

**EFFECTIVE DATE  
OF ORDINANCE**  
  
February 6, 2013

**ORDINANCE NO. 2448 N.C.S**

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Introduced by  
  
David Glass

Seconded by  
  
Chris Albertson

**APPROVING A NEW FRANCHISE AGREEMENT BETWEEN THE CITY OF PETALUMA AND  
PETALUMA REFUSE AND RECYCLING, INCORPORATED, AN AFFILIATE OF THE RATTO GROUP  
OF COMPANIES, INC. FOR SOLID WASTE, RECYCLABLE MATERIALS AND YARD TRIMMINGS  
SERVICES AND STREET SWEEPING SERVICES, AND AUTHORIZING AND DIRECTING THE CITY  
MANAGER TO EXECUTE THE FRANCHISE AGREEMENT AND RELATED DOCUMENTS**

**WHEREAS**, on September 13, 2005, the City entered into an exclusive Franchise Agreement ("Agreement") with GreenWaste Recovery, Inc., ("GreenWaste") commencing on January 1, 2006, for collection of solid waste, recyclable materials and yard trimmings, pursuant to Resolution No. 2005-141 N.C.S.; and,

**WHEREAS**, on July 6, 2009, the City Council amended the Agreement (the First Amendment) to modify the Rate Periods originally specified in the Agreement and to extend the Term of the Agreement six months to June 30, 2016; and,

**WHEREAS**, on January 4, 2010, the City Council approved assignment of the Agreement with Green Waste Recovery to Petaluma Refuse and Recycling, Incorporated (PR & R), an affiliate of The Ratto Group of Companies, Inc. by adoption of Ordinance No. 2361 N.C.S.; and,

**WHEREAS**, on November 21, 2011, the City Council adopted Ordinance No. 2421 N.C.S. amending Chapter 8.16 entitled "Garbage and Rubbish Disposal" to add section 8.16.065, "Award of franchises without competitive bidding," which provides that the City Council may enter into an exclusive franchise for garbage and rubbish collection if the Council finds that the benefits of doing so outweigh the potential benefits of using the competitive process otherwise required by Chapter 8.16; and,

**WHEREAS**, PR & R has offered benefits and financial incentives to the City as part of a new franchise agreement that are not provided in the existing franchise agreement; and,

**WHEREAS**, the City and PR & R wish to terminate the existing franchise agreement and enter into a new 15-year franchise agreement without engaging in competitive bidding, rather

1 than renew the existing franchise agreement pursuant to Chapter 8.16 and City of Petaluma  
2 Charter Section 51; and,

3 **WHEREAS**, the City Council finds that the following benefits to the public are offered by  
4 the new franchise agreement and outweigh the potential benefits to the public of following the  
5 competitive bidding procedures in Section 8.16.070:

- 6 • PR & R will pay \$500,000 to the city during the first three months of the new  
7 franchise agreement term.
- 8  
9 • PR & R will pay the full cost of the City's consultants, legal advisers and staff costs  
10 necessary to perform due diligence related to the existing and proposed services,  
11 including a contract compliance review, and negotiation of a new franchise  
12 agreement, estimated at \$106,000.
- 13  
14 • The new franchise agreement delays rate increases that would have occurred  
15 under the prior franchise agreement, resulting in savings to ratepayers of  
16 approximately \$410,000 per year, or \$6.15 million over the fifteen year life of the  
17 agreement.
- 18  
19 • The City's share of revenues under the new franchise agreement will be  
20 approximately \$22.2 million in standard franchise fees, \$15.3 million from the  
21 streets impact portion of the franchise fee and \$620,000 for PR & R-paid  
22 compliance costs, totaling approximately \$38.12 million.
- 23  
24 • The City's share of revenues under the new franchise agreement will show an  
25 increase of approximately \$12.4 million over the fifteen year life of the  
26 agreement, compared to existing franchise fees and payments; and,  
27

28 **WHEREAS**, the new franchise agreement continues the same services for solid waste  
29 disposal, recycling and related services provided for by the previous franchise agreement,  
30 requires the same diversion percentage of waste from landfills, directs garbage and rubbish  
31 hauled from City sources to the same landfill, continues the composting of green waste and  
32 directs the hauling of green waste to the same composting site, and uses the same trucks and  
33 equipment as used by the existing solid waste, recycling and disposal service, thereby making  
34 no changes to the services which would have physical environmental impacts as defined by the  
35 California Environmental Quality Act ("CEQA"); and, therefore, adoption of this ordinance is not  
36 a "project" under CEQA and/or is categorically exempt pursuant to Title 14, Chapter 3,  
37 California Code of Regulations ("CEQA Guidelines") section 15301, as the operation,  
38 maintenance, repair, permitting, leasing or licensing of existing public or private structures,  
39 facilities or mechanical equipment with negligible or no expansion of use.

40  
41 **NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Petaluma as follows:  
42

1 **Section 1.** The above recitals are hereby incorporated as findings and declared to be true and  
2 correct.

3 **Section 2.** The City Council approves a new Franchise Agreement between the City of  
4 Petaluma and Petaluma Refuse and Recycling, Incorporated (PR & R), an affiliate of The Ratto  
5 Group of Companies, Inc. for Solid Waste, Recyclable Materials, and Yard Trimmings Services  
6 and Street Sweeping Services, and authorizes and directs the City Manager to execute on  
7 behalf of the City a Franchise Agreement substantially in accordance with Attachment 2 to this  
8 ordinance, which is hereby made a part of this ordinance for all purposes, and any related  
9 documents necessary and appropriate to implement such new Franchise Agreement in  
10 accordance with the requirements of the Petaluma City Charter and the Petaluma Municipal  
11 Code, and in the interests of the City and its citizens.

12 **Section 3.** The new Franchise Agreement approved pursuant to this ordinance shall replace and  
13 succeed the Franchise Agreement as assigned to PR & R on January 4, 2010, by Ordinance No.  
14 2361 N.C.S., and such Franchise Agreement as assigned on January 4, 2010 shall terminate,  
15 subject to this ordinance and any implementing documents related to the new Franchise  
16 Agreement executed on behalf of the parties pursuant to this ordinance.

17 **Section 4.** If any section, subsection, sentence, clause, phrase or word of this ordinance is for  
18 any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent  
19 jurisdiction or preempted by state legislation, such decision or legislation shall not affect the  
20 validity of the remaining portions of this ordinance. The City Council of the City of Petaluma  
21 hereby declares that it would have passed and adopted this ordinance and each and all  
22 provisions thereof irrespective of the fact that any one or more of said provisions be declared  
23 unconstitutional, unlawful or otherwise invalid.

24 **Section 5.** This ordinance or a synopsis of it shall be posted and/or published for the period and  
25 in the manner required by City charter.

26 **Section 6.** This ordinance shall become effective thirty (30) days after the date of its adoption by  
27 the Petaluma City Council.

28  
29 **INTRODUCED** and **ORDERED** posted/published this 19<sup>th</sup> day of November 2012.

30  
31 **ADOPTED** this 7<sup>th</sup> of January, 2013, by the following vote:

32  
33 Ayes: Vice Mayor Albertson, Mayor Glass, Harris, Healy, Kearney, Miller  
34 Noes: Barrett  
35 Abstain: None  
36 Absent: None  
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43 David Glass, Mayor  
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ATTEST:

Claire Cooper  
Claire Cooper, City Clerk

APPROVED AS TO FORM:

ER  
Eric Dantly, City Attorney

1           FRANCHISE AGREEMENT BETWEEN THE CITY OF PETALUMA AND PETALUMA  
2 REFUSE AND RECYCLING, INC. FOR COLLECTION, DISPOSAL, AND PROCESSING OF  
3           MIXED MATERIALS, RECYCLABLE MATERIALS AND ORGANIC MATERIALS AND  
4 RELATED ACTIVITIES PURSUANT TO CHAPTER 8.16 OF THE PETALUMA MUNICIPAL  
5    CODE

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20

1 **FRANCHISE AGREEMENT BETWEEN THE CITY OF PETALUMA AND PETALUMA**  
2 **REFUSE AND RECYCLING, INC. FOR COLLECTION, DISPOSAL AND PROCESSING OF**  
3 **MIXED MATERIALS, RECYCLABLE MATERIALS AND ORGANIC MATERIALS AND**  
4 **RELATED ACTIVITIES PURSUANT TO CHAPTER 8.16 OF THE PETALUMA MUNICIPAL**  
5 **CODE**

6  
7 This Franchise Agreement for Collection, Disposal and Processing of Mixed Materials, Recyclable Materials  
8 and Organic Materials and related activities is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_,  
9 2012, by and between the City of Petaluma, a California municipal corporation and Petaluma Refuse and  
10 Recycling, Inc., a California corporation, corporation no. C3264523, and subsidiary of the Ratto Group of  
11 Companies, Inc., a California corporation, corporation no. C2223449, in accordance with Chapter 8.16 of the  
12 Petaluma Municipal Code and other Applicable Law.

13 **BACKGROUND**

14 The Parties desire to establish a new Franchise Agreement to, among other things, establish a new Franchise  
15 Term, provide for amendment of Franchise rates, and provide for new services to be provided by Contractor  
16 to the City and its residents.

17 In consideration of the mutual promises, covenants, and conditions contained in this Franchise Agreement  
18 and for other good and valuable consideration, the City and Contractor agree as follows:

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**SECTION 1 – DEFINITIONS**

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**1.1** “AB 939” means the California Integrated Waste Management Act of 1989 (section 40000 and following of the California Public Resources Code), as such act may be amended, supplemented, superseded, and replaced by successor legislation.

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

**1.3** “Agreement” means this Franchise Agreement between the City and Contractor for Collection, Disposal, and Processing of Mixed Materials, Recyclable Materials and Organic Materials and related activities, including all exhibits, and any future amendments hereto.

**1.4** “Alternative Daily Cover” means cover material used to cover compacted Mixed Materials in a Disposal Site, other than at least six (6) inches of earthen material, placed on the surface of the active face of the Refuse fill area at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging, as defined in Section 20164 of the California Code of Regulations as may be amended from time to time.

