Construction and Demolition Debris (C&D)       Commercial Recyclable Materials

If Contractor's rights are limited to C&D Collection, any and all rights and terms and conditions related to Commercial Recyclable Materials referenced in this Agreement shall not pertain to the Contractor. If Contractor's rights are limited to Commercial Recyclable Materials Collection, any and all rights and terms and conditions related to C&D referenced in this Agreement shall not pertain to the contractor.

  *PS*   Contractor's Initials

  *SM*   City Manager's Initials

**RECITALS**

This Agreement is entered into with reference to the following facts and circumstances:

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act" or "AB939") and subsequent additions and amendments (codified at California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Collection within their jurisdiction; and,

**WHEREAS**, the State of California ("State") has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from land filling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act, directed the responsible State agency, and all local agencies, to promote Disposal Site Diversion and to

maximize the use of feasible Solid Waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of Solid Waste that must be Disposed of in Disposal Sites; and,

**WHEREAS**, the Act requires local agencies to Divert 50% of discarded materials from landfills; and,

**WHEREAS**, landfill Disposal capacity in Sonoma County is in short supply, and the City is currently directing its Solid Waste to landfill located outside of the County; and,

**WHEREAS**, the City finds that reusing and Recycling Construction and Demolition Debris (C&D) and Commercial Recyclable Materials is essential to further the City's efforts to reduce Solid Waste Disposal and comply with the Act; and

**WHEREAS**, under Chapter 8.16.115 of the City's Municipal Code, the City has the authority to provide for the Collection, Recycling, and Disposal of C&D and Commercial Recyclable Materials in Drop Boxes through a license granted to a Solid Waste Collection provider; and

**WHEREAS**, the City requires all haulers providing Drop Box Collection services for C&D and Commercial Recyclable Materials in the City to obtain a non-exclusive franchise in order to regulate this business, ensure its orderly operation, and to minimize the potential for adverse effects it may have on the local environment; and

**WHEREAS**, the City Council has determined through an application process, that the Contractor, by demonstrated experience, reputation, and capacity, is qualified to provide for the Drop Box Collection of C&D and/or Commercial Recyclable Materials within the corporate limits of the City and the Transportation of such material to appropriate places of Recycling, Processing, and/or Disposal, and can provide insurance consistent with the City's requirements. The City Council desires that Contractor be engaged to perform such services on the basis set forth in this Agreement; and

**WHEREAS**, Contractor intends to use the City's streets, alleys, other public rights-of way, and infrastructure to provide C&D and/or Commercial Recyclable Materials Collection services to the City's residents and businesses; and

**WHEREAS**, the City intends to receive just and reasonable fees from the Contractor for City's administration of the Agreement and for Contractor's use of the City streets, alleys, other public rights-of-way, and infrastructure which the City may lawfully impose and the companies are obligated to pay; and,

**WHEREAS**, this Agreement is satisfactory to the Parties,

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



## ARTICLE 1 DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement:

**“Abandon”** means the following:

- a. Contractor’s failure to remove a Contractor-owned Drop Box within 5 calendar days of receiving a written request from a Customer or the City, or
- b. Contractor’s failure to remove a Contractor-owned Drop Box within 30 calendar days upon termination of this Agreement.

**“Act”** means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

**“Agreement”** means this Agreement between the City and Contractor for the Drop Box Collection, Transportation, Recycling, Processing, and Disposal of C&D and Commercial Recyclable Materials including all exhibits, and any future amendments hereto.

**“Applicable Law”** means all Federal, State, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Drop Box Collection, Transportation, Recycling, Processing, and Disposal of C&D and Commercial Recyclable Materials that are in force on the Effective Date and as they may be enacted, issued, or amended during the Term of this Agreement.

**“Approved C&D Processing Site”** means the C&D Processing Sites Referred to in Exhibit A in the application, which was selected by Contractor and approved by the City.

**“Approved Commercial Recyclable Materials Processing Site”** means the \_\_\_\_\_ processing site on \_\_\_\_\_ Road in \_\_\_\_\_, California (name and address of Contractor’s processing site), which was selected by Contractor and approved by the City.

**“Approved Disposal Site”** means the C&D residuals Disposal Sites Referred to in Exhibit A in the application, which was selected by Contractor and approved by the City.

**“Approved Processor”** means the operator of the Approved C&D Processing Site, and/or the operator of the Approved Commercial Recyclable Materials Processing Site.

**“Bin”** means a container with capacity of approximately one to eight cubic yards, with a hinged lid, and with wheels, that is serviced by a front end-loading Collection vehicle.

**“Business Days”** mean Monday through Fridays excepting City, State, or federal Holidays.

**“Cart”** means a plastic container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64, or 96 gallons (or similar volumes).

**“C&D”** means Construction and Demolition Debris.

**“Change in Law”** means any of the following events or conditions which has a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or
- b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

**“City”** means the City of Petaluma, California, charter city and a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such, boundaries may be modified during the Term. Unless otherwise specified in this Agreement any action authorized or required by the City may be taken by the City Council or by an agent designated by the City Council.

**“City’s Municipal Code”** means the City of Petaluma Municipal Code and the City of Petaluma Charter.

**“Collect”** or **“Collection”** means the act of collecting C&D, Commercial Recyclable Materials, and other material at the place of generation in the City.

**“Commercial”** shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

**“Composting (or Compost)”** includes a controlled biological decomposition of organic materials yielding a safe and nuisance free Compost Product.

**“Compost Product”** means the product resulting from the controlled biological decomposition of organic materials that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized facility.

**“Construction and Demolition Debris (C&D)”** includes rubble or debris generated by cleanup, clearing, landscaping, yard renovation, pruning, gardening and other activities related to the care and maintenance of property; and discarded building materials, packaging, debris, and rubble that (1) results from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, and (2) is generated at a Premises pursuant to a construction or demolition permit issued by the City.. Construction and Demolition Debris shall expressly exclude putrescible wastes.

**“Contractor”** means M&M Services, Inc. dba Pacific Sanitation (contractor’s name), a (corporation, sole proprietorship, partnership - select one term) organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies, and Subcontractors.

**“Contractor’s Application”** means the application to provide Drop Box Collection services for C&D and Commercial Recyclable Materials submitted by Contractor and received by the City and approved by the City on \_\_\_\_\_, 20\_\_\_\_, which is included as Exhibit A to this Agreement and is incorporated by reference.

**“Contractor Party(ies)”** shall mean Contractor, officers, directors, or management or fiscal employees (where “management employee” means any employee with direct or indirect responsibility for direction and control over the Contractor’s activities under this Agreement and “fiscal” employee means an employee with direct or indirect responsibility and control duties relating to financial matters under this Agreement).

**“Criminal Activity”** means those activities described in Section 12.13.1

**“Customer”** means the Person whom Contractor submits billing invoice to and collects payment from for Collection services provided.

**“Drop Box”** means an open-top container with a capacity of six or more cubic yards that is used for Collection of C&D and Commercial Recyclable Materials and is serviced by a roll-off Collection vehicle.

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

**“Disposal or Dispose (or variation thereof)”** means the final disposition of Solid Waste at a Disposal Site.

**“Disposal Site”** means a facility for ultimate Disposal of Solid Waste.

**“Diversion”** means activities that reduce or eliminate the amount of Solid Waste from Solid Waste Disposal including, but not limited to, Recycling and Composting.

**“Effective Date”** means the date on which the latter of the two Parties signs the Agreement and the date on which Contractor may begin to provide Drop Box Collection, Transportation, Recycling, Processing, and Disposal services for C&D and Commercial Recyclable Materials in accordance with this Agreement.

**“Federal”** means belonging to or pertaining to the national general government of the United States; or founded on or organized under the constitution of the United States.

**“Franchise Fee”** means the fee paid by Contractor to City for the privilege to hold the non-exclusive rights granted by this Agreement.

**“Generator”** means any Person as defined by the Public Resources Code, whose act or process produces C&D and Commercial Recyclable Materials as defined in the Public Resources Code, or whose act first causes C&D and Commercial Recyclable Materials to become subject to regulation.

**“Hazardous Substance”** means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "hazardous wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 *et seq.* (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, *et seq.*; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 *et seq.*; (iv) the Clean Water Act, 33 USC §1251 *et seq.*; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 *et seq.*; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyls ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

**“Holidays”** are defined as New Year’s Day, Labor Day, Fourth of July, Thanksgiving Day, and Christmas Day.

**“Infectious Waste”** means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

**“Legislation”** means any code, ordinance, resolution, or any other formal enactment of the governing body of the City, which now exists or which may hereafter be adopted, which constitutes law or regulation governing the operation of the Contractor.

**“Liquidated Damages”** means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 11.4 and Exhibit B.

**“Organic Materials”** means those discarded materials that will decompose and/or putrefy including Yard Trimmings and food scraps such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with Food Scrap, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No discarded material shall be considered to be Organic Materials, however, unless such material is separated from Solid Waste and Recyclable Material.

**“Parent Company”** refers to a company owning more than fifty percent (50%) of the shares of another company (subsidiary) or a company that has management control over such subsidiary.

**“Party or Parties”** refers to the City and Contractor, individually or together.

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

**“Premises”** means any land or building in the City where C&D or Commercial Recyclable Materials are generated or accumulated.

**“Processing”** means to prepare, treat, or convert through some special method.

**“Processing Site”** means any plant or site used for sorting, cleansing, treating, or reconstituting C&D or Commercial Recyclable Materials for the purpose of making such material available for reuse.

**“Putrescible Waste”** means Solid Wastes originated from living organisms and their metabolic waste products and from petroleum, which contains naturally produced organic compounds and which are biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide and other simpler organic compounds.

**“Rates”** means the fees Contractor bills and collects from each Customer receiving Drop Box Collection service under this Agreement.

**“Recyclable Materials”** means those non-hazardous materials or by-products which are set aside, handled, packaged, or offered for Collection in a container different from Solid Waste container or which are Source Separated from Solid Waste or C&D, for the purpose of being reused or Processed and then returned to the economic mainstream in the form of commodities.