**1.5** “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 Collection, Transportation, Processing, and Disposal of Mixed Materials, Recyclable Materials and Organic Materials that are in force on the Effective Date and as they may be enacted, issued or amended during the Term of this Agreement.

**1.6** “Approved Disposal Site(s)” means an Approved Disposal Site listed in Exhibit 5 of this Agreement.

**1.7** “Approved Organic Materials Processing Site(s)” means an Approved Organic Materials Processing Site listed in Exhibit 5 of this Agreement.

**1.8** “Approved Recyclable Materials Processing Site(s)” means an Approved Recyclable Materials Processing Site listed in Exhibit 5 of this Agreement.

**1.9** “Billing(s)” means any and all statements of Charges for services rendered, howsoever made, described or designated by Contractor, or made by or for City or Contractor, presented to Customers served by Contractor for the Collection of Mixed Materials, Recyclable Materials, and Organic Materials in the City.

**1.10** “Bin(s)” means a Container with a hinged lid or lids and wheels serviced by a front-end loading truck with a capacity of 1.5 to 8 cubic yards.



1 **1.11** "Bulky Items" means large discarded items including, but not limited to, Major Appliances,  
2 furniture, tires, carpets, mattresses, and other oversize materials whose large size precludes or complicates  
3 their handling by normal Collection, Processing, or Disposal methods, but can be Collected without the  
4 assistance of special loading equipment (such as forklifts or cranes) and without violating Collection Vehicle  
5 legal load limits. Bulky Items do not include abandoned automobiles, large auto parts, boats, or trees.

6 **1.12** "Business Day(s)" means a day (or days) during which City offices are open to do business with the  
7 public.

8 **1.13** "Cal Recycle" means the California Department of Resources Recycling and Recovery, formerly  
9 known as the California Integrated Waste Management Board (CIWMB).

10 **1.14** "Cart" means a plastic Container with a hinged lid and wheels that is serviced by an automated or  
11 semi-automated Collection Vehicle. All Carts have capacities and specifications as indicated by Section 5 and  
12 Exhibit 8.

13 **1.15** "Change in Law" means any of the following events or conditions which has a material and adverse  
14 effect on the performance by the Parties of their respective obligations under this Agreement (except for  
15 payment obligations):

16 a. The enactment, adoption, promulgation, issuance, modification, or written change in  
17 administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or

18 b. The order or judgment of any governmental body, on or after the Effective Date, to the  
19 extent such order or judgment is not the result of willful or negligent action, error or omission or lack of  
20 reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in  
21 Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such  
22 order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission  
23 or lack of reasonable diligence.

24 **1.16** "Charge(s)" means amounts that are imposed by Contractor on Customers receiving Franchise  
25 Services and that may not exceed the maximum rates set by the City.

26 **1.17** "City" means the City of Petaluma, Petaluma charter city and a municipal corporation, and all the  
27 territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be  
28 modified during the Term. Unless otherwise specified in this Agreement, any action authorized or required by  
29 the City may be taken by the City Council or by an agent designated by the City Council.

30 **1.18** "City-Approved Maximum Service Rates" means the monetary amounts discussed in Section 10 and  
31 specified in Exhibit 1 that are maximum amounts that Contractor may not exceed in imposing Charges on  
32 Customers for performance of Franchise Services in accordance with this Franchise Agreement. For  
33 purposes of this Franchise Agreement, Rates are not necessarily the Charges imposed on Customers pursuant  
34 to this Franchise Agreement, but rather are the maximum amounts that Contractor may not exceed in  
35 imposing Charges on Customers. This Franchise Agreement imposes no Charges on Customers.

36 **1.19** "Collection" means the removal and Transportation of Mixed Materials from the place where it was  
37 generated in the City to a Disposal Site, and/or the removal and Transportation of Recyclable Materials or  
38 Organic Materials from the place where they were generated in the City to a Processing Facility.

39 **1.20** "Commencement Date" means the date specified in Section 3.2 when the Franchise Services  
40 required by this Agreement shall be provided.

- 1 **1.21** “Commercial” shall mean of, from or pertaining to non-Residential Premises where business activity  
2 is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and  
3 industrial operations, but excluding businesses conducted upon Residential property which are permitted  
4 under applicable zoning regulations and are not the primary use of the property.
- 5 **1.22** “Commercial Service(s)” means Franchise Services provided to any business property upon which  
6 business activity is conducted, including but not limited to retail sales, services, schools, construction sites,  
7 wholesale operations, and manufacturing and industrial operations, but excluding businesses conducted upon  
8 Residential property that are permitted under applicable zoning regulations and are not the primary use of the  
9 property.
- 10 **1.23** “Compactor” means a mechanical apparatus that compresses materials and/or the Container that  
11 holds the compressed materials. Compactors include two to four cubic yard Bin Compactors serviced by  
12 front-end loader Collection vehicles and 6 to 50 cubic yard Drop Box Compactors serviced by roll-off  
13 Collection vehicles.
- 14 **1.24** “Complaint” means written or orally communicated statements made by members of the public,  
15 Customers, Owners, or Occupants of properties served by Contractor, or officers, employees or agents of  
16 City alleging non-performance or deficiencies in Contractor’s performance, or otherwise alleging a violation  
17 by Contractor of the provisions of this Agreement.
- 18 **1.25** “Compost Product” means the product resulting from the controlled biological decomposition of  
19 Organic Materials that are Source Separated from the municipal Mixed Materials stream, or which are  
20 separated at a centralized facility.
- 21 **1.26** “Composting (or Compost)” includes a controlled biological decomposition of Organic Materials  
22 yielding a safe and nuisance-free Compost Product.
- 23 **1.27** “Construction and Demolition Debris” includes discarded building materials, packaging, debris, and  
24 rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements,  
25 excavation projects, houses, Commercial buildings, or other structures. Construction refers to SIC Codes  
26 1521 through 1794, 1796, and 1799. Demolition refers to SIC Code 1795.
- 27 **1.28** “Containers” means Bins, Carts, and Drop Boxes used to Collect Mixed Materials, Recyclable  
28 Materials, or Organic Materials, as well as City-owned containers used for Mixed Materials and Recyclable  
29 Materials in public locations.
- 30 **1.29** “Contractor” means Petaluma Refuse and Recycling, Incorporated, a corporation organized and  
31 operating under the laws of the State of California and its officers, directors, employees, agents, companies,  
32 and Subcontractors.
- 33 **1.30** “Contractor’s Compensation” means the monetary compensation received by Contractor in return  
34 for providing services in accordance with this Agreement as described in Section 10.
- 35 **1.31** “Curb (or Curbside)” means the location of a Collection Container for pick-up, where such  
36 Container is placed on the street or alley against the face of the curb, or where no curb exists, the Container is  
37 placed not more than five feet from the outside edge of the street or alley nearest the property’s entrance.
- 38 **1.32** “Customer” means the Person or entity receiving Franchise Services, to whom Contractor submits  
39 Billing invoice and from whom Contractor collects payment for Collection services provided to a Premises.  
40 The Customer may be the Occupant or Owner of the Premises, provided that the Owner of the Premises

1 shall be responsible for payment of Collection services if an Occupant of a Premises, which is identified as  
2 the Customer of Owner's Premises, fails to make such payment.

3 **1.33** "Designated Waste" means non-Hazardous Waste which may pose special Disposal problems  
4 because of its potential to contaminate the environment and which may be Disposed of only in Class II  
5 Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the California Department of  
6 Health Services. Designated Waste consists of those substances classified as Designated Waste by the State of  
7 California, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

8 **1.34** "Discarded Material(s)" means Mixed Materials, Recyclable Materials, Organic Materials, or  
9 Construction and Demolition Debris placed by a Generator in a receptacle and/or at a location that is  
10 designated for Collection pursuant to the City's Municipal Code.

11 **1.35** "Disposal or Dispose (or variation thereof)" means the final disposition of Mixed Materials at a  
12 Disposal Site. Disposal does not include the use of Yard Trimmings as Alternative Daily Cover so long as  
13 City and State regulations consider use of Yard Trimmings as Alternative Daily Cover as Diversion under AB  
14 939 and other Applicable Law.

15 **1.36** "Disposal Site" means a facility for ultimate Disposal of Mixed Materials.

16 **1.37** "Diversion" means sale or delivery of materials Collected from the provision of Franchise Services to  
17 a recycler or re-user. This includes the delivery of materials to an Approved Recyclable Materials Processing  
18 Facility or Approved Organic Materials Processing Facility, but does not include delivery of materials to an  
19 Approved Disposal Site.

20 **1.38** "Diversion Level" means the percentage equal to the Tonnage Diverted by Contractor divided by the  
21 Tonnage Collected by Contractor multiplied by 100, which reflects the accomplishments of the Contractor's  
22 Diversion programs.

23 **1.39** "Diversion Rate" means the Tons of material Collected by the Contractor within the City that are  
24 sold or delivered to a recycler or re-user divided by the total Tons of materials Collected in the City in the  
25 contract year.

26 **1.40** "Diversion Requirement" means the greatest of: (i) an annual Solid Waste Diversion Level of fifty  
27 percent (50%); (ii) the Solid Waste Diversion Level required by Applicable Law; or (iii) the Solid Waste  
28 Diversion level specified by the City pursuant to Sections 4.5.1.9 and 8.4.

29 **1.41** "Drop Box" means an open-top Container with a capacity of 6 to 50 cubic yards that is serviced by a  
30 roll-off Collection Vehicle.

31 **1.42** "Effective Date" means the date on which all conditions precedent to this Franchise Agreement  
32 taking effect are satisfied and this Franchise Agreement and the rights and obligations under it commence in  
33 effect as binding on the Parties.

34 **1.43** "E-Scrap Items" means discarded electronic equipment including, but not limited to: television sets,  
35 computer monitors, central processing units (CPUs), laptop computers, external computer hard drives,  
36 computer keyboards, computer mice, computer printers, DVDs, and VCRs.

37 **1.44** "Food Scraps" means food scraps and trimmings from food preparation, including but not limited  
38 to: meat, fish and dairy waste, fruit and vegetable waste, grain waste, Stable Matter, and acceptable food

1 packaging items such as pizza boxes, paper towels, waxed cardboard and food-contaminated paper products.  
2 Food Scraps are a subset of Organic Materials.