**“Recycle or Recycling”** means the process of sorting, cleansing, treating and reconstituting at a Recyclable Materials Processing Site materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused or reconstituted products.

**“Regional Agency”** means the Sonoma County Waste Management Agency.

**“Residential”** shall mean of, from, or pertaining to a single-family Premises, multi-plex, or multi-family Premises including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

**“Solid Waste”** means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder that the City Code requires Generators within the City to set out for Collection. Excluded from the definition of Solid Waste are C&D, Hazardous Substance, Infectious Waste, Designated Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, “Solid Waste” may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time.

**“Source Separated”** means the segregation, by the waste Generator, of materials designated for separate Collection for some form of Recycling, recovery, or reuse.

**“State”** means the State of California.

**“Subcontractor”** means a party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations under this Agreement.

**“Term”** means the Term of this Agreement, including extension periods if granted, as provided for in Article 3.

**“Ton (or Tonnage)”** means a unit of measure for weight equivalent to 2,000 standard pounds where each pound contains 16 ounces.

**“Transportation”** means the act of transporting or state of being transported.

**“Yard Trimmings”** means those discarded materials placed by a Generator in a receptacle and/or at a location that is designated for Collection that will decompose and/or putrefy, including but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard Trimmings are a subset of Organic Materials.

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

The Contractor, by execution of this Agreement, represents and warrants the conditions presented in this Article.

### **2.1 CORPORATE STATUS**

Contractor is duly organized, validly existing and in good standing under the laws of the State. It is qualified to transact business in the City and State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

### **2.2 AUTHORIZATION**

Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary), sole proprietor, or partners have taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor represents and warrants that they have authority to do so and the corporate secretary's certificate in Exhibit C confirms this. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

### **2.3 AGREEMENT WILL NOT CAUSE BREACH**

To the best of Contractor's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by Contractor of its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or governmental regulation applicable to Contractor; (ii) any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority; or, (iii) any Agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitute a default thereunder.

### **2.4 NO LITIGATION**

To the best of Contractor's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

- A. Materially adversely affect the performance by Contractor of its obligations hereunder;
- B. Adversely affect the validity or enforceability of this Agreement; or
- C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

## **2.5 NO ADVERSE JUDICIAL DECISIONS**

To the best of Contractor's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

## **2.6 NO LEGAL PROHIBITION**

To the best of Contractor's knowledge after reasonable investigation, there is no Applicable Law in effect on the date Contractor signed this Agreement that would prohibit the Contractor's performance of its obligations under this Agreement and the transactions contemplated hereby.

## **2.7 CONTRACTOR'S STATEMENTS**

The Contractor's Application and any other supplementary information submitted to the City, which the City has relied on in entering this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

## **2.8 CONTRACTOR'S INVESTIGATION**

Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has considered such matters in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

## **2.9 ABILITY TO PERFORM**

Contractor possesses the business, professional, and technical expertise to Collect, Transport, Recycle, Process, and Dispose C&D and Commercial Recyclable Materials generated in the City. Contractor possesses the equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

# **ARTICLE 3 TERM OF AGREEMENT**

## **3.1 EFFECTIVE DATE**

The Effective Date of this Agreement shall be the date the latter of the two Parties signs the Agreement and all conditions described in Section 3.2 are satisfied. The Effective Date shall be the date on which Contractor may provide Drop-Box Collection, Transportation, Recycling, Processing, and Disposal services authorized by this Agreement.



### 3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may be waived, in written form, in whole or in part by City.

- A. **Accuracy of Representations.** The representations and warranties made in Article 2 of this Agreement are true and correct on and as of the Effective Date.
- B. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.
- C. **Furnishings of Insurance.** Contractor has furnished evidence of the insurance and performance bond required by Article 10 that is satisfactory to the City.
- D. **Effectiveness of City Council Action.** The City Council action approving this Agreement shall have become effective and all Parties shall have signed the Agreement pursuant to Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind has been issued.

### 3.3 TERM

The Term of this Agreement shall begin on the Effective Date and end (**select one option – see section 8.2.1**):

- Option 1, five (5) years, or       Option 2, ten (10) years

after the Effective Date, unless the City terminates the Agreement sooner in accordance with Section 11.2.

## ARTICLE 4 SCOPE OF AGREEMENT

### 4.1 SCOPE OF AGREEMENT

This non-exclusive franchise, granted to Contractor with regard to C&D and Commercial Recyclable Materials, authorizes Contractor to Collect, Transport, Recycle, Process, and Dispose of (1) C&D placed by a Residential or Commercial Generator in a Drop Box for Collection provided that the Drop Box is located at the construction site or demolition site where the C&D is generated, and the Customer has voluntarily arranged for Contractor to provide Collection services, and (2) Commercial Recyclable Materials placed by a Commercial Generator in a Drop Box for Collection provided that the Drop Box is located where the Commercial Recyclable Materials are generated, and the Customer has voluntarily arranged for Contractor to provide

Collection services. The scope of the Agreement shall be non-exclusive except where otherwise precluded by Applicable Law.

This non-exclusive franchise does not grant the Contractor any rights to Collection of C&D or Commercial Recyclable Materials that includes Putrescible Wastes weighing in excess of 10% of the total weight of materials placed by Generator in a Drop Box for Collection.

The Contractor shall be responsible for the following services:

- A. Collecting C&D placed by Customer in a Drop Box for Collection as requested by Customer.
- B. Collecting Commercial Recyclable Materials placed by Customer in a Drop Box for Collection as requested by Customer.
- C. Providing each Customer, upon delivery of Drop Box, a printed list that specifies the materials that cannot be placed in the Drop Box (i.e., Putrescible Waste and Hazardous Substances).
- D. Transporting collected materials to an Approved C&D Processing Site, Approved Commercial Recyclable Materials Processing Site, or Approved Disposal Site.
- E. Furnishing all labor, supervision, vehicles, Drop Boxes, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.
- F. Paying all expenses related to provision of services required by this Agreement including, but not limited to, Franchise Fees, taxes, regulatory fees, Collection costs, Transportation costs, Processing costs, Disposal costs, utilities, etc.
- G. Providing all services required by this Agreement in a thorough and professional manner so that residents, businesses, and the City are provided timely, reliable, courteous and high-quality service at all times.
- H. Performing all services in substantial accordance with this Agreement at all times using best industry practice for comparable operations.
- I. Complying with Applicable Law.
- J. Performing or providing all other services necessary to fulfill its obligations under this Agreement.
- K. Diverting a minimum of 60% of the C&D Collected from Disposal. The Diversion rate shall be calculated each month based upon the weights of C&D Collected and Diverted.

- L. Diverting 90% of the Commercial Recyclable Materials Collected from Disposal. The Diversion rate shall be calculated each month based upon the weights of Commercial Recyclable Materials Collected and Diverted.

The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty of accomplishing all other aspects necessary to fulfill its obligations under this Agreement whether such requirements are enumerated elsewhere in the Agreement or not.

#### 4.2 LIMITATIONS TO SCOPE

The C&D and Commercial Recyclable Materials listed below in this Section may be Collected and Transported by other Persons provided that such Persons shall do so in accordance with the City's Municipal Code.

- A. **C&D or Commercial Recyclable Materials Mixed with Putrescible Waste.** C&D or Commercial Recyclable Materials in Drop Boxes that include Putrescible Wastes weighing in excess of 10% of the total weight of materials in the Drop Box.
- B. **C&D and Commercial Recyclable Materials Collected by Other Non-Exclusive Franchise Haulers.** C&D and Commercial Recyclable Materials Collected by a party that has executed a Non-Exclusive Franchise Agreement with the City for Drop-Box Collection and Recycling of C&D and Commercial Recyclable Materials.
- C. **Commercial Recyclable Materials Collected in Carts or Bins.** Commercial Recyclable Materials placed in Carts or Bins and Collected by (1) the party that has executed an Exclusive Franchise Agreement with the City for Solid Waste, Recyclable Materials, and Organic Materials Services, or (2) by a Person (or company) through a private arrangement with the Generator, and the Generator is compensated for the materials Collected.
- D. **Donated Materials.** C&D and Recyclable Materials Generated in the City that Source Separated are donated by the Generator to youth, civic, charitable, or other nonprofit organizations.
- E. **Materials Hauled by Owner or Occupant, or its Contractor.** C&D or Commercial Recyclable Materials that is removed from any Premises by the Owner or Occupant and are Transported to a Disposal Site or Processing Site by (i) the Owner or Occupant of such Premises, by full-time employee of Owner or Occupant that uses the Owner's or Occupant's equipment to transport materials; or (ii) by a contractor whose removal of the C&D or Commercial Recyclable Materials is incidental to the service being performed and such contractor removes materials at no additional or separate fee.

#### 4.3 CITY'S RIGHT TO GRANT MULTIPLE NON-EXCLUSIVE AGREEMENTS

The City may grant an unlimited number of Persons similar non-exclusive franchise agreements for Drop Box Collection, Transportation, Recycling, Processing, and Disposal of C&D and Commercial Recyclable Materials.

#### **4.4 AGREEMENT CONSISTENT WITH APPLICABLE LAW**

This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now and during the Term. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial interpretations or new laws.

#### **4.5 OWNERSHIP OF MATERIALS**

Once C&D and Commercial Recyclable Materials are placed in a Drop Box for Collection by Contractor, ownership and the right to possession of such materials shall transfer directly from the Customer to Contractor.

City may obtain ownership or possession of C&D and Commercial Recyclable Materials placed in the Drop Box for Collection upon written notice to Contractor of its intent to do so. However, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Contractor.

#### **4.6 NOTIFICATION TO CITY OF NON-FRANCHISED HAULERS**

If Contractor can produce evidence that other Persons are Collecting C&D and Commercial Recyclable Materials and do not have rights to do so as granted by non-exclusive franchise agreement with the City or in a manner that is not consistent with the City's Municipal Code, Contractor shall notify the City in writing, within 10 calendar days of Contractor witnessing such circumstances. The Contractor's notice shall include the name and telephone number of the Person or company Collecting C&D and Commercial Recyclable Materials, the date the Contractor witnessed the event, the location of the Drop Box along with Contractor's evidence of the violation of the rights granted by this non-exclusive franchise.

## **ARTICLE 5 COLLECTION, RECYCLING, AND DISPOSAL SERVICES**

### **5.1 COLLECTION**

Contractor shall Collect C&D and Commercial Recyclable Materials from Customers that voluntarily subscribe to or request C&D and Commercial Recyclable Materials Collection services from Contractor. Contractor shall provide its Customers with a Drop Box for C&D and Commercial Recyclable Materials Collection or shall allow its Customers to provide a Drop Box. Contractor shall Collect C&D and Commercial Recyclable Materials placed in Drop Boxes, owned by Contractor or Customer, as scheduled by Customer.

In accordance with Section 4.2, Contractor shall only provide C&D Collection services for C&D that is generated at a construction or demolition job site by activities conducted pursuant to a construction or demolition permit issued by the City.

In accordance with Section 4.2, Contractor shall only provide Commercial Recyclable Materials Collection services for Recyclable Materials that contain no more than 10% Putrescible Wastes by weight, and are Generated at commercial premises.

Contractor shall Transport materials Collected pursuant to this Agreement to an Approved Processing Site that has been approved in advance by the City. The Approved Processing Site must be able to demonstrate Diversion rates in accordance with Section 4.1.

Contractor may enter into contracts with Customers for Collection services provided that in no case shall the term of such contracts extend beyond the Term of this Agreement, and provided that in the event the City terminates this Agreement the contracts with any and all Customers shall be null and void on the termination date of this Agreement.

### **5.2 RECYCLING**

- A. **Processing.** Contractor agrees to Transport and deliver all C&D it Collects in the City to the Approved C&D Processing Site and to Transport and Deliver all Commercial Recyclable Materials it Collects in the City to the Approved Commercial Recyclable Materials Processing Site. Residue from the C&D and Commercial Recyclable Materials shall be Disposed of by Contractor or its Approved Processor at an Approved Disposal Site selected by Contractor in accordance with Section 5.3. Contractor shall select the Approved C&D Processing Site(s), Approved Commercial Recyclable Materials Processing Site(s) and Approved Disposal Site(s) and obtain the City's written approval to use such sites prior to Effective Date of this Agreement. Contractor shall permit or arrange for the City to inspect the Approved Processing Site(s) and observe operations at any time during the Term.

Contractor or its Approved Processor(s) shall possess all existing permits and approvals necessary for use of the C&D and Commercial Recyclable Materials Processing Site(s) in full regulatory compliance. Contractor shall, upon City request, provide or request from its Approved Processor(s) and provide copies of notices of violation or permits to the City. Upon request of the City, Contractor shall provide a certified statement from its Approved Processor(s) documenting its Diversion rate.

If Contractor elects to use a C&D or Commercial Recyclable Materials Processing Site(s) that is different than the Approved C&D Processing Site or Approved Commercial Recyclable Materials Processing Site, it shall request written approval from the City 60 calendar days prior to use of the site and obtain the City's written approval no later than 10 calendar days prior to use of the site.

If Contractor is unable to use the Approved C&D Processing Site or Approved Commercial Recyclable Materials Processing Site due to an emergency or sudden unforeseen closure of the Approved C&D Processing Site or Approved Commercial Recyclable Materials Processing Site, Contractor may use an alternative Processing Site provided that the Contractor provides verbal and written notice to the City within 24 hours of use of an alternative Processing Site. The written notice shall include a description of the reasons the Approved C&D Processing Site or Approved Commercial Recyclable Materials Processing Site is not feasible and the period of time Contractor proposes to use the alternative Processing Site. Contractor shall receive the City's written approval to use the alternative Processing Site within 24 hours of the City's receipt of the Contractor's written notice.

- B. **Marketing.** The Contractor or its Approved Processor shall be responsible for marketing C&D and Commercial Recyclable Materials Collected in the City and Diverted. Contractor and/or its Approved Processor shall retain all revenues generated from the sale of Recyclable Materials Diverted.

Upon request, Contractor or its Approved Processor shall provide proof (in the form of sales receipts showing end-user) to the City that all C&D and Commercial Recyclable Materials Diverted are marketed for Recycling or reuse in such a manner that materials shall be considered as Diverted in accordance with the State regulations established by the Act. All residual material from the Processing activities that is not marketed for use shall be accounted for as Disposal Tonnage at a permitted Disposal Site. No Recyclable Material shall be transported to a domestic or foreign location if Solid Waste Disposal of such material is its intended use.

City may audit brokers or buyers to confirm that materials are being Recycled and Diverted from Disposal and Contractor shall provide all information deemed necessary by City to permit City to conduct such audit. If Contractor becomes aware that a broker or buyer has illegally handled or Disposed of material generated by the City or elsewhere, Contractor shall immediately inform the City and terminate its contract or working relationship with such party immediately.

- C. **Diversion Requirement.** Contractor shall Divert at least 60% by weight of all C&D it Collects within the City and 90% by weight of all Commercial Recyclable Materials it Collects within the City during each calendar month by Processing and Recycling some or all of the C&D and Commercial Recyclable Materials Collected.

If Contractor fails to Divert at least 60% by weight of all C&D it Collects within the City during a calendar month and at least 90% by weight of all Commercial Recyclable Materials it Collects within the City, the City may terminate the Agreement in accordance with Section 11.2.

### 5.3 DISPOSAL

Contractor shall, or shall require its Approved Processor to, Dispose of C&D and Commercial Recyclable Materials Collected within the City, which are not Diverted through Processing activities, by Transporting C&D and Commercial Recyclable Materials to an Approved Disposal Site, which is lawfully authorized to accept such material. Contractor, or its Approved Processor, shall not Dispose of such C&D or Commercial Recyclable Materials by depositing it on any public or private land, in any river, stream, or other waterway, or in any sanitary sewer or storm drainage system or in any other manner which violates Applicable Laws. Contractor, or its Approved Processor, shall select the Approved Disposal Site(s) and obtain the City's written approval to use such sites prior to Effective Date of this Agreement. Contractor shall arrange for the City to inspect the Approved Disposal Site(s) and observe operations at any time during the Term.

Contractor or its Approved Processor shall only Dispose of materials at a permitted Disposal Site that is in full regulatory compliance. Contractor, or its Approved Processor, shall keep or confirm all existing permits and approvals necessary for use of the Disposal Site(s) in full regulatory compliance. Contractor shall, upon request, provide copies of notices of violation or permits to the City.

If Contractor, or its Approved Processor, elects to use a Disposal Site(s) that is different than the Approved Disposal Site, it shall request written approval from the City 60 calendar days prior to use of the site and obtain the City's written approval no later than 10 calendar days prior to use of the site.

If Contractor, or its Approved Processor, is unable to use the Approved Disposal Site due to an emergency or sudden unforeseen closure of the Approved Disposal Site, Contractor, or its Approved Processor, may use an alternative Disposal Site provided that the Contractor provides verbal and written notice to the City within 24 hours of use of an alternative Disposal Site. The written notice shall include a description of the reasons the Approved Disposal Site is not feasible and the period of time Contractor, or its Approved Processor, proposes to use the alternative Disposal Site. Contractor shall receive the City's written approval to use the alternative Disposal Site within 24 hours of the City's receipt of the Contractor's written notice.

## 5.4 BILLING

Contractor shall bill all Customers and collect billings in accordance with Contractor-established Rates, which are set in a manner consistent with provisions of Section 9.3. The Contractor shall prepare, mail, and collect bills (or shall issue written receipts for cash payments) for Collection services provided by Contractor. Contractor shall be responsible for collection of payment from Customers with past due accounts (“bad debt”).

Contractor shall maintain copies of all billings and receipts, each in chronological order, for five years for inspection and verification by City at any reasonable time upon request. The Contractor may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

## 5.5 CUSTOMER SERVICE

Contractor shall maintain a business office within the City or within a reasonable distance of the City limits approved by the City Manager. The business office shall staff at least one customer service representative capable of accepting payments from Customers, answering service questions, and resolving Customer service issues. Contractor shall have a toll-free Customer service telephone number and shall have staff available to answer calls from at least 8:00 a.m. to 6:00 p.m., Monday through Friday. An answering machine shall record Customer calls and voice messages between 6:00 p.m. and 8:00 a.m.

# ARTICLE 6 STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT, AND PERSONNEL

## 6.1 OPERATING HOURS AND SCHEDULES

### A. Hours of Collection

1. **Residential Premises.** Delivery or Collection of a Drop Box to or from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.
2. **Commercial Premises.** Delivery or Collection of a Drop Box to or from Commercial Premises that are 200 feet or less from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday. Delivery or Collection of a Drop Box to or from Commercial Premises that are more than 200 feet from Residential Premises shall only occur between the hours of 5:00 a.m. and 7:00 p.m. The City Manager may require modifications to hours for delivery and Collection from Commercial Premises to resolve noise complaints, and, in such case, the City Manager may change the allowable operating hours.



3. **Exceptions.** In the event of an unforeseen or extenuating circumstance, the Contractor may deliver or Collect a Drop Box from Residential or Commercial Premises that are 200 feet or less from Residential Premises between the hours of 5:00 a.m. and 10:00 p.m. upon prior written approval from the City Manager.
4. **Failure to Comply.** If the Contractor fails to comply with the Collection hours described in this Section, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit B.

## **6.2 COLLECTION STANDARDS**

### **6.2.1 Instructions to Customer**

Contractor shall instruct Customers as to any preparation of C&D or Commercial Recyclable Materials necessary prior to placing in the Drop Box. Contractor shall, in written form, inform all Customers as to the acceptable materials that can be included in the Drop Box and any unacceptable materials to be excluded from Collection. Contractor shall, in written form, inform all Customers that Putrescible and liquid wastes in excess of 10% by weight of each load in total are prohibited.

### **6.2.2 Care of Private Property**

Contractor shall not damage private property. Contractor shall ensure that its employees: (i) close all gates opened in making Collections, unless otherwise directed by the Customer; (ii) do not cross landscaped areas; and (iii) do not climb or jump over hedges and fences.

City shall refer complaints about damage to private property to Contractor. Contractor shall repair all damage to private and public property caused by its employees to its previous condition.