3 **1.45** “Franchise” means the rights and obligations of a contractor concerning provision of Collection,  
4 Disposal, and/or Processing of Mixed Materials, Recyclable Materials and/or Organic Materials services  
5 and/or related activities as a result of award of a contract pursuant to and in accordance with Chapter 8.16 of  
6 the Petaluma Municipal Code. “Franchise Agreement” means this contract granting rights to and imposing  
7 obligations on Contractor pursuant to and in accordance with Chapter 8.16 of the Petaluma Municipal Code,  
8 including all exhibits and future amendments.

9 **1.46** “Franchise Fee(s)” means the fee(s) paid by Contractor to the City as specified in Section 11 for the  
10 Franchise rights granted pursuant to this Franchise Agreement, including, but not limited to, the right to  
11 provide Franchise Services within the City and to use City rights of way in performing Franchise Services.

12 **1.47** “Franchise Records” means any and all information concerning or related to the Franchise that the  
13 Contractor must create, maintain, preserve, submit, make available for review or audit, update, or otherwise  
14 produce or process as required by this Franchise Agreement and/or Applicable Law or regulations. Franchise  
15 Records include, but are not limited to, accounting, Franchise Services, Franchise payment, Customer Billing,  
16 cash, payroll, capital expenditure, profit/loss, Disposal, Diversion and any and all other information of  
17 Contractor or its Affiliates or related entities involved in any way in the performance of the Franchise  
18 Services or in producing or receiving revenue or incurring or charging expenses resulting from or related to  
19 the Franchise Services which information the City deems, in its sole discretion, useful for evaluating the  
20 Contractor’s performance under the Franchise and the Franchise generally.

21 **1.48** “Franchise Services” means the activities discussed in Section 4 and specified in Section 5 that the  
22 Contractor is authorized and obligated to perform in accordance with this Franchise Agreement. The  
23 Franchise Services may include, but are not limited to, the Collection, Transportation, Processing, and  
24 Disposal of Mixed Materials, Recyclable Materials, and Organic Materials for Single-Family, Multi-Family, and  
25 Commercial Customers; Commercial Drop Box and Construction and Demolition Drop Box service; Street  
26 Sweeping; annual clean-ups; Christmas tree Collection; City facilities Collection; special events Collection;  
27 community clean-up; emergency services; provision of consumer information; public education services as  
28 specified in Section 9 and Exhibit 6; and any other services as specified in Section 5.

29 **1.49** “Franchise Term” means the Term of this Agreement, which commences on the Commencement  
30 Date specified in Section 3.2 and expires on December 31, 2027, unless terminated sooner pursuant to the  
31 provisions of this Agreement.

32 **1.50** “Generator” means any Person as defined by the Public Resources Code, whose act or process  
33 produces Mixed Materials, Recyclable Materials or Organic Materials as defined in the Public Resources  
34 Code, or whose act first causes Solid Waste to become subject to regulation.

35 **1.51** “Gross Receipts” means all monetary amounts collected by the Contractor for the provision of  
36 Franchise Services pursuant to this Agreement, (including revenue received by the Contractor from any  
37 entity, including Federal, State, County or other local facilities within the Service Area for the provision of  
38 Collection Services by the Contractor hereunder), calculated in accordance with Generally Accepted  
39 Accounting Procedures (GAAP). The term Gross Receipts, for purposes of this Agreement, does not include  
40 any revenues generated from the sale of Recyclable Materials, or other receipts from state and local  
41 government accounts (e.g. grants, cash awards and rebates) resulting from the performance of this  
42 Agreement.

1 **1.52** "Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed  
2 (directly or by reference) as "hazardous substances," "hazardous materials," "hazardous waste," "toxic  
3 waste," "pollutant" or "toxic substances," or similarly identified as hazardous to human health or the  
4 environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability  
5 Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC  
6 §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water  
7 Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316;  
8 (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments,  
9 rules or regulations promulgated under or concerning such enumerated statutes or acts currently existing or  
10 hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant  
11 identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental  
12 laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated  
13 biphenyls ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

14 **1.53** "Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or  
15 extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and  
16 §25117 or in the future amendments to or recodifications of such statutes or identified and listed as  
17 Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource  
18 Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and  
19 regulations promulgated thereunder.

20 **1.54** "Holidays" are defined as New Year's Day, Thanksgiving Day, and Christmas Day.

21 **1.55** "Household Hazardous Waste" means Hazardous Waste generated at Residential Premises within  
22 the City.

23 **1.56** "Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics,  
24 dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities  
25 and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be  
26 amended from time to time.

27 **1.57** "Interfamilial Assignment" means the sale, exchange, or other transfer of substantially all of  
28 Company's assets dedicated to service under this Agreement to a spouse, sibling, child, or grandchild of James  
29 Ratto.

30 **1.58** "Liquidated Damages" means the amounts due by Contractor for failure to meet specific quantifiable  
31 standards of performance as described in Section 14.4.

32 **1.59** "Major Appliances" means any discarded Residential device, including, but not limited to, washing  
33 machines, clothes dryers, hot water heaters, dehumidifiers, conventional ovens, microwave ovens, stoves,  
34 refrigerators, freezers, air-conditioners, trash compactors, and Residential furnaces discarded by Residential  
35 Generators.

36 **1.60** "Mixed Materials" means all Discarded Materials, excluding materials Source Separated from garbage  
37 or Collected for Recycling or Composting, Processing and marketing which are set out by the Service  
38 Recipient for Collection by CONTRACTOR. Except for Mixed Materials Collected at CITY Facilities, Mixed  
39 Materials must be generated at the Premises wherein the Mixed Materials are Collected. Mixed Materials are a  
40 subset of Solid Waste.

1 **1.61** "Mobile Home Park" means any area or tract of land used to accommodate 2 or more mobile homes  
2 as Single-Family Residential Units, where those homes are located on individual rented or leased lots  
3 consistent with Health and Safety Code section 18214(c)(1), as may be amended from time-to-time.

4 **1.62** "Multi-Family" means any Residential Premises, other than a Single-Family Premises or Multi-Plex  
5 Premises, with two or more dwelling units used for Residential purposes (regardless of whether residence  
6 therein is temporary or permanent) which receive centralized Collection service for all units on the Premises  
7 which are billed to one Customer at one address.

8 **1.63** "Multi-Family Complex" means any building and/or structure, or portion thereof, located in the City  
9 that is used for Residential housing that has 4 or more distinct living units.

10 **1.64** "Multi-Plex" means any Residential Premises, other than a Single-Family and Multi-Family Premises,  
11 with two or more dwelling units used for Residential purposes (regardless of whether residence therein is  
12 temporary or permanent) which receive individual Cart Collection services and that are billed to one  
13 Customer at one address or to each individual unit.

14 **1.65** "Occupant" means the Person who occupies a Premises.

15 **1.66** "Organic Materials" means those Discarded Materials that will decompose and/or putrefy and that  
16 the City's Municipal Code permits, directs, and/or requires Generators to separate from Mixed Materials and  
17 Recyclable Materials for Collection in specially designated Containers for Organic Materials Collection.  
18 Organic Materials include Yard Trimmings and Food Scraps such as, but are not limited to, green trimmings,  
19 grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces,  
20 other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish  
21 waste, paper contaminated with Food Scraps or otherwise not accepted in the Recyclable Materials Collection  
22 program, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No  
23 Discarded Material shall be considered to be Organic Materials, however, unless such material is separated  
24 from Mixed Materials and Recyclable Materials. Organic Materials are a subset of Solid Waste.

25 **1.67** "Owner" means the Person holding legal title to the land or building.

26 **1.68** "Parties" means the City and the Contractor.

27 **1.69** "Person" means any individual, firm, association, organization, partnership, corporation, business  
28 trust, joint venture, the United States, the State of California, the County of Sonoma, and special purpose  
29 districts.

30 **1.70** "Premises" means any land or building in the City where Mixed Materials, Recyclable Materials, or  
31 Organic Materials are generated or accumulated, or other Franchise Services are performed pursuant to this  
32 Franchise Agreement.

33 **1.71** "Processing (or Process)" means to prepare, treat, or convert through some special method.

34 **1.72** "Processing Site(s)" means a City-authorized plant or site used for sorting, cleansing, treating or  
35 reconstituting material Collected from Customers for the purpose of making such material available for re-  
36 use. Activities that may be undertaken at a Processing Facility include but are not limited to Processing  
37 Organic Materials and Recyclable Materials.

38 **1.73** "Proposition 26" means amendments to Article XIIC of the California Constitution as approved by  
39 the voters November 2, 2010, and any implementing laws and regulations and related case law.

1 1.74 "Proposition 218" means Articles XIII C and XIII D of the California Constitution as approved by  
2 the voters November 5, 1996 and any implementing laws and regulations and related case law.

3 1.75 "Rate" means the dollar unit the Contractor bills a Customer for providing Mixed Materials  
4 Collection and Disposal, Recyclable Materials Collection and Processing services, and Organic Materials  
5 Collection and Processing services, where such dollar unit does not exceed the maximum Rate determined by  
6 City pursuant to Sections 8.16.220 and 8.16.230 of the Petaluma Municipal Code and contained in Exhibit 1.

7 1.76 "Rate Period" means a 12-month period, commencing July 1 and concluding June 30, for which  
8 Contractor's Compensation is calculated.

9 1.77 "Rate Revenue" means the actual monies received by Contractor from Customers.

10 1.78 "Recyclable Materials" or "Recyclables" means those Discarded Materials that the City Code permits,  
11 directs and/or requires Generators to set out in Recyclables Containers for Collection for the purpose of  
12 Recycling. No Discarded Materials shall be considered Recyclable Materials unless such material is separated  
13 from Mixed Materials and Organic Materials. Recyclable Materials shall include, but not be limited to:  
14 newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper,  
15 computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg  
16 cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings,  
17 shoe boxes, cereal and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic  
18 coating, paper contaminated with food, wax paper, foil-line paper, Tyvex non-tearing paper envelopes);  
19 chipboard; corrugated cardboard; paper milk cartons; glass containers of any color (including brown, clear,  
20 and green glass bottles and jars); aluminum (including beverage containers, foil, food containers, small pieces  
21 of scrap metal); small pieces of scrap metal weighing less than 40 pounds and not exceeding two (2) feet in  
22 length in any dimension for any single item and fitting into the Recyclable Materials Collection Container;  
23 steel, tin or bi-metal cans; mixed plastics such as plastic containers (no. 1 to 7) and bottles including  
24 containers made of HDPE, LDPE, PET or PVC, aseptic beverage boxes, and textiles. Recyclable Materials  
25 are a subset of Solid Waste.