### **6.2.3 Litter Abatement**

- A. **Minimization of Spills.** Contractor shall use due care to prevent vehicle oil and vehicle fuel from being spilled or scattered during Collection and Transportation operations. If any C&D or Recyclable Materials are spilled or scattered during Collection or Transportation operations, the Contractor shall promptly clean up all spilled and scattered materials.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, hot load (combustion of material in the truck), accidental damage to a vehicle, or unless approved by the City.

If Contractor fails to perform some or all of the requirements described in this Section, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit B.

- B. **Clean-Up.** Each Collection vehicle shall carry protective gloves, a broom, and shovel at all times for cleaning up litter and absorbent material for cleaning up liquid spills. The Contractor shall discuss instances of repeated spillage not caused by it with the Customer of the Premises where spillage occurs, and Contractor shall report such instances to City. If the Contractor has attempted to have a Customer stop creating spillage but is unsuccessful, the City will attempt, upon notice by the Contractor, to rectify such situation with the Customer.
- C. **Covering of Loads.** Contractor shall cover all Drop Boxes at the pickup location before Transporting materials to prevent C&D or Commercial Recyclable Materials from escaping during Transportation.

#### 6.2.4 Noise

All Collection operations shall be conducted as quietly as possible and shall conform to Applicable Law. Contractor will promptly resolve any Complaints of noise during the morning or evening hours of the day to the satisfaction of the City. In the event of repeat occurrences of noise levels in excess of 75 db(A), the Contractor shall pay Liquidated Damages in accordance with Section 11.4 and Exhibit B.

### 6.3 VEHICLE REQUIREMENTS

- A. **General.** Vehicles used to provide services under this Agreement shall be kept in a safe, neat, clean, and operable condition at all times. If Contractor fails to keep Collection vehicles in a safe and sanitary condition, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit B.
- B. **Specifications.** Contractor shall register all vehicles with the California Department of Motor Vehicles. All such vehicles shall comply with California Environmental Protection Agency (EPA) noise emission and air quality regulations and other applicable noise control regulations.
- C. **Vehicle Identification.** Contractor's name, local telephone number, and a unique identification number for each vehicle used to provide services under this Agreement, shall be prominently displayed on all vehicles, in letters and numbers that are a minimum of 4 inches high. Contractor shall not place the City's logo on its vehicles.
- D. **Cleaning and Maintenance**
  - 1. **Cleaning.** Collection vehicles shall be thoroughly washed and thoroughly steam cleaned as frequently as necessary to present a clean appearance of the exterior and interior compartment of the vehicle.

2. **Maintenance.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operating properly. Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards whichever are more stringent. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to the City upon request to the extent necessary to perform the inspections described in Sections 6.3.F and 6.8.
  3. **Repairs.** Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause, so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.
  4. **Storage.** Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with City's applicable zoning regulations.
- E. **Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions for vehicles and roads. Contractor shall have each Collection vehicle weighed at the Approved C&D Processing Sites, Approved Commercial Recyclable Materials Processing Site, or Approved Disposal Sites to determine the unloaded weight ("tare weight") of the vehicle, and the total loaded weight of each load delivered to the Approved C&D Processing Sites, Approved Commercial Recyclable Materials Processing Site, or Approved Disposal Sites.
- F. **Vehicle Inspection.** City may inspect vehicles at any time to determine compliance with the requirements of this Agreement. Contractor shall make vehicles available to the City and/or Sonoma County Health Department for inspection, at any frequency City reasonably requests.

#### 6.4 DROP BOX REQUIREMENTS

- A. **General.** All Drop Boxes shall meet applicable federal, State, and local regulations for safety.
- B. **Specifications.** Contractor-provided Drop Boxes shall be designed and constructed to be watertight and prevent the leakage of liquids.
- C. **Drop Box Identification.** All Contractor-provided Drop Boxes shall prominently display the Contractor's name, local telephone number, a unique Drop Box identification

number, and the words “Construction and Demolition Debris or Recyclable Materials Only”

If Contractor fails to comply with the provisions of this Section 6.4, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit B.

- D. **Cleaning, Painting, and Maintenance.** All Drop Boxes shall be maintained in a safe, serviceable, and functional condition. Contractor shall steam clean and repaint all Drop Boxes at least every two years, or more frequently, to present a clean appearance. If any Drop Box is impacted by graffiti, Contractor shall remedy the situation within 48 hours.
- E. **Drop Box Inspections.** City may inspect Drop Boxes at any time to determine compliance with sanitation requirements. Contractor shall make Containers available to the City at any frequency it requests. The City shall have the right to prohibit the use of any Drop Box that fails to comply with the provisions in this Section 6.4.
- F. **Abandoned Drop Boxes.** Contractor shall not Abandon any Drop Box used to provide C&D or Commercial Recyclable Materials Collection services under this Agreement. If the Contractor Abandons a Contractor-owned Drop Box, City may remove the Drop Box and Process and Dispose of the contents. If the City removes a Drop Box Abandoned by Contractor, the City may charge Contractor for the City’s costs incurred removing such Drop Box, Transporting, Processing, and Disposing of its contents, and/or the cost of storing such Drop Box. Contractor shall reimburse the City for such costs within 10 calendar days of the date of the City’s invoice to the Contractor for such costs.

## **6.5 PERSONNEL – LIVING WAGE ORDINANCE**

Contractor shall comply fully with all applicable requirements of Petaluma Municipal Code, Chapter 8.36, Living Wage (the “Living Wage Ordinance”), as the same may be amended from time to time. Upon the City’s request Contractor shall promptly provide to the City documents and information verifying Contractor’s compliance with the requirements of the Living Wage Ordinance, and shall within fifteen (15) calendar days of the Effective Date of this Agreement, notify each of its affected employees as to the amount of wages and time off that are required to be provided to them pursuant to the Living Wage Ordinance. The Acknowledgement and Certification Pursuant to City of Petaluma Living Wage Ordinance, attached to this Agreement as Exhibit E shall be a part of this Agreement for all purposes, and Contractors that are subject to Living Wage Ordinance requirements, as determined by the City, must provide a properly completed Exhibit E in accordance with the requirements of the Living Wage Ordinance. Contractor’s noncompliance with the applicable requirements of the Living Wage Ordinance shall constitute cause for City’s termination of this Agreement pursuant to Section 11.2 of this Agreement.

## 6.6 PERSONNEL – QUALIFICATIONS AND CONDUCT

- A. **General.** Contractor shall furnish such qualified drivers, maintenance, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.
- B. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor Vehicles employer “Pull Notice Program” to monitor its drivers for safety.
- C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection, Disposal, or Processing. Contractor shall train its employees involved in Collection to identify, and not to collect, Hazardous Substance or Infectious Waste. Upon the City’s request, Contractor shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.
- D. **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 employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures and shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit B.
- E. **Employee Identification.** While performing services under this Agreement, all of the Contractor’s employees performing field service shall be dressed in clean clothes and shall wear badges that include the employee’s name and/or employee number, and Contractor’s name, as approved by the City.

## 6.7 HAZARDOUS SUBSTANCE INSPECTION AND HANDLING

- A. **Response to Hazardous Substance Identified during Collection.** If Contractor determines that material placed in any Drop Box for Collection is a Hazardous Substance that may not legally be Disposed of at a Disposal Site or handled at the Processing Site, or presents a hazard to Contractor's employees, the Contractor shall refuse to accept such material. The Contractor shall contact the Customer and request the Customer to arrange proper Disposal. If the Generator cannot be reached immediately, the Contractor shall, before leaving the Premises, leave a tag at least two inches by six inches (2" x 6") in size, which indicates the reason for refusing to Collect the material and lists the phone number for the Sonoma County Household Toxic Waste Facility. Under no circumstances shall Contractor’s employees knowingly Collect Hazardous Substance.

If Hazardous Substance is found in a Drop Box that could possibly result in imminent danger to people or property, the Contractor shall immediately notify the City's Fire Department using the 911 emergency number.

The Contractor shall notify the City of any Hazardous Substance identified in Drop Boxes or left at any Premises within 24 hours of identification of such material.

**B. Response to Hazardous Substances Identified at Disposal Site or Processing Site.**

The Contractor, or its Approved Processor, shall provide load checkers and equipment operators at the Processing or Disposal Site(s) to identify Hazardous Substances for storage in approved, on-site, hazardous materials storage container(s). Contractor shall make reasonable efforts to identify and notify the Customer. Contractor shall arrange for removal of the Hazardous Substances by permitted haulers in accordance with Applicable Laws and regulatory requirements.

If the Hazardous Substances delivered to a Disposal Site or Processing Site by Contractor before its presence is detected, and the Generator cannot be identified or fails to remove the material after being requested to do so, the Contractor shall arrange for its proper Disposal. The Contractor may make a good faith effort to recover the cost of Disposal from the Generator, and the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator.

**C. Regulations and Record Keeping.** Contractor shall comply with emergency notification procedures required by Applicable Laws and regulatory requirements. All records required by regulations shall be maintained at the Contractor's facility. These records shall include: waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

## **6.8 NON-DISCRIMINATION**

Contractor shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, natural origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any Applicable Law.

## **6.9 COMMUNICATION AND COOPERATION WITH CITY**

**A. Communications.** If requested, the Contractor shall meet with the City or its agent to discuss service issues.

**B. Inspection by City.** The City, or its designated representatives, shall have the right to observe and review Contractor operations, Processing Sites and Disposal Sites used by Contractor, and enter Contractor's Premises for the purposes of such observation and review during reasonable hours without advance notice.

- C. **Cooperate with City-Initiated Studies.** Contractor shall cooperate with and assist the City or its agent with the performance of City-initiated studies of C&D or Commercial Recyclable Materials such as, but not limited to, waste characterization and composition studies.

## **ARTICLE 7 RECORD KEEPING AND REPORTING**

### **7.1 GENERAL**

#### **7.1.1 Maintenance of Records**

Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with and to meet the reporting and C&D and Commercial Recyclable Materials program management needs of City and the Regional Agency, the Act, and other Applicable Laws, and the requirements of this Agreement.