26 1.79 "Recycle or Recycling" means the process of sorting, cleansing, treating and reconstituting at a  
27 Recyclable Materials Processing Site materials that would otherwise be Disposed of at a landfill for the  
28 purpose of returning such materials to the economy in the form of raw materials for new, re-used or  
29 reconstituted products.

30 1.80 "Refuse" means all discarded putrescible and non-putrescible waste in a solid, semi-solid, or liquid  
31 form. Refuse does not include:

32 1.80.1 Hazardous Waste or Hazardous Substances;

33 1.80.2 Infectious Waste;

34 1.80.3 Abandoned automobiles, boats or any vehicle;

35 1.80.4 Radioactive waste;

36 1.80.5 Recyclable Materials; or

37 1.80.6 Organic Materials.

- 1 **1.81** "Residential" shall mean of, from, or pertaining to a Single-Family Premises, Multi-Plex Premises, or  
2 Multi-Family Premises including Single-Family homes, apartments, condominiums, townhouse complexes,  
3 Mobile Home Parks, cooperative apartments, and yacht harbors and marinas where residents live aboard  
4 boats.
- 5 **1.82** "Residue" means materials that remain after Processing Recyclable Materials and that cannot be  
6 Recycled, marketed, or otherwise utilized, including, but not limited to, materials such as rocks, contaminated  
7 paper, putrescibles, and other debris. Residue shall not exceed 10% by weight of the materials Processed for  
8 Recycling, or as specified in the operating permit of the Processing Facility and upon written concurrence by  
9 the City, and may be Disposed of at an Approved Disposal Site.
- 10 **1.83** "Re-use Vendor" means a vendor (e.g. St. Vincent DePaul, Goodwill Industries, or other non-profit  
11 or for-profit organizations) that will collect used furniture and other re-usable items for purposes of re-use  
12 rather than Disposal.
- 13 **1.84** "Roll-off Container" means an open-top Container that is normally loaded onto a motor vehicle for  
14 Transportation to a facility.
- 15 **1.85** "Service Type" refers separately to the following types of Mixed Materials, Recyclable Materials and  
16 Organic Materials Collection services for each of the following types of services: Single-Family Premises Cart  
17 service, Multi-Plex Premises Cart service, Multi-Family Premises Cart service, Multi-Family Premises Bin  
18 service, Commercial Cart service, Commercial Bin service, Drop Box service, annual clean-ups, City facilities  
19 service, and Street Sweeping.
- 20 **1.86** "Single-Family" means, notwithstanding any contrary definition in the City's Municipal Code, any  
21 detached or attached house or residence designed or used for occupancy by one family, provided that  
22 Collection service feasibly can be, and is, provided to such Premises as an independent unit, and the Owner  
23 or Occupant of such independent unit is billed directly for the Collection service.
- 24 **1.87** "Single-Family Residence" or "Residential Unit" means any building and/or structure, or portion  
25 thereof, in the City that is used for Residential housing purposes, irrespective of whether residence therein is  
26 transient, temporary or permanent, and having 3 or fewer distinct living units.
- 27 **1.88** "Single Stream Recycling" means the use of a single Container to Collect two or more types of  
28 Recyclable Materials.
- 29 **1.89** "Solid Waste" means solid waste as defined in California Public Resources Code, division 30, part 1,  
30 chapter 2, section 40191, as from time to time amended, and regulations promulgated thereunder, and  
31 without limitation includes the following: (1) Refuse; (2) Bulky Items; and (3) vehicle parts as defined in  
32 California Code of Regulations, title 23, division 3, chapter 15, section 2520(d)(3) and section 2523(c). Solid  
33 Waste includes Mixed Materials, Organic Materials, Recyclable Materials, Bulky Items, and any and all other  
34 materials Collected by Contractor under this Franchise.
- 35 **1.90** "Source Separated" means the segregation, by the Generator, of materials designated for separate  
36 Collection for some form of Recycling, Composting, recovery, or re-use.
- 37 **1.91** "Specialty Recyclable Material" means material not specified in this Agreement that can be or will be  
38 Collected for purposes of Recycling by any Person operating under a valid permit issued by the City. Such  
39 Specialty Recyclable Material includes, but is not limited to, scrap metal, Construction and Demolition  
40 Debris, high-grade paper (including office mixed paper), pallets, and plastic film.



- 1 1.92 "Stable Matter" means manure and other waste matter normally accumulated and associated with  
2 stables or domestic livestock.
- 3 1.93 "Street Sweeping" means sweeping and washing of the City streets and parking lots as required by  
4 Section 4 and Section 7 of this Agreement.
- 5 1.94 "Subcontractor" means a party who has entered into a contract, express or implied, with the  
6 Contractor for the performance of an act that is necessary for the Contractor's fulfillment of its obligations  
7 under this Agreement.
- 8 1.95 "Term" means "Franchise Term" as defined in Section 1 of this Agreement.
- 9 1.96 "Ton (or Tonnage)" means a unit of measure for weight equivalent to two thousand (2,000) standard  
10 pounds where each pound contains sixteen (16) ounces.
- 11 1.97 "Transfer Station" means a facility for the temporary collection and storage of Mixed Materials,  
12 Organic Materials and Recyclable Materials until they are transferred to trucks for Transportation to a  
13 Disposal Site or Processing Facility authorized by the City.
- 14 1.98 "Transportation" or "Transport" means the act of transporting or state of being transported.
- 15 1.99 "Waste Management Agency" means the Sonoma County Waste Management Agency, a joint  
16 powers authority formed in April, 1992 by Sonoma County and the nine incorporated cities in Sonoma  
17 County to satisfy waste Diversion requirements of AB 939. The Waste Management Agency conducts  
18 Household Hazardous Waste, Composting, wood waste Recycling, parks Recycling, planning and education  
19 programs on behalf of the member jurisdictions.
- 20 1.100 "Working Days" means Monday through Saturday, excluding Holidays, unless otherwise specified.
- 21 1.101 "Yard Trimmings" means those Discarded Materials that will decompose and/or putrefy, including  
22 but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree  
23 trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard  
24 Trimmings placed for Collection may not exceed three (3) inches in diameter and three (3) feet in length.  
25 Yard Trimmings are a subset of Organic Materials.

26 **SECTION 2 – REPRESENTATIONS AND WARRANTIES**

27 In entering into this Franchise Agreement, the City is relying on all of the Contractor's representations  
28 contained in this Franchise Agreement, expressly including all of Contractor's representations in this Section  
29 2. The accuracy of each of the Contractor's representations contained in this Section 2 and the satisfaction of  
30 each of the conditions set forth in this Section 2 are conditions precedent to this Franchise Agreement taking  
31 effect. If any of the representations contained in this Section 2 are inaccurate, false or misleading, and/or,  
32 unless and until each of the conditions precedent in this Section 2 are fully satisfied, this Franchise Agreement  
33 shall not become effective, and the rights and obligations it would grant and impose shall not accrue.

34 **2.1 Corporate Status**

35 Contractor is duly organized, validly existing, and in good standing under the laws of the State of California.  
36 Contractor is authorized to transact business in the State of California and has the power to own its  
37 properties and carry on its business as now owned and operated and as required by this Franchise Agreement.

1 **2.2 Corporate Authorization**

2 Contractor has the authority to enter into and perform its obligations under this Franchise Agreement. The  
3 Board of Directors of Contractor (or the shareholders, if necessary) have taken all actions required by law,  
4 articles of incorporation, bylaws or otherwise to authorize the execution of this Franchise Agreement. The  
5 Persons signing this Franchise Agreement on behalf of Contractor have authority to do so and this Franchise  
6 Agreement constitutes a legal, valid, and binding obligation of the Contractor.

7 **2.3 No Conflict**

8 Neither the execution nor the delivery by Contractor of this Franchise Agreement nor the performance by  
9 Contractor of its obligations hereunder: (i) conflicts with, violates or results in a breach of any law or  
10 governmental regulation applicable to Contractor; or (ii) conflicts with, violates or results in a breach of any  
11 term or condition of any judgment, order, or decree of any court, administrative agency or other  
12 governmental authority, or any Agreement or instrument to which Contractor or any of its properties or  
13 assets are bound, or constitutes a default thereunder.

14 **2.4 No Litigation**

15 To the best of Contractor's knowledge, after reasonable investigation, as of the effective date of this  
16 Franchise Agreement, there is no action, suit, or other proceeding at law or in equity or any investigation  
17 before or by any court or governmental authority, commission, board, agency or instrumentality decided,  
18 pending or threatened against Contractor that is likely to result in a decision, ruling, or finding that would  
19 materially and adversely affect the performance by Contractor of its obligations hereunder; adversely affect  
20 the validity or enforceability of this Franchise Agreement; or have a material adverse effect on the financial  
21 condition of Contractor or its parent company.

22 **2.5 Information Supplied by Contractor**

23 The information supplied by Contractor to the City in connection with the negotiation and execution of this  
24 Franchise Agreement, and all representations and warranties made by Contractor throughout this Franchise  
25 Agreement are true, accurate, correct and complete in all material respects on and as of the effective date of  
26 this Franchise Agreement.

27 **2.6 Agreement to Cooperate**

28 Contractor agrees to cooperate with and assist the City in supporting and defending the legal validity of, and  
29 authorization for entering into, this Franchise Agreement in the event of any legal challenge thereto brought  
30 or made in any manner by a third party. In accordance with Section 13, Contractor shall indemnify, hold  
31 harmless and defend the indemnitees for any liability related to any challenge to the validity of this Franchise  
32 Agreement.