This Article is intended to highlight the general nature of records and reports to be maintained by Contractor, and their minimum content. This Article is not meant to comprehensively define what the records and reports are to be and their content. With the written direction by or approval of City, the records and reports to be maintained and provided by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency. Records and reporting may be revised to reflect current record keeping and reporting requirements.

To the extent such requirements are set out in this and other Articles of this Agreement, they shall not be considered limiting or necessarily complete.

#### **7.1.2 Retention of Records**

Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five years after its expiration or earlier termination. Records and data shall be in chronological order and readily and easily interpreted. At the City's request, records and data required to be maintained that are specifically directed in this Agreement to be retained, shall be retrieved in a timely manner by Contractor and made available to the City.

#### **7.1.3 Inspection of Records**

The City, its auditors and other agents, shall have the right, during regular business hours, to inspect specific documents or records required by this Agreement or any other similar records or reports of the Contractor that the City shall deem, at its sole discretion, necessary to evaluate the Contractor's performance provided for in this Agreement. The City may make copies of any documents it deems relevant to this Agreement. The City shall provide Contractor written notice at least three Business Days prior to any inspection of these records.

The City reserves the right to inspect records for the purposes of auditing the Contractor's reports, reported Diversion level, and fee payments to the City. If an audit conducted by the City, or its representatives, finds: (i) that the Contractor has made any intentional misrepresentation with respect to the fees due to the City (e.g., Franchise Fees or other fees due to the City as per Article 8) in an amount greater than \$1,000 or 10% of the fees due to the City during the period covered by the audit, whichever is greater, or (ii) that the Diversion level is 5% different than the Diversion level reported by the Contractor, then in addition to any other remedies available to the City, Contractor shall reimburse the City for the City's costs incurred in the performance of the audit. Such reimbursement shall be paid by Contractor, along with any underpaid fees and Liquidated Damages required by Section 11.4 and Exhibit B, within 30 calendar days of the date the City notifies the Contractor of the amount of the City's costs.

#### **7.1.4 Record Security**

Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as fire, theft, and earthquake. Electronically maintained data and records shall be protected and backed-up.

### **7.2 RECORDS**

#### **7.2.1 Financial and Operational Records**

Contractor shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all revenues associated with providing C&D and Commercial Recyclable Materials Collection, Transportation, Processing, Recycling, and Disposal services. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied.

At a minimum, operational records shall include:

Records shall be maintained by Contractor for City relating to:

- A. Customer account information and billing records;
- B. Tonnage of material Collected by type (e.g., C&D, Commercial Recyclable Materials) listed by Processing Site or Disposal Site where such materials were delivered. Where possible, information is to be separated by Residential and Commercial Customers;
- C. Tonnage of C&D, Recyclable Materials, and Organic Materials Diverted from Disposal by Contractor and supporting documentation;
- D. Diversion level;



- E. Weight tickets from Processing Sites documenting the Tonnage of C&D and Commercial Recyclable Materials Collected within the City and delivered to the Processing Sites by vehicle, date, and time;
- F. End use and markets for recovered materials.

Contractor shall make records available to the City upon request.

**7.2.2 Customer Records**

Contractor shall maintain accurate and complete records containing the number and types of accounts served by the Contractor. The records shall contain, at a minimum, the Customers name, type of business, phone number, address of Drop Box delivery and Collection location, date of delivery and Collection, itemized listing of services performed, tonnage Collected, and the amount charged to provide services. The information shall be provided to the City upon request.

**7.2.3 CERCLA Defense Records**

City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the City regards its ability to prove where C&D and Commercial Recyclable Materials Collected by the Contractor are taken for Processing, Recycling, Transfer or Disposal, as well as where they are not taken, to be matters of concern. Contractor shall maintain, retain and preserve records which can establish where C&D and Commercial Recyclable Materials Collected were Processed and Disposed (and therefore establish where they were not). This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of 10 years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to City (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

**7.3 GENERAL REPORTING REQUIREMENTS**

The format of each report shall be approved by City. Contractor may propose report formats that are responsive to the objectives. Contractor agrees to mail a copy of all reports and submit all reports on computer discs, by e-mail, or by modem in a format compatible with City’s software and computers at no additional charge. Contractor will provide a certification statement, under penalty or perjury, by the responsible Contractor official, that the report being submitted is true and correct to the best knowledge of such official after their reasonable inquiry.

Contractor shall submit quarterly reports on or before following dates each year:

First Quarter	April 30
Second Quarter	July 30
Third Quarter	October 30
Fourth Quarter	January 30

If Contractor does not submit the quarterly reports by the dates required in this Article, Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit B.

Contractor shall submit (via mail or e-mail) all reports to:

**Director of Public Works & Utilities**  
City of Petaluma  
202 North McDowell Blvd.  
Petaluma, CA 94954

#### 7.4 QUARTERLY REPORT

Contractor shall provided information requested in this Section separately for: (i) Tonnage Collected in Drop Boxes in accordance with this Agreement, and, (ii) for Tonnage Collected, if any, from Carts or Bins Collected by Contractor through a private arrangement with the Generator, in which the Generator is compensated for the materials Collected. The quarterly report shall present the following information. Fourth quarter report will summarize tonnage and diversion level for the year.

- A. **Total Tonnage.** Total C&D and Commercial Recyclable Materials Tonnage Collected by Contractor within the City during the previous three months, listed separately by month.
- B. **Diverted Tonnage.** C&D and Commercial Recyclable Materials Tonnage Collected by Contractor within the City that was Diverted during the previous three months, listed separately by month.
- C. **Disposed Tonnage.** C&D and Commercial Recyclable Materials Tonnage Collected by Contractor within the City that was Disposed during the previous three months, listed separately by month.
- D. **Diversion Level.** Tonnage Diverted by Contractor divided by the Tonnage Collected by Contractor multiplied by 100, listed separately by month for the previous three months.
- E. **Disposal and Processing Locations.** Contractor shall provide a list of the names and addresses of where C&D and Commercial Recyclable Materials Collected within the City during the previous quarter was Diverted and Disposed. Such list shall include the amount of C&D and Commercial Recyclable Materials Tonnage Diverted and/or Disposed at each location during the previous calendar year, listed separately by month.
- F. **Revenues.** Gross revenues (e.g. cash receipts) earned on all C&D and Commercial Recyclable Materials Drop Box Collection, Transportation, Processing, Recycling and/or

Disposal services provided to Customers within the City during the previous quarter, listed separately by month.

- G. **Insurance.** Updated insurance certificates to be furnished to the City in accordance to requirements of 10.2.7.
- H. **Account Information.** In table format, the number of Customers served and number of Drop Boxes serviced per month, and listed separately for C&D and Commercial Recyclable Materials.
- I. **Contractor Officers and Board Members.** Provide a list of Contractor's officers and members of its board of directors (only required with the fourth quarterly report each year, or in the event of a change in the officers or board members).

The City reserves the right to request reports from Contractor more frequently than once per year, and upon City's request, Contractor shall provide information required above for the time period requested by the City.

## **ARTICLE 8 FRANCHISE FEES AND OTHER FEES**

### **8.1 GENERAL**

Contractor shall collect the fees described in this Section from Customers through Contractor's regular billings and remit collected amounts to City on a monthly basis as described in Section 8.6.

### **8.2 FRANCHISE FEE**

8.2.1. In consideration of the non-exclusive rights provided Contractor herein, Contractor shall pay Franchise Fees to the City each month equal to **(select one option from section 3.3):**

- Option 1: 10%
- Option 2: 15%

of actual gross revenues (e.g. cash receipts remitted by customers for Collection services provided in City and revenues generated by the sale of Collected materials Diverted from Disposal, pursuant to Section 9.1.). This fee shall be known as the Right-of-Way Franchise Fee.

8.2.2. In addition, in consideration of the non-exclusive rights provided Contractor herein, Contractor shall pay Franchise Fees to the City each month equal to 4.4% of actual gross revenues (e.g. cash receipts remitted by customers for Collection services provided in City and revenues generated by the sale of Collected materials Diverted from Disposal, pursuant to Section 9.1.) This fee shall be known as the Pavement Condition Franchise Fee.

#### **8.4 CONTRACT ADMINISTRATION FEE**

Contractor shall pay a contract administration fee to the City each month equal to \$150.00 per month. For each year of the agreement, this fee shall increase or decrease each January based on the most recent November to November Consumer Price Index for San Francisco-Oakland-San Jose (CPI-U) published by the US Bureau of Labor Statistics.

#### **8.5 OTHER FEES**

The City may set "other" additional fees, as it deems necessary. The amount, time, and method of payment and adjustment process will be set in a manner similar to that for other fees described in this Article.

#### **8.6 ADJUSTMENT TO FEES**

City may adjust the fees established in this Article annually at any time during the Term of this Agreement. The Pavement Condition Franchise Fee will increase or decrease annually by the percentage change in the "Engineering News Record Construction Cost Index—20 City Average" ("Index"). The first annual adjustment will be based on a comparison of the most recent Index to the Index in the month of June for the year in which this Agreement is executed, and will take effect on July 1<sup>st</sup> of the first full year of this Agreement. Subsequent indexed adjustments will be based on a comparison of the most recent Index to the last Index used for the prior adjustment of the Pavement Condition Franchise Fee and will take effect on each July 1<sup>st</sup> subsequent to the first adjustment year. The Finance Director shall compute the increase or decrease in the Pavement Condition Franchise Fee.

#### **8.7 PAYMENT SCHEDULE AND LATE FEES**

On or before the 20th day of each month during the Term of this Agreement, Contractor shall remit to City Franchise Fees and other fees as described in this Article. If such remittance is not paid to the City on or before the 20th day of any month, Contractor shall pay, in addition to the amount owed to City, Liquidated Damages in accordance with Section 11.4 and Exhibit B of this Agreement.

Each monthly remittance to City shall be accompanied by a statement itemizing each fee paid; detailing calculation of all fees; stating actual gross revenues (e.g. cash receipts) for the monthly period collected from all operations conducted or permitted by this Agreement; stating the total tonnage of C&D, Commercial Recyclables and other material collected during the monthly period, and stating the number and size of Containers serviced by Contractor for the monthly period.