33 **2.7 Ability to Perform**

34 Contractor possesses the business, professional, and technical expertise, and equipment, facilities, employees  
35 and other resources required to perform its obligations under this Franchise Agreement in accordance with its  
36 terms.

37 **2.8 Council Action**

38 The City Council shall adopt a resolution approving of and adopting this Franchise Agreement and  
39 authorizing execution of this Franchise Agreement on behalf of the City prior to or on the effective date of  
40 this Franchise Agreement.

41 **2.9 Verification of Insurance and Performance Bond**

42 Contractor shall submit, prior to the effective date of this Franchise Agreement, and shall maintain, insurance  
43 policies and endorsements of insurance coverage in accordance with the requirements of Section 13.  
44 Contractor shall submit a performance bond as set forth more specifically in Section 13 in favor of the City,

1 approved by the City Attorney, in the amount of **\$3,500,000** securing the faithful performance of the  
2 provisions of this Franchise Agreement.

3 **2.10 Vehicle Information**

4 Contractor shall provide the City with information regarding the size, weight, age, and mechanical condition  
5 of each of the vehicles to be used in carrying out the Franchise Services, a copy of which vehicle inventory is  
6 attached hereto as Exhibit 9. All said vehicles shall comply at a minimum with the Petaluma Municipal Code  
7 and all other applicable state and federal law.

8 **2.11 Payment of Fees to Prepare this Agreement**

9 Prior to execution of this Franchise Agreement, Contractor shall pay all of the City's attorneys' fees,  
10 consultant's fees, and staff time incurred in drafting, reviewing, revising, negotiating and executing this  
11 Franchise Agreement and the City's attorneys' fees for updating the provisions in the City's Municipal Code  
12 governing the provision of Solid Waste Collection and other related services. Should additional updates to the  
13 *Petaluma Municipal Code* be necessary after execution of this Franchise Agreement, said Attorney fees,  
14 consultant costs and staff time shall be paid to City by Contractor within thirty days of submittal by the City  
15 to Contractor of a statement for the cost of such services. Said costs shall not be passed on to the ratepayer.

16 **SECTION 3 – GRANT OF FRANCHISE**

17 **3.1 Grant of Franchise**

18 In accordance with Chapter 8.16 of the Petaluma Municipal Code and other Applicable Law, the City hereby  
19 grants to Contractor for the duration of this Franchise Agreement the exclusive right to perform the  
20 Franchise Services described in Section 4 and as set forth more fully in Section 5 of this Franchise  
21 Agreement, including, but not limited to, the Collection, Transportation, Processing and Disposal of all  
22 Mixed Materials, Recyclable Materials and Organic Materials generated within the City and placed for  
23 Collection in receptacles provided by Contractor.

24 **3.2 Franchise Term**

25 The rights granted in this Franchise Agreement to Contractor shall commence on January 1, 2013 and  
26 continue through December 31, 2027. The City may, in its sole discretion, at the end of the Franchise Term,  
27 either re-negotiate the terms and conditions of the Franchise Agreement with the Contractor and provide for  
28 a new Franchise Term, or request proposals from qualified contractors to provide Franchise Services to the  
29 City for a new Franchise, or take any other lawful action to arrange for the Collection, Transportation,  
30 Processing, and/or Disposal of Mixed Materials, Recyclable Materials and Organic Materials generated in the  
31 City and/or related services.

32 **3.3** In the event that any party brings an action against the City alleging a violation of the California  
33 Environmental Quality Act or any other law or regulation in the course of negotiating and approving this  
34 Agreement or arising from the act or omission of either party to this Agreement *in the course of performing*  
35 hereunder, (for convenience, any such action, whether including a CEQA Action or not, is referred to as a  
36 "CEQA/Other Action"), then:

37 **3.3.1** Contractor shall, at the sole expense of Contractor as provided below, defend against such  
38 CEQA/Other Action.

39 **3.3.2** Contractor shall pay all costs associated with the defense of the CEQA/Other Action  
40 including attorney fees, expert fees, costs, and the like, provided that Contractor and City shall agree on  
41 retaining a single law firm to represent both the City and Contractor and will reasonably waive conflicts as  
42 necessary to allow for the representation of City and Contractor by a single law firm. Contractor shall also  
43 pay the reasonable attorney fees and costs incurred by City to monitor the defense of the CEQA/Other

1 Action. In addition, Contractor will indemnify City against any and all claims for attorney fees and costs that  
2 may be awarded against the City in the CEQA/Other Action. The Contractor shall be entitled to recover all  
3 of the costs incurred by Contractor under this Section 4.1.9.2 as part of Contractor's RRI adjustment.

4 **3.3.3** In the event that, by settlement or judgment, it is determined that this Agreement is void or  
5 voidable (in either case, a "Determination that Agreement is Void"), and in the further event that Contractor  
6 shall have paid any of the amounts due from Contractor to City under Section 11, below, to the City, then the  
7 City and Contractor shall, within thirty days, determine (i) the amount of payments due under Section 11,  
8 below, from the Contractor to City that were actually paid during the period from the commencement of  
9 operations under this Agreement through the date of the Determination that Agreement is Void and (ii) the  
10 amount of payments to the City that would have been due from Contractor to City under the Prior  
11 Agreement during such time period. The City shall refund the difference between (i) and (ii) above to  
12 Contractor within thirty days of the determination of such amount.

#### 13 **SECTION 4 –SCOPE OF AGREEMENT**

##### 14 **4.1 Scope of Agreement**

15 This Franchise granted to Contractor shall be exclusive with regards to Collection, Transporting, and  
16 Processing of Mixed Materials, Recyclable Materials, and Organic Materials generated in the City, except as  
17 described in Section 4.2 or where otherwise precluded by Applicable Law.

18 The Contractor, or its Subcontractor(s), shall be responsible for the following services:

19 **4.1.1** Collecting all Mixed Materials, Recyclable Materials, and Organic Materials generated in the  
20 City and placed by Generators for Collection.

21 **4.1.2** Transporting Collected materials to an Approved Disposal Site, Approved Organic Materials  
22 Processing Site, or Approved Recyclable Materials Processing Site.

23 **4.1.3** Processing and marketing Recyclable Materials Collected in the City by Contractor.

24 **4.1.4** Processing, Composting, and marketing Organic Materials Collected in the City by  
25 Contractor.

26 **4.1.5** Disposing Mixed Materials Collected in the City by Contractor.

27 **4.1.6** Performing Street Sweeping services throughout the City in accordance with Section 7.

28 **4.1.7** Customer service and Billing, as detailed in Section 9.

29 **4.1.8** Public education and community outreach in accordance with Section 9 and Exhibit 6.

30 **4.1.9** Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies,  
31 and all other items and services necessary to perform its obligations under this Agreement.

32 **4.1.10** Paying all expenses related to provision of services required by this Agreement including, but  
33 not limited to, taxes, regulatory fees, utilities, etc.

34 **4.1.11** Providing all services required by this Agreement in a thorough and professional manner so  
35 that residents, businesses, and the City are provided timely, reliable, courteous and high-quality service at all  
36 times.

1           **4.1.12** Complying with Applicable Law.

2           **4.1.13** Performing or providing all other services necessary to fulfill its obligations under this  
3 Agreement.

4           **4.1.14** Accomplishing and maintaining the Diversion Requirement established by the City, as set  
5 forth in Section 8.4 of this Agreement.

6 The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not  
7 relieve Contractor of the duty of accomplishing all other aspects necessary to fulfill its obligations under this  
8 Agreement whether such requirements are enumerated elsewhere in the Agreement or not, unless excused in  
9 accordance with Section 14.6.

10           **4.2 Limitations to Scope**

11 The materials listed below in this Section may be collected and transported by other Persons. Such Persons  
12 shall do so in accordance with the City's Municipal Code.

13           **4.2.1 Construction and Demolition Debris Materials Deposited in a Drop Box**

14 Construction and Demolition Debris placed by Generator in a Drop Box located temporarily at a  
15 construction or demolition debris job site, and hauled by a City-permitted contractor;

16           **4.2.2 Materials Hauled by Owner or Occupant, or its Contractor**

17 Mixed Materials, Recyclable Materials, Yard Trimmings, and Specialty Recyclable Materials that are removed  
18 from any Premises by the Owner or Occupant and are Transported to a Disposal Site or Processing Site by (i)  
19 the Owner or Occupant of such Premises, by full-time employee of Owner or Occupant that uses the  
20 Owner's or Occupant's equipment to transport materials; or (ii) by a contractor whose removal of the Mixed  
21 Materials, Recyclable Materials, and/or Organic Materials are incidental to the service being performed and  
22 such contractor removes materials at no additional or separate fee;

23           **4.2.3 Donated Materials**

24 Source Separated Recyclable Materials, Organic Materials, and Specialty Recyclable Materials Generated in the  
25 City that are donated by the Generator to youth, civic, charitable, or other nonprofit organizations;

26           **4.2.4 Containers Recycled**

27 Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act,  
28 Section 14500, et. seq. California Public Resources Code as may be amended from time to time;

29           **4.2.5 Commodities Hauled in Drop Boxes**

30 Source Separated Recyclable Materials and Specialty Recyclable Materials generated by Commercial  
31 businesses, including City facilities, that are placed by Generator in a Drop Box, and hauled by a City-  
32 permitted contractor;

33           **4.2.6 Commodities Collected in Carts or Bins**

34 Source Separated Recyclable Materials, Organic Materials, and Specialty Recyclable Materials generated by  
35 Commercial businesses, including City facilities, which (1) are placed in Carts or Bins and (2) are Collected by  
36 a Person (or company) through a private arrangement with the Generator, and the Generator is compensated  
37 for the materials Collected; provided however, that the Owner or Occupant of such Commercial business  
38 shall be required to subscribe to and pay for the basic level of Recyclable Materials Collection service  
39 provided by Contractor;

1           **4.2.7 On-Site Composting**

2 Organic Materials Composted on a Residential Premises;

3           **4.2.8 Animal, Grease Waste, and Used Cooking Oil**

4 Animal waste and remains from slaughterhouse or butcher shops, grease waste, or used cooking oil;

5           **4.2.9 Sewage Treatment By-Product**

6 By-products of sewage treatment including sludge, sludge ash, grit, and screenings;

7           **4.2.10 Hazardous Wastes and Infectious Waste.**

8 Household Hazardous Waste, Hazardous Waste, Infectious Waste, and Designated Waste regardless of its  
9 source with the exception of materials Contractor is required to Collect in accordance with Section 5.6 of this  
10 Agreement;

11           **4.2.11 Public School Wastes**

12 Materials generated by public schools located in the City.

13           **4.2.12 Contractor acknowledges and agrees that the City may permit other Persons besides the**

14 Contractor to Collect any and all types of materials excluded from the scope of this Franchise, as set forth  
15 above, without seeking or obtaining approval of Contractor. If Contractor can produce evidence that other  
16 Persons are servicing Collection Containers or are Collecting and Transporting Mixed Materials, Recyclable  
17 Materials, and/or Organic Materials in a manner that is not consistent with the City's Municipal Code, it shall  
18 report the location and the name of the Person or company to the City along with Contractor's evidence of  
19 the violation of the exclusiveness of this Franchise.

20           **4.2.13 This Agreement and scope of this Franchise shall be interpreted to be consistent with**

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

28 **4.3 Subcontracting**

29 Contractor shall not engage any Subcontractors for Collection, Transportation, Processing, or Disposal of  
30 Mixed Materials, Recyclable Materials, or Organic Materials or Street Sweeping services without the prior  
31 written consent of the City.

32 **4.4 Ownership of Materials**

33 Once Mixed Materials, Recyclable Materials, and Organic Materials are placed in Containers and at the  
34 Collection location, Ownership and the right to possession of such materials shall transfer directly from the  
35 Generator to Contractor. Once Mixed Materials, Recyclable Materials, or Organic Materials are deposited by  
36 Contractor at a Disposal Site, transformation site, Transfer Station, Composting Site, or Processing Site, such  
37 materials shall become the property of the Owner or operator of the facility.

38 City may obtain Ownership or possession of Mixed Materials, Recyclable Materials, or Organic Materials  
39 placed for Collection upon written notice to Contractor of its intent to do so. However, nothing in this  
40 Agreement shall be construed as giving rise to any inference that City has such Ownership or possession  
41 unless such written notice has been given to Contractor.

1     **4.5     City-Directed Changes to Scope**

2             **4.5.1     Types of Changes**

3     City may, by written notice, direct Contractor to perform additional services or modify existing services. For  
4     example, and without limitation, the City may request the following:

5     Collection of certain materials, which were originally Mixed Materials, but during the Term can, in the  
6     reasonable opinion of the City, be economically Recycled or Composted;

7             **4.5.1.1**     Modifications to the definitions of “Organic Materials,” “Food Scraps,” “Yard  
8     Trimblings,” “Recyclable Materials,” and/or “Mixed Materials” as set forth in Section 1 of this Agreement in  
9     order to include additional material types for Collection, or to otherwise modify the accepted material types  
10     for Collection;

11            **4.5.1.2**     Inclusion of new Diversion programs;

12            **4.5.1.3**     Expansion of public education activities;

13            **4.5.1.4**     Elimination of programs;

14            **4.5.1.5**     Modification of the manner in which Contractor performs existing services;

15            **4.5.1.6**     Performance of pilot programs;

16            **4.5.1.7**     Implementation of innovative services, which may entail new Collection methods,  
17     targeted routing, different kinds of services, different types of Collection vehicles, and/or new requirements  
18     for Generators;

19            **4.5.1.8**     Transportation of materials to other than the Approved Disposal Site or  
20     Approved Organic Materials Processing Site or Approved Recyclable Materials Processing Site; and

21            **4.5.1.9**     Increasing or decreasing the Diversion Requirement set forth in Section 8.4.

22            **4.5.2     Procedure for Making Changes in Scope**

23     Contractor shall present, within 30 calendar days of the City’s written request, a written proposal to provide  
24     modified or additional services. At a minimum, the proposal shall contain a complete description of the  
25     following:

26            **4.5.2.1**     Collection methodology to be employed (equipment, manpower, etc.);

27            **4.5.2.2**     Equipment to be utilized (vehicle number, types, capacity, age, etc.);

28            **4.5.2.3**     Labor requirements (number of employees by classification);

29            **4.5.2.4**     Type of materials to be Collected or Containers to be utilized;

30            **4.5.2.5**     Provision for program publicity/education/marketing; and

31            **4.5.2.6**     Additional Contractor compensation required to pay for the cost of City’s  
32     requested change in services, the change to Customer rates, and the supporting basis of any such increased  
33     Contractor compensation or change in Customer rates.

1           **4.5.3** The City shall negotiate with the Contractor over the terms, conditions and details of the  
2 Contractor's proposal and appropriate amendments to the Agreement to reflect the change in scope.

3           **4.5.4** If the Contractor and City do not within 90 days after the Contractor submits its proposal,  
4 reach an agreement on the change in scope and amendments to the Agreement, the parties shall engage in  
5 mediation in accordance with Section 15.6, below. In the event that Contractor fails to reach agreement with  
6 the City on the change in scope and amendments, then Contractor shall forfeit its exclusive right to Collect  
7 such material from Generators or provide the services under consideration and the City may solicit proposals  
8 from one or more other parties for such service and Contractor shall be invited to submit a proposal during  
9 the process.

10           **4.5.5 Change in Approved Disposal Site, Approved Recyclable Materials Processing Site,  
11 or Approved Organic Materials Processing Site**  
12 If the City specifies use of a Disposal Site or Processing Site that is different from the site(s) approved at that  
13 time, the City shall provide written notice to Contractor.

14           **4.5.6 Implementation of New Services**  
15 The Contractor's implementation of any new services or change in the Approved Disposal Site or Approved  
16 Organic Materials Processing Site shall occur in a timely, smooth, and seamless manner such that Customers  
17 and/or Generators do not experience disruption in Collection services. Contractor shall be responsible for  
18 managing implementation of any new Collection services or change in the Approved Disposal Site or  
19 Approved Organic Materials Processing Site and other related services and shall do so in accordance with an  
20 implementation plan approved by the City. The City may designate a facility for receipt of food  
21 waste collected by Contractor hereunder from commercial customers. The net Disposal Fee at the  
22 designated food waste facility shall be included in the Rate as part of the RRI adjustment. Commencement of  
23 delivery of commercial food waste to the designated facility shall occur contemporaneously with the  
24 adjustment of the City Approved Maximum Service Rate for the use of the food waste processing facility.

25           **4.5.7 Monitoring and Evaluation of Changes in Scope**  
26 If the City requests, the Contractor shall meet with the City to describe the progress of each new service. If  
27 applicable, Contractor shall document the results of the new programs on a monthly basis, including at a  
28 minimum the Tonnage Diverted by material type, the end use or processor of the Diverted materials and the  
29 cost per Ton for Transporting and Processing each type of material and other such information requested by  
30 the Contractor and/or City necessary to evaluate the performance of each program.

31 At each meeting, the City and Contractor shall have the opportunity to revise the program based on mutually  
32 agreed upon terms in accordance with provisions of this Section. The City shall have the right to terminate a  
33 program if, in its discretion, the Contractor is not cost effectively achieving the program's goals and  
34 objectives. Before such termination, the City shall meet and confer with the Contractor for a period not to  
35 exceed 90 calendar days to resolve the City's concerns. If the City and the Contractor are unable to resolve  
36 their differences within ninety days, then the issue shall be submitted to mediation in accordance with Section  
37 15.6, below. Thereafter, in the event that Contractor fails to accommodate the demands of the City, the City  
38 may utilize a third party to perform these services if the City reasonably believes the third party can improve  
39 on Contractor's performance and/or cost. Notwithstanding these changes, Contractor shall continue the  
40 program during the meet and confer period and, thereafter, until the third party takes over the program.

41           **4.5.8 Environmental Assessments**  
42 Should any Change in Scope be a non-exempt Project or for any reason require an environmental assessment  
43 under CEQA, Contractor shall reimburse the City for all costs of conducting such an assessment, including,  
44 without limitation, the costs to the City of work performed by its own staff as well as by consultants and



1 contractors. Contractor may recover the costs of such reimbursement and all other costs reasonably incurred  
2 by Contractor with respect to such an environmental assessment as part of the RRI adjustment.

3 **4.6 City's Right to Perform Services and Possess Equipment**

4 **4.6.1 General**

5 The City, in its sole discretion, may determine a period of emergency if both of the following conditions  
6 occur: (i) Contractor, for any reason whatsoever, fails, refuses, or is unable to perform its Collection,  
7 Processing, and Disposal and Street Sweeping obligations, at the time and in the manner provided in this  
8 Agreement, for a period of more than 48 hours, and (ii) the City finds that such failure, refusal, or inability  
9 endangers or menaces the public health, safety, or welfare. If the City determines a period of emergency, then  
10 the City shall have the right during the period of such emergency to (i) perform, or cause to be performed,  
11 such services with its own or other personnel without liability to Contractor; and/or (ii) take possession of  
12 and use any or all of Contractor's land, equipment, and other property used or useful in providing the  
13 Franchise Services under this Agreement. If the City chooses to exercise such rights, the City shall provide  
14 written notice to the Contractor 24-hours prior to its plans to exercise its rights. The City agrees that it  
15 assumes complete responsibility for the proper and normal use of such equipment and facilities while in its  
16 possession.

17 The City shall provide oral notice (by telephone or in Person) to Contractor of the Contractor's failure,  
18 refusal, or inability to perform its Collection obligations and of the City's intent to perform Collection  
19 services and/or possess Contractor's equipment. The City shall send written confirmation of such oral  
20 notification to Contractor, by certified mail, within 24 hours of the oral notification, unless the 24 hour  
21 deadline ends on a Sunday, City holiday, or U.S. Postal Service holiday, then confirmation of such notice shall  
22 be sent on the day following such day.

23 Contractor agrees that in such event:

24 **4.6.1.1** It will take direction from the City to effect the transfer of possession of property  
25 to the City for City's use.