#### **8.8 OVERPAYMENT OF FEES**

If Contractor believes it has paid Franchise Fees or other fees as described in this Article, in excess of the fees due to the City, Contractor may submit a request for refund to the City Manager or his/her designee. If proof of overpayment is satisfactory to the City Manager or

his/her designee, the City Manager or his/her designee shall authorize the City to refund the overpayment to the Contractor. Contractor shall not apply any overpayment as a credit against any Franchise Fee or other amounts payable to the City, unless specifically authorized to do so by the City Manager or his/her designee in writing.

## **ARTICLE 9 CONTRACTOR'S COMPENSATION AND RATES**

### **9.1 CONTRACTOR'S COMPENSATION**

Contractor's compensation for performance of all its obligations under this Agreement shall be: (i) actual Rate revenues paid to Contractor (e.g. cash receipts) by Customers that contract for Contractor's Collection services less fees dues to the City in accordance with Article 8, and (ii) revenues generated by the sale of Collected materials Diverted from Disposal.

Contractor's compensation provided for in this Article shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, Processing and Disposal fees, regulatory fees, City fees, taxes, insurance, bonds, overhead, operations, profit and all other things necessary to perform all the services in the manner required by this Agreement.

If Contractor's costs are more than Contractor's compensation, Contractor shall not be compensated for the difference in costs and revenues. If Contractor's costs are less than Contractor's compensation, Contractor shall retain the difference.

### **9.2 CITY'S RIGHT TO SET MAXIMUM RATES**

The City reserves the right to establish maximum Rates for C&D and Commercial Recyclable Materials Collection services provided under this Agreement in the event that: (a) there are three or fewer companies holding non-exclusive franchise agreements for Collection of C&D or Commercial Recyclable Materials, or (b) the Rates charged by the companies holding non-exclusive franchise agreements for Collection of C&D or Commercial Recyclable Materials are no longer comparable to those of other jurisdictions. If the City chooses to exercise its right to set maximum Rates, City shall notify Contractor at least 180 calendar days prior to the date that maximum Rates become effective. The City-established maximum Rates shall be adjusted annually as determined by the City, at its sole discretion.

### **9.3 CONTRACTOR'S RATES**

Contractor shall set the Rates it charges its Customers for C&D and Commercial Recyclable Materials Collection services. The Contractor's Rates shall not exceed City-established maximum Rates, if the City exercised its rights under Section 9.2.

## **ARTICLE 10 INDEMNITY AND INSURANCE**

### **10.1 INDEMNIFICATION**

To the maximum extent permitted by law, Contractor shall, at its own expense, indemnify, defend with counsel acceptable to the City, (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers (“Indemnitees”) from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney’s fees and costs and fees of litigation) (collectively, “Liability”) of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Contractor’s failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Contractor’s obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Contractor’s inability to evaluate Liability, or because the Contractor evaluates Liability and determines that the Contractor is not or may not be liable. The Contractor must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding has been extended by an authorized representative of the City in writing. If the Contractor fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Contractor under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Contractor accepts the tender, whichever occurs first. In the event that the City must file responsive documents in a matter tendered to Contractor prior to Contractor’s acceptance of tender, Contractor agrees to fully reimburse all costs, including but not limited to attorney’s fees and costs and fees of litigation, incurred by the City in filing such responsive documents.

The Contractor waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Contractor arising out of or in connection with the Services or Contractor’s failure to comply with any of the terms of this Agreement.

The Contractor’s duty to defend and indemnify herein shall include Damages arising from or attributable to any operations, repairs, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance Collected in the City. Contractor shall be required to indemnify the City for the costs for any claims arising from the Disposal of C&D and/or Commercial Recyclable Materials, including, but not limited to, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The foregoing is intended to operate to defend and indemnify and hold harmless indemnitees to the full extent permitted for liability pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364.

In addition, Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by the California Integrated Waste Management Board, subject to the restrictions set forth in Public Resources Code Section 40059.1, if the requirements of the Act are not met by the Contractor with respect to the waste stream Collected under this Agreement, and such failure is due to Contractor delays in providing information that prevents Contractor, Regional Agency, or City from submitting reports required by the Act in a timely manner.

This provision will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity from third parties.

## **10.2 INSURANCE**

### **10.2.1 Minimum Scope Of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage:
  - a. Personal injury;
  - b. Contractual liability.
2. Insurance Services Office form covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Contractors Pollution Liability.
5. Furnish proof of crime policy
6. Such other insurance coverages and limits as may be required by the City.

### **10.2.2 Minimum Limits Of Insurance**

Contractor shall maintain limits no less than:

- A. Comprehensive General Liability: \$10,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.
- B. Automobile Liability: \$10,000,000 combined single limit per accident for bodily injury and property damage, MCS-90 endorsed.
- C. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
- D. Contractor's Pollution Legal Liability or Hazardous Waste and Environmental Impairment Liability: \$3,000,000 each pollution condition and \$10,000,000 general aggregate.
- E. Such other insurance coverages and limits as may be required by the City.

### **10.2.3 Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### **10.2.4 Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

- A. General Liability and Automobile Liability Coverages
  - 1. The City, its officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; Premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers. The automobile liability is endorsed to contain MCS-90 coverage.
  - 2. The Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents and volunteers. shall be excess of the Contractor's insurance and shall not contribute with it.
  - 3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
  - 4. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - 5. Contractor agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with the services to do likewise.
- B. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, employees, agents or volunteers for losses arising from work performed by the Contractor for the City.
- C. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in



coverage or in limits except after 30 calendar days' prior written notice by certified mail, return receipt requested, has been given to the City.

### **10.2.5 Acceptability of Insurers**

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

### **10.2.6 Verification Of Coverage**

Contractor shall furnish Contractor's insurance agent a copy of these specifications, and direct the agent to provide the City with certificates of insurance and with original endorsements affecting coverage required by this clause. Issuance of documentation indicates the Contractor's insurance complies with these provisions. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. The City may require complete, certified copies of all required insurance policies, at any time.

### **10.2.7 Required Endorsements**

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

"Thirty calendar days' prior written notice shall be given to the City of Petaluma in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Clerk  
City of Petaluma  
P.O. Box 61  
Petaluma, CA 94953"

- B. The Commercial General Liability Business and Automobile Liability policies shall contain endorsements in substantially the following form:

1. "Thirty calendar days' prior written notice shall be given to the City of Petaluma in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Clerk  
City of Petaluma  
P.O. Box 61  
Petaluma, CA 94953"

2. " City, its officers, officials, employees, agents or volunteers are additional insureds on this policy."
3. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Petaluma, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
4. "Inclusion of the City of Petaluma as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one party had been named as an insured."

#### **10.2.8 Delivery Of Proof Of Coverage**

Simultaneously with the execution of this Agreement, Contractor shall furnish the City certificates of each policy of insurance required hereunder, 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 have all required endorsements. If the City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

Renewal certificates will be furnished annually to City to demonstrate maintenance of the required coverages throughout the Term. Upon any change in coverage or provider, new certificates shall be furnished to the City immediately.

#### **10.2.9 Other Insurance Requirements**

- A. If any services are delegated to a Subcontractor, the 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 in accordance with Sections 10.2.2.C and 10.2.4.B. The liability insurance required by Section 10.2.2.A shall cover all Subcontractors or the Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 10.2.
- B. The 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. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third person against the Contractor or any Subcontractor because of any occurrence related to this Agreement, the Contractor shall promptly report the facts in writing to the insurance carrier and to the City.

The Comprehensive General and Automobile Liability insurance required by Sections 10.2.2 and 10.2.4.A shall be written on an "occurrence," rather than a "claims made" basis, if such coverage

is obtainable. If it is not obtainable, Contractor must arrange for a 36 month "tail coverage" to protect the City from claims filed after the expiration or termination of this Agreement relating to incidents which occurred prior to such expiration or termination.

## **ARTICLE 11 DEFAULT AND REMEDIES**

### **11.1 EVENTS OF DEFAULT**

Each of the following shall constitute an event of default ("Event of Default") hereunder:

- A. Contractor fails to perform its obligations under this Agreement, or future amendment to this Agreement, including, but not limited to, Contractor's failure to pay Franchise Fees and other City fees in accordance with Article 8 of this Agreement, and the breach continues for more than 10 Business Days after written notice from the City for the correction thereof;
- B. Contractor's failure to Divert 60% of the C&D and 90% of the Commercial Recyclable Materials Collected in the City as required by Section 5.2.C of this Agreement after Contractor is given an opportunity to remedy the nonperformance as described in Section 11.5
- C. Any representation, warranty, or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation, warranty, or disclosure appears as part of this Agreement;
- D. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within 48 hours excluding weekends and Holidays;
- E. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;

- F. A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of 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 Contractor;

## **11.2 RIGHT TO TERMINATE UPON DEFAULT**

Upon a default by Contractor, the City may terminate this Agreement within 10 calendar days of the default but no later than 180 calendar days after the default. Such termination shall be effective 10 calendar days following the City's written notice to Contractor, and such termination shall be effective without the need for any hearing, suit, or legal action.

## **11.3 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

The City's right to terminate the Agreement under Section 11.2 is not exclusive, and the City's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

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 the Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive relief.

## **11.4 LIQUIDATED DAMAGES**

- A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

**B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable C&D and Commercial Recyclable Materials service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in executing this Agreement. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article, the Parties agree that the Liquidated Damages amounts established in Exhibit B of this Agreement and the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Schedule of Liquidated Damages, Exhibit B.

City may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of complaints by Customers, occupants, and Generators.

Other than Liquidated Damages payable under Section 8.6 of this Agreement, Liquidated Damages will only be assessed after Contractor has been given the opportunity but failed to rectify the damages as described in this Agreement. Before assessing Liquidated Damages other than pursuant to Section 8.6 of this Agreement, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and/or non-performance. The City may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and non-performance. City may, within 10 calendar days after issuing the notice, request a meeting with Contractor. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City will provide Contractor with a written explanation of its determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 11.4. The decision of City shall be final and City shall not be subject to, or required to exhaust, any further administrative remedies.