26 **4.6.1.2** It will, if City so requests, keep in good repair and condition all of such property,  
27 provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary  
28 to maintain said property in satisfactory operational condition.

29 **4.6.1.3** Subject to provisions of any labor agreements then in effect, Contractor shall  
30 provide the services of all or any personnel necessary or useful for the Collection, Transportation, Processing,  
31 Disposal, and Street Sweeping operations including, if City so desires, employees then employed by  
32 Contractor. Contractor further agrees, if City so requests, to furnish City the services of any or all  
33 management or office personnel employed by Contractor whose services are necessary or useful for  
34 Collection, Transportation, Processing, Disposal, and Street Sweeping operations and for the Billing and  
35 collection of fees for these services.

36 If the interruption or discontinuance of service is caused by any of the reasons listed in Section 4.6, the City  
37 shall pay to Contractor \$100 per day for use of each Collection or Street Sweeping vehicle and the reasonable  
38 rental value of other equipment and facilities, possession of which is taken by the City, for the period of the  
39 City's possession, if any, which extends beyond the period of time for which Contractor has rendered bills to  
40 Customers in advance of service.

41 Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this  
42 Section: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not

1 create any liability on the part of City to Contractor; and (iii) does not exempt Contractor from the indemnity  
2 provisions of Section 13, which are meant to extend to circumstances arising under this Section, provided  
3 that Contractor is not required to indemnify City against claims and damages arising from the sole negligence  
4 of City officers, employees, and agents in the operation of Collection or Street Sweeping vehicles during the  
5 time the City has taken possession of such vehicles.

6 **4.6.2 Duration of City's Possession**

7 City has no obligation to maintain possession of Contractor's property and/or continue its use in Collection,  
8 Transportation, Processing, Disposal, and Street Sweeping operations for any period of time and may, at any  
9 time, in its sole discretion, relinquish possession to the Contractor.

10 The City's right to retain temporary possession of Contractor's property, and to provide Collection services,  
11 shall continue until Contractor can demonstrate to the City's satisfaction that it is ready, willing and able to  
12 resume such services or for 180 calendar days, whichever occurs first.

13 **4.6.3 Condemnation**

14 The City fully reserves the rights to acquire the Contractor's property utilized in the performance of this  
15 Agreement, by purchase or through the exercise of the right of eminent domain.

16 **4.7 Transition to Next Contractor at End of Agreement**

17 If applicable, before expiration or earlier termination of this Agreement, Contractor will take direction from  
18 the City and subsequent Contractor to assist in a timely and orderly transition of services from Contractor to  
19 subsequent contractor. In response to the City's direction, Contractor shall provide route lists (which identify  
20 each Customer on the route, its service level and scheduled Collection day, and any special Collection notes)  
21 and detailed Customer account and Billing information. Contractor may, but shall not be obliged to, sell  
22 Collection or Street Sweeping vehicles, equipment, or facilities to the next contractor.

23 **4.8 City Free to Negotiate with Third Parties**

24 The City may investigate all options for Collection, Transportation, Processing, Disposal, and Street Sweeping  
25 services that will be scheduled to commence after the expiration of the Term or earlier termination of this  
26 Agreement. Without limiting the generality of the foregoing, the City may solicit proposals from Contractor  
27 and from third parties for the provision of Collection, Transportation, Processing, or Disposal of Mixed  
28 Materials, Recyclable Materials, and Organic Materials, Street Sweeping services, and any combination  
29 thereof. The City may negotiate and execute agreements for such services that will take effect upon the  
30 expiration or earlier termination of this Agreement.

31 **SECTION 5 – COLLECTION SERVICES**

32 **5.1 Mixed Materials Collection**

33 **5.1.1 General**

34 Contractor acknowledges that the City is committed to Diverting materials from Disposal through the  
35 implementation of source reduction, re-use, Recycling and Composting programs and that the City may at  
36 some time in the future implement, in accordance with Section 4.5, new programs that may impact the overall  
37 quantity or composition of Mixed Materials to be Collected by Contractor.

38 **5.1.2 Single-Family Premises**

39 Contractor shall Collect Mixed Materials from Single-Family Premises once per week from Contractor-  
40 provided Carts. Contractor shall provide each Customer with a Cart of approximately 20, 35, 65, or 95 gallons  
41 as requested by the Customer. Contractor shall Collect Carts from the Curb unless the Occupant is physically

1 unable to place the Container Curbside. In such case, Contractor shall Collect Carts from an alternative  
2 service location (such as the porch, sideyard, or backyard).

3 **5.1.3 Multi-Plex Premises**

4 Contractor shall provide Mixed Materials Collection service to Multi-Plex Premises in a manner identical to  
5 service provided to Single-Family Premises.

6 **5.1.4 Multi-Family Premises**

7 Contractor shall Collect Mixed Materials from Multi-Family Premises as frequently as scheduled by  
8 Customer, but not less than once per week. Contractor shall allow a Multi-Family Premises to use Carts or  
9 Bins for Mixed Materials Collection that are shared by the Occupants of the Multi-Family Premises.  
10 Contractor shall provide one or more Carts or Bins to such Premises as requested by Owner provided that no  
11 less than 95 gallons of Container capacity are provided for every four dwelling units in the Premises.  
12 Contractor shall provide each Customer with a choice of one or more Carts with capacities ranging from  
13 approximately 35 to 95 gallons or Bins with capacity ranging from approximately 1.5 to 8 cubic yards (or  
14 similar sizes). Contractor shall Collect Mixed Materials from Carts and Bins at a location selected by  
15 Customer and approved by the City.

16 **5.1.5 Commercial Premises**

17 Contractor shall Collect Mixed Materials from Commercial Premises as frequently as scheduled by the  
18 Customer, but not less than once per week. Contractor shall Collect Mixed Materials from Carts and Bins at a  
19 location selected by the Customer and approved by the City. Contractor shall allow each Commercial  
20 Customer to select a Collection service methodology that best suits the needs of its Premises. Specifically, the  
21 Contractor shall offer the following Collection service methodologies to Commercial Customers:

22 **5.1.5.1 Individual Cart or Bin Service**

23 Contractor shall allow each Commercial Premises to use Carts or Bins for Mixed Materials Collection.  
24 Contractor shall provide each Customer with a choice of one or more Carts with capacities ranging from  
25 approximately 35 to 95 gallons or Bins with capacity ranging from approximately 1.5 to 8 cubic yards (or  
26 similar sizes).

27 **5.1.5.2 Centralized Bin or Cart Service**

28 Contractor shall allow each Commercial Premises to use Carts or Bins for Mixed Materials Collection that are  
29 shared by the Occupants of two or more adjacent Commercial Premises. In such case, Contractor shall  
30 provide one or more Carts or Bins as requested by Customer(s) provided that no less than 95 gallons of  
31 Container capacity is provided for every four Commercial Premises. Contractor shall provide each Customer  
32 with a choice of one or more Carts with capacities ranging from approximately 35 to 95 gallons or Bins with  
33 capacity ranging from approximately 1.5 to 8 cubic yards (or similar sizes).

34 **5.1.5.3 Permanent Drop Boxes and Compactors**

35 Contractor shall allow a Customer to use a Drop Box or Compactor for Mixed Materials Collection to meet  
36 the Customer's permanent Disposal needs. In such case, Contractor shall provide Customer with a choice of  
37 Container capacities ranging from approximately 10 to 50 cubic yards (or similar sizes). Contractor shall offer  
38 Customers the option to purchase or lease Compactors through either the Contractor or an outside vendor.

39 **5.2 Recyclable Materials Collection**

40 **5.2.1 General**

41 Contractor shall Collect Recyclables Materials that are commingled in the Customer's Recyclable Materials  
42 Collection Container provided that the Customer has Source Separated the Recyclable Materials from Mixed  
43 Materials.

1 In accordance with Section 4.5, the City may direct Contractor to modify its scope of services to include  
2 Collection of additional types of Recyclable Materials beyond those materials defined in Section 1.

3 **5.2.2 Single-Family Premises**

4 Contractor shall Collect commingled Recyclable Materials from Single-Family Premises once per week.  
5 Contractor shall provide each Customer with a one Cart for Recyclable Materials as requested by the  
6 Customer. Contractor shall provide each Customer with a Cart of approximately 35, 65, or 95 gallons, as  
7 requested by the Customer. Contractor shall Collect Carts from the Curb unless the Occupant is physically  
8 unable to place the Cart at the Curb. In such case, Contractor shall Collect Carts from an alternative service  
9 location (such as the porch, sideyard, or backyard).

10 **5.2.3 Multi-Plex Premises**

11 Contractor shall provide commingled Recyclable Materials Collection service to Multi-Plex Premises in the  
12 same manner described in Section 5.2.2 for Single-Family Premises.

13 **5.2.4 Multi-Family Premises**

14 Contractor shall Collect commingled Recyclable Materials from Multi-Family Premises as frequently as  
15 scheduled by Customer, but not less than once per week.

16 Contractor shall provide each Customer with Container for Recyclable Materials Collection. Contractor shall  
17 provide each Customer with a Cart of approximately 35, 65, or 95 gallons, or Bins with capacities ranging  
18 from approximately 1.5 to 8 cubic yards (or similar sizes), as requested by the Customer. Carts and Bins may  
19 be shared by the Occupants of the Multi-Family Premises.

20 Contractor shall Collect Recyclable Materials at the designated location agreed upon by Contractor and  
21 Customer.

22 **5.2.5 Commercial Premises**

23 Contractor shall Collect Recyclable Materials from Commercial Premises as frequently as scheduled by  
24 Customer, but not more than once per day and not on Sundays or scheduled Holidays. Contractor shall allow  
25 Commercial Customers to select a Collection service method that best suits the needs of its Premises.  
26 Specifically, the Contractor shall offer the following choices to Commercial Customers:

27 **5.2.5.1 Cart or Bin Service**

28 Contractor shall allow Commercial Customers to use Cart(s) or Bin(s) for Recyclable Materials Collection.  
29 Contractor shall provide each Customer with a choice of one or more Carts with capacities of approximately  
30 35, 65, or 95 gallons, or Bins with capacity ranging from approximately 1.5 to 8 cubic yards (or similar sizes).