**C. Amount.** 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 in the amounts specified in Exhibit B subject to annual adjustment described below.

The amount of Liquidated Damages specified in Exhibit B shall be adjusted annually on the anniversary of the Effective Date. The adjustment shall be rounded to the nearest cent. Liquidated Damage amounts shall be adjusted to reflect changes in the All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982 – 1984 = 100, not seasonally adjusted, compiled and published by the U. S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the method following:

$$\begin{array}{l} \text{Adjusted Liquidated} \\ \text{Damage Amount} \end{array} = \begin{array}{l} \text{Then-current Liquidated Damage Amount x} \\ \text{most current CPI-U/previous 12-month CPI-U} \end{array}$$

For example:

Current Liquidated Damage Amount = **\$150.00**

Most recently published index (May 2004) = **193.5**

Index published twelve months prior to most recently published index (May 2003) = **191.0**

Adjusted Liquidated Damage Amount =  $\$150.00 \times (193.5/191.0) = \mathbf{\$151.96}$

If the CPI-U is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

- D. **Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within 10 calendar days of the date the Liquidated Damages are assessed. If they are not paid within the 10-day period, City may order the termination of the rights or “franchise” granted by this Agreement.

## 11.5 DIVERSION NON-PERFORMANCE

If the Contractor’s Diversion level is less than 60% for C&D and/or 90% for Commercial Recyclable Materials Collected in the City for a quarterly reporting period, the following steps shall be followed by the City and Contractor.

- A. **Warning.** The City shall issue a written warning to the Contractor within 30 calendar days of receipt of the Contractor’s quarterly report documenting the Diversion level for the monthly reporting period. The warning notice shall specify the amount of time (i.e. “correction period”) the City grants the Contractor to improve its performance and meet the Diversion requirements defined in Section 5.2.C.
- B. **Opportunity to Improve Performance.** The Contractor shall modify its Collection, Processing, Diversion, and public education and outreach programs (subject to the City’s approval) to improve the Diversion level. At the end of the correction period, Contractor shall submit a written report to the City identifying the Diversion level and providing the supporting documentation. If the City determines that the Diversion level equals or exceeds Diversion requirements defined in Section 5.2.C, the Contractor shall continue to

perform services in such a manner as to maintain or improve the Diversion level and the City shall waive its rights to proceed with steps outlined in subsections C and D of this Section 11.5 during the remainder of then-current reporting period.

- C. **Liquidated Damages.** If the Contractor fails to improve the Diversion level so that it is equal to or greater than Diversion requirements defined in Section 5.2.C by the end of the correction period granted in subsection A of this Section, the City may levy, and Contractor shall pay, Liquidated Damages described in Section 11.4.
- D. **Termination of the Agreement.** If Contractor's fails to achieve a Diversion level that equals or exceeds Diversion requirements defined in Section 5.2.C within six months of the date the City levied Liquidated Damages in accordance with subsection C of the Section, the failure to meet the Diversion requirements defined in Section 5.2.C shall be considered an event of default and the City may terminate the Agreement in accordance with Section 11.2.

## 11.6 CONDITIONS UPON TERMINATION

In the event this Agreement is terminated under the provisions of this Article, the following conditions shall be effective:

- A. **Prohibit C&D and Commercial Recyclable Materials Collection Services.** Contractor shall have no right or authority to engage in C&D Collection services in the City for a period of five years from the date of termination. After five years, should the Contractor provide proof that the event causing the Contractor to default under this Agreement has been corrected, the Contractor may reapply for a non-exclusive C&D and Commercial Recyclable Materials Collection Drop Box franchise, and the City, at the sole and complete discretion of the City, may reinstate the Contractor based on review of its reapplication.
- B. **Continuing Liabilities.** Contractor shall remain liable to the City for:
  - 1. Fees due in accordance with Article 8 that would otherwise be payable by the Contractor
  - 2. Liquidated Damages assessed pursuant to Section 11.4
  - 3. Reports required by Article 7 for C&D and Commercial Recyclable Materials activities performed by Contractor up to and including the date of termination
  - 4. Indemnity obligations under Section 10.1
  - 5. Record keeping and retention obligations under Sections 7.1 and 7.2

- C. **Release Customers and Generators from Obligations.** Contractor shall allow C&D and Commercial Recyclable Materials Generators served by Contractor to arrange for C&D and Commercial Recyclable Materials Collection services with a hauler authorized to perform such services, without penalty or liability for breach of any contract between Contractor and its Customers or Generators.
  
- D. **Remove Drop Boxes.** Contractor shall remove all of Contractor's Drop Boxes from all of Contractor's Collection locations and shall properly Recycle or Dispose of C&D and Commercial Recyclable Materials in such Drop Boxes.

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

### **12.1 RELATIONSHIP OF PARTIES**

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and not as an officer nor employee of the City, nor as a partner of, or joint venturer with, the City. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of the City. Except as expressly provided herein, Contractor shall have control over the manner and means of conducting the C&D and Commercial Recyclable Materials Collection, Transporting, Processing, Recycling, and Disposal services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents. Neither Contractor nor its officers, employees, Subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with the City.

### **12.2 PERMITS AND LICENSES**

Contractor shall obtain and maintain, at Contractor's sole cost and expense, all permits and licenses applicable to Contractor's operations under this Agreement which are required by any governmental agency.

### **12.3 COMPLIANCE WITH LAW**

Contractor shall, at all times, at its sole cost, comply with all Applicable Laws now in force and as they may be enacted, issued, or amended during the Term.

### **12.4 GOVERNING LAW**

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



## **12.5 JURISDICTION**

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Sonoma County in the State of California, which shall have exclusive jurisdiction over such lawsuits.

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

## **12.6 BINDING ON SUCCESSORS**

The provisions of this Agreement shall inure to the benefit to, and be binding on, the successors and permitted assigns of the Parties.

## **12.7 ASSIGNMENT**

Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other Party. Any such assignment made without the consent of the other Party shall be void and the attempted assignment shall constitute a material breach of this Agreement. Under no circumstances shall any assignment be considered by City if Contractor is in default at any time during the period of consideration.

## **12.8 PARTIES IN INTEREST**

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

## **12.9 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 which become due hereunder, shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement.

## **12.10 NOTICE PROCEDURES**

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

A. If to City:

City Manager  
City of Petaluma  
P.O. Box 61  
Petaluma, CA 94953

B. If to Contractor:

*Dustin Abbott*

*Pacific Sanitation*

*590 Caletti Ave*

*Windsor, CA 95492*

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

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

#### **12.11 REPRESENTATIVES OF THE PARTIES**

References in this Agreement to the "City" shall mean the City Manager and all actions to be taken by the City shall be taken by the City Manager except as provided below. The City may delegate the authority to the Director of Public Works and Utilities, 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. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

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

#### **12.12 NOTICE OF CITY'S RIGHT TO GRANT EXCLUSIVE FRANCHISE**

The Parties agree that in the event the City determines to provide or authorize an exclusive system of solid waste handling services that would include the services permitted under this non-exclusive Agreement during the Term of this Agreement, the City shall notify Contractor in writing of such determination. Provided that as of the date of mailing of said written notification, Contractor has provided services pursuant to this Agreement for more than three

previous years, Contractor may continue to provide services for up to five years after mailed notification, notwithstanding any such exclusive system of solid waste handling services. The Parties acknowledge that this provision fulfills the City's obligations, if any, under Sections 49520 through 49524 of the Public Resources Code as they applied on the date of this Agreement.

## **12.13 CRIMINAL ACTIVITY OF CONTRACTOR**

### **12.13.1 Criminal Activity**

For purpose of this Section, Criminal Activity shall mean any of the following events or circumstances:

- A. **Convictions.** The entry against any Contractor Party or its officers, of a criminal conviction or a permanent mandatory or prohibitory injunction from a court, municipality, or regulatory agency of competent jurisdiction, based on acts taken in his or her official capacity on behalf of Contractor with respect to:
1. Fraud or criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to municipal Solid Waste services of any kind (including Collection, Transportation, transfer, Processing, Recycling, Composting or Disposal), including this Agreement or any amendment thereto;
  2. Bribery or attempting to bribe a public officer or employee of a local, State, or Federal agency;
  3. Embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;
  4. Unlawful disposal of Hazardous Substances, the occurrence of which any of Contractor Party knew or should have known;
  5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging, and sales and market allocation, and of unfair and anti-competitive trade practices laws;
  6. Violation of securities laws; and
  7. Felonies.
- B. **Pleas.** Entry of a plea of "guilty," "nolo contendere," or "no contest" by a Contracting Party based on acts taken in his, her, or its official capacity on behalf of Contractor with respect to the conduct described in preceding Section 12.13.1.A.

**12.13.2 Notice**

Contractor shall notify City in writing within five calendar days of occurrence of any Criminal Activity by any Contractor Party.

**12.13.3 Contractor's Cure**

Upon occurrence of any Criminal Activity, Contractor shall immediately do or cause to be done all of the following:

- A. Terminate from employment or remove from office any offending individual Contractor Party, unless otherwise directed or ordered by a court or regulatory agency of competent jurisdiction or authority, and unless that termination would constitute a breach of any labor agreement entered into by Contractor, and
- B. Eliminate participation by any individual offending individual Contractor Party in any management, supervision, or decision activity that affects or could affect, directly or indirectly, the performance of the Contractor under this Agreement.

**12.13.4 Transfer And Hiring**

Contractor shall not allow or cause to be allowed to hire or transfer any individual from any Parent Company or subsidiary company or business entity of Contractor who has committed Criminal Activity as a Contractor representative, field supervisor, officer, or director who is directly or indirectly responsible for performance of this Agreement without obtaining prior written consent of City, following full disclosure to City of the facts and circumstances surrounding such Criminal Activity.

**12.13.5 City's Remedy**

In the event of any occurrence of Criminal Activity, the City, in its sole discretion, may terminate the Agreement within 30 calendar days written notice to Contractor, or may impose other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it will deem proper, in the following events:

- A. Contractor fails to comply with the foregoing obligation of this Section, or
- B. The Criminal Activity concerns or relates directly or indirectly to this Agreement.

Contractor shall be given the opportunity to present evidence in mitigation during the 30-calendar day notice period.

## **ARTICLE 13 MISCELLANEOUS AGREEMENTS**

### **13.1 ENTIRE AGREEMENT**

This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties with respect to the matters covered herein.

### **13.2 SECTION HEADINGS**

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

### **13.3 REFERENCES TO LAWS**

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

### **13.4 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.

### **13.5 AMENDMENT**

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

### **13.6 SEVERABILITY**

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

### **13.7 COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be considered an original.

### **13.8 EXHIBITS**

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

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed on the day and year first above written.

**CITY OF PETALUMA**  
A Municipal Corporation



City Manager

**CONTRACTOR**

*M&M SERVICES, INC*  
*dba: PACIFIC SANITATION*



Name, Title

APPROVED AS TO FORM:



City Attorney



Risk Manager



Finance Director

ATTEST:



City Clerk

**EXHIBIT A**

**CONTRACTOR'S APPLICATION**  
**(To Be Prepared and Submitted By Applicant)**

## SCHEDULE FOR LIQUIDATED DAMAGES

**Contractor may be assessed Liquidated Damages if Contractor fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit.**

1.	<b>Diversion.</b> Failure to achieve and maintain a minimum of 60% Diversion per month of all C&D Collected within the City and 90% Diversion per month of all Commercial Recyclable Materials Collected within the City.	The greater of \$5,000 or 10% of the gross Rate revenues received for providing C&D and Commercial Recyclable Materials services in the City, for the most recent 12-month period
2.	<b>Leaks, Litter or Spills.</b> For each occurrence over five during a calendar year of unreasonable leaks, litter, or spills of C&D or Commercial Recyclable Materials near or on public streets and failure to pick up or clean up such material immediately	\$300/ event
3.	<b>Unauthorized Collection Hours.</b> For each occurrence over five during a calendar year of Collecting C&D and Commercial Recyclable Materials during unauthorized hours	\$300/ event
4.	<b>Excessive Noise.</b> For each occurrence over 10 during a calendar year of excessive noise	\$300/ event
5.	<b>Cleaning Collection Vehicles.</b> For each occurrence over five during a calendar year for failure to keep Collection vehicles in a safe and sanitary condition	\$150/ event
6.	<b>Labeling of Drop Boxes.</b> For each occurrence of Contractor's failure to correctly label Contractor-owned Drop Boxes (in accordance with Section 6.4.C).	\$500/ event
7.	<b>Discourteous Behavior.</b> For each occurrence of discourteous behavior by Collection vehicle personnel, customer service personnel, or other employees of Contractor	\$500/ event
8.	<b>Injuries to Others.</b> For each incident of personal injury to a Person requiring medical treatment or hospitalization, where the negligence of the Contractor or its personnel was a contributing factor to the injury	\$5,000/ incident
9.	<b>Quarterly Reports.</b> Failure to submit quarterly reports in the timeframe specified in this Agreement.	\$300/ day report is overdue
10.	<b>Report Hazardous Substance.</b> For each failure to notify the appropriate authorities of reportable quantities of Hazardous Substance	\$500/ event

11.	<b>Late Remittance of Fees to City.</b> Failure of Contractor to remit fees due to the City (as described in Article 8) on or before the 20th day of any month	2% of the amount owing for that month; plus an additional 2% owing on any unpaid balance for each following 30 calendar day period the fee remains unpaid
12.	<b>Failure of Other Obligations.</b> Failure to perform any of the obligations set forth in this Agreement not specifically stated above and not corrected or proceeding in good faith to correct within 24 hours upon 24 hour notification by City	\$150/ for each obligation per day until obligation is performed



SECRETARY'S CERTIFICATION

The undersigned, being the Secretary of M&M Services, Inc., a  
Company Name  
California corporation ("the Company"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

RESOLVED, that Dustin Abbott be, and hereby is, authorized to  
Name of Designated Representative  
execute by and on behalf of the Company any and all agreements, instruments, documents or papers, as he/she may deem appropriate or necessary, pertaining to or relating to the Non-Exclusive Franchise Agreement between the City of Petaluma and Company for Drop Box Collection and Recycling of Construction and Demolition Debris and Commercial Recyclable Materials and that any such action taken to date is hereby ratified and approved.

Dated: 2-28-2018



\_\_\_\_\_  
Signature

Corporate Secretary & VP

Title

**STATEMENT OF APPLICANT'S  
UNDERSTANDING AND REPRESENTATIONS**

The undersigned (who is duly authorized to bind the company submitting this application) has reviewed the requirements of the non-exclusive franchise agreement for drop box collection and recycling services for construction and demolition debris and commercial recyclable materials, its exhibits, and reference documents. In addition, the undersigned attests that this application and any other supplementary information submitted with this application do not: (i) contain any untrue statement of a material fact, (ii) contain inaccurate or misleading information, or (iii) omit to state a material fact that is necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

Dustin Abbott

Print Name

8-6-18

Date

Vice President

Title

M&M Services, Inc. dba Pacific Sanitation

Company Name



Signature

**ACKNOWLEDGMENT AND CERTIFICATION PURSUANT TO  
CITY OF PETALUMA LIVING WAGE ORDINANCE  
PETALUMA MUNICIPAL CODE CHAPTER 8.36**

The City of Petaluma Living Wage Ordinance (“Ordinance”), Petaluma Municipal Code Chapter 8.36, applies to certain service contracts, leases, franchises and other agreements or funding mechanisms providing financial assistance (referred to hereafter as an “Agreement”) between the City of Petaluma (“City”) and/or the Petaluma Community Development Commission (“PCDC”) and contractors, lessees, franchisees, and/or recipients of City and/or PCDC funding or financial benefits (“covered entities”). The ordinance can be viewed as part of the Municipal Code at <http://www.codepublishing.com/ca/petaluma.html> or at the City Clerk’s office. The current amount of the living wage is set by periodic City Council resolution and can be obtained from the City Clerk.

Pursuant to Petaluma Municipal Code Section 8.36.120, as part of any bid, application or proposal for any Agreement subject to the Ordinance, the covered entity shall:

- Acknowledge that the covered entity is aware of the Ordinance and intends to comply with its provisions.
- Complete the Report of Charges, Complaints, Citations and/or Findings contained in this Acknowledgement and Certification by providing information, including the date, subject matter and manner of resolution, if any, of all wage, hour, collective bargaining, workplace safety, environmental or consumer protection charges, complaints, citations, and/or findings of violation of law or regulation by any regulatory agency or court including but not limited to the California Department of Fair Employment and Housing, Division of Occupational Safety and Health (OSHA), California Department of Industrial Relations (Labor Commissioner), Environmental Protection Agency and/or National Labor Relations Board, which have been filed or presented to the covered entity within the ten years immediately prior to the bid, proposal, submission or request.

Pursuant to Petaluma Municipal Code Section 8.36.120, before the beginning of the term of any covered Agreement, or prior to the execution of said Agreement by the City or the PCDC, each covered entity shall certify that its employees are paid a living wage that is consistent with Petaluma Municipal Code Chapter 8.36.

By executing this Acknowledgment and Certification, the covered entity (i) acknowledges that it is aware of the Ordinance and intends to comply with its provisions, (ii) attests to the accuracy and completeness of information provided in the Report of Charges, Complaints, Citations and/or Findings contained herein, (iii) certifies that it pays its covered employees a Living Wage as defined in Petaluma Municipal Code Chapter 8.36 and (iv) attests that the person

executing this Acknowledgment and Certification is authorized to bind the covered entity as to the matters covered in this Acknowledgment and Certification.

SO ACKNOWLEDGED and CERTIFIED:

Project or Contract I.D: \_\_\_\_\_

M&M Services, Inc. dba Pacific Sanitation \_\_\_\_\_ Date: 8-6-18  
(Print Name of Covered Entity/Business Capacity)

By Dustin Abbott  
(Print Name)

/s/   
(Signature)

Its Vice President  
(Title /Capacity of Authorized Signer)

**REPORT OF CHARGES, COMPLAINTS, CITATIONS AND/OR FINDINGS  
PURSUANT TO PETALUMA MUNICIPAL CODE SECTION 8.36.120**

FOR EACH WAGE, HOUR, COLLECTIVE BARGAINING, WORKPLACE SAFETY, ENVIRONMENTAL OR CONSUMER PROTECTION CHARGE, COMPLAINT, CITATION, AND/OR FINDING OF VIOLATION OF LAW OR REGULATION BY ANY REGULATORY AGENCY OR COURT, INCLUDING BUT NOT LIMITED TO THE CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (OSHA), CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (LABOR COMMISSIONER), ENVIRONMENTAL PROTECTION AGENCY AND/OR NATIONAL LABOR RELATIONS BOARD, WHICH:

- AFFECTS YOU AS A PROSPECTIVE CONTRACTOR, SUBCONTRACTOR, LESSEE, FRANCHISEE AND/OR PARTY TO ANY CITY OF PETALUMA AND/OR PETALUMA COMMUNITY DEVELOPMENT COMMISSION-FUNDED AGREEMENT OR BENEFIT SUBJECT TO PETALUMA MUNICIPAL CODE CHAPTER 8.36 (LIVING WAGE ORDINANCE), AND
- HAS BEEN FILED OR PRESENTED TO YOU WITHIN THE TEN YEARS IMMEDIATELY PRIOR TO THE BID, PROPOSAL, SUBMISSION OR REQUEST FOR WHICH THIS ACKNOWLEDGMENT AND CERTIFICATION IS MADE.

PLEASE PROVIDE THE DATE, THE REGULATORY AGENCY OR COURT MAKING THE CHARGE COMPLAINT, CITATION OR FINDING, THE SUBJECT MATTER AND THE MANNER OF RESOLUTION, IF ANY, FOR EACH SUCH CHARGE COMPLAINT, CITATION OR FINDING.

IF NONE, PLEASE STATE "NONE" NONE.

ATTACH ADDITIONAL PAGES IF NEEDED.

Date:

Regulatory Agency or Court:

Subject Matter:

Resolution, if any:

Expected resolution, if known:

1983370.7