31 **5.2.5.2 Centralized Cart or Bin Service**

32 Contractor shall allow for Commercial Customers to use Cart(s) or Bin(s) for Recyclable Materials Collection  
33 that are shared by the Occupants of two or more Commercial Premises. In such case, Contractor shall  
34 provide one or more Carts or Bins to such Premises as requested by Customer(s) provided that a minimum  
35 of 95 gallons of Container capacity for Recyclable Materials is provided for every four Commercial Premises.

36 **5.2.5.3 Drop Boxes and Compactors**

37 Contractor shall allow Commercial Customers to use a Drop Box or Compactor for Recyclable Materials  
38 Collection to meet Customer's permanent needs. In such case, Contractor shall provide Customers with a  
39 choice of Container capacities ranging from approximately 10 to 50 cubic yards. Contractor shall offer  
40 Customers the option to purchase or lease Compactors through Contractor or an outside vendor.

1    **5.3     Organic Materials Collection**

2            **5.3.1    General**

3    For Single-Family Premises and Multi-Plex Premises, Contractor shall Collect Organic Materials (including  
4    both Yard Trimmings and Food Scraps) placed in the Customer's Organic Materials Collection Container,  
5    provided that the Customer has Source Separated the Organic Materials from Mixed Materials and Recyclable  
6    Materials.

7    For Multi-Family Premises and Commercial Premises, Contractor shall separately Collect Yard Trimmings  
8    and Food Scraps from Customers, from Containers designated for either Yard Trimmings or Food Scraps,  
9    provided that the Customer has Source Separated the Yard Trimmings and Food Scraps from each other into  
10   their respective Containers, and also provided that the Customer has Source Separated the Yard Trimmings  
11   and Food Scraps from Mixed Materials and Recyclable Materials.

12   In accordance with Section 4.5, the City may direct Contractor to modify its scope of services to include  
13   Collection of additional types of Organic Materials.

14            **5.3.2    Single-Family Premises**

15   Contractor shall Collect Source Separated Organic Materials from Single-Family Premises once a week.  
16   Contractor shall provide each Customer with a Cart of approximately 65 or 95 gallons, as requested by the  
17   Customer. Contractor shall Collect Carts from the Curb unless Occupant is physically unable to place the  
18   Container at the Curb. In such event, Contractor shall Collect Carts from an alternative service location (such  
19   as the porch, sideyard, or backyard).

20            **5.3.3    Multi-Plex Premises**

21   Contractor shall provide Organic Materials Collection service to Multi-Plex Premises in the same manner as  
22   described in Section 5.3.2 for Single-Family Premises, with the exception that Organic Materials Collection  
23   services shall not be provided to Multi-Plex condominium and townhouse complexes unless the Owners or  
24   Occupants of such Premises request Organic Materials Collection service and pay an additional fee for such  
25   service.

26            **5.3.4    Multi-Family Premises**

27   Contractor shall Collect Source Separated Yard Trimmings and/or Source Separated Food Scraps from  
28   Multi-Family Premises as frequently as scheduled by Customer, but not less than once per week. Contractor  
29   shall provide each Customer with a 65- or 95-gallon Cart, or Bins with capacities ranging from approximately  
30   1.5 to 8 cubic yards (or similar sizes), as requested by Customer. Contractor shall Collect Yard Trimmings and  
31   Food Scraps at the designated location agreed upon by Contractor and Customer.

32   If Customer requests Yard Trimmings or Food Scraps Collection service(s), Contractor shall provide the  
33   requested service(s) and shall Charge Customer for such service(s) at Rates not to exceed the City-Approved  
34   Maximum Service Rates.

35            **5.3.5    Commercial Premises**

36   Contractor shall Collect Source Separated Yard Trimmings and/or Source Separated Food Scraps from  
37   Commercial Premises as frequently as scheduled by Customer, but not less than once per week.

38   If Customer requests Yard Trimmings or Food Scraps Collection service(s), Contractor shall provide the  
39   requested service(s) and shall Charge Customer for such service(s) at Rates not to exceed the City-Approved  
40   Maximum Service Rates.

1 Contractor shall allow Commercial Customers to select a Collection service method that best suits the needs  
2 of its Premises. Specifically, the Contractor shall offer the following choices to Commercial Customers:

3 **5.3.5.1 Cart or Bin Service**

4 Contractor shall allow Commercial Premises to use Cart(s) or Bin(s) for Yard Trimmings and/or Food Scraps  
5 Collection. Contractor shall provide each Customer with a choice of one or more Carts with capacities of  
6 approximately 65 or 95 gallons, or Bins with capacity ranging from approximately 1.5 to 8 cubic yards (or  
7 similar sizes).

8 **5.3.5.2 Centralized Cart or Bin Service**

9 Contractor shall allow Commercial Premises to use Cart(s) or Bin(s) for Yard Trimmings and/or Food Scraps  
10 Collection, which are shared by the Occupants of two or more Commercial Premises. In such case,  
11 Contractor shall provide one or more Carts or Bins to such Premises as requested by Customer(s) provided  
12 that no less than 95 gallons of Container capacity for Yard Trimmings or Food Scraps is provided for every  
13 four Commercial Premises.

14 **5.3.5.3 Permanent Drop Boxes and Compactors**

15 Contractor shall allow Premises to use a Drop Box or Compactor for Yard Trimmings or Food Scraps  
16 Collection to meet Customer's permanent needs. In such case, Contractor shall provide Premises with a  
17 choice of Container capacities ranging from approximately 10 to 50 cubic yards. Contractor shall offer  
18 Customers the option to purchase or lease Compactors through Contractor or an outside vendor.

19 **5.4 Annual Clean-Ups**

20 **5.4.1 General Requirements**

21 The City elects to have Contractor provide each Residential Customer two pre-scheduled clean-ups during a  
22 period mutually established by the Contractor and the City. Each Residential Customer shall be limited to  
23 four (4) cubic yards of materials per event. The Contractor shall pick up Solid Waste placed at Curbside and  
24 Transport such items to an Approved Disposal Site at no additional Charge to Customers. The following  
25 guidelines must be followed:

26 **5.4.1.1** All waste must be left at the Curb by 6:00 a.m.

27 **5.4.1.2** Items, where appropriate, should be placed in Contractor-approved cans, bags or  
28 boxes.

29 **5.4.1.3** Residents may place Major Appliances (maximum 1 per event), Bulky Items,  
30 Recyclable Materials, Yard Trimmings, tires (maximum 4 per Residential Customer; removed from rims; no  
31 Commercial tires), clean unfinished wood, and rubbish at the Curb.

32 **5.4.1.4** Yard Trimmings cannot exceed 3 inches in diameter, or be longer than 3 feet, and  
33 weigh no more than 75 pounds per bundle.

34 **5.4.1.5** The following items will not be picked up: liquids or sludge, cement, dirt, asphalt,  
35 Construction and Demolition Debris, a single item that weighs more than 75 pounds (excluding Major  
36 Appliances), Hazardous Waste or Infectious Waste.

37 Contractor may refuse to Collect clean-up items and shall not be obligated to provide this service to any  
38 Person who does not set out Solid Waste, and/or whose account is in delinquent status.

1 Contractor shall separate Recyclable Materials and Organic Materials Collected from the clean-up events and  
2 Transport such materials to the appropriate Processing Site.

3 Major Appliances shall be re-used, Recycled, or Disposed by Contractor in accordance with requirements of  
4 Applicable Law. Any changes to such regulations made after the Effective Date shall be addressed as though  
5 they are a Change in Law.

6 Contractor shall record the kind and weights (in Tons) of Solid Waste Diverted from the landfill, if any,  
7 during these clean-ups through Recycling, re-use, transformation or other means of approved Diversion.

8 **5.5 Holiday Tree Collection**

9 Contractor shall supply two Drop Boxes that will serve as drop-off locations for holiday trees. The  
10 Contractor shall place the Drop Boxes at two locations determined by the City. The Contractor shall service  
11 the holiday tree Drop Boxes so that there is space in the Drop Boxes for Residents to discard trees and  
12 maintain the surrounding area so it is kept free of any debris. Contractor shall deliver the Drop Boxes to the  
13 City-specified sites on the first Business Day after December 25 and shall service the Drop Boxes until the  
14 third Monday of January. Holiday tree Drop Boxes shall be Transported to, and holiday trees Processed at, an  
15 Approved Organic Materials Processing Site. Contractor shall also provide curbside holiday tree Collection  
16 from Residential Premises from December 26<sup>th</sup> through January 2<sup>nd</sup>.

17 **5.6 Used Motor Oil and Oil Filter Collection**

18 On a weekly basis, Contractor shall Collect from Single-Family and Multi-Plex Customers used motor oil and  
19 used motor oil filters placed Curbside for Collection in Contractor-provided containers. Contractor shall not  
20 be required to Collect more than one gallon of used motor oil per individual dwelling unit per week.

21 Contractor shall provide one-gallon translucent plastic containers with screw on tops for used motor oil  
22 Collection and 6-mil plastic Ziploc-type bags for used oil filter Collection to Single-Family and Multi-Plex  
23 Occupants upon Occupant's request within three (3) Working Days of such request, at no additional cost.

24 **5.7 Collection from City Facilities**

25 Contractor shall Collect Mixed Materials, Recyclable Materials, and Organic Materials from the City locations  
26 identified in Exhibit 4. Collection from City Facilities shall occur at least once per week or more frequently as  
27 requested by the City.

28 Contractor shall Collect materials from public litter Containers and Recycling cans one time per day, six days  
29 per week. Where warranted due to use, Contractor shall provide extra daily Collections of public litter and  
30 Recycling cans on a case-by-case basis as agreed to by Contractor and City. As of the Effective Date of this  
31 Agreement, Contractor shall service (i.e., Collect materials from) approximately 375 public litter and  
32 Recycling cans in the City during a week, where the number of cans serviced represents the number of cans  
33 emptied by Contractor in a week (e.g., if one can is emptied twice in one week it shall count as two service  
34 events). Over the Term, the City shall install new public litter and Recycling cans and Contractor shall service  
35 all such cans at no additional cost to the City provided that the total number of cans serviced per week does  
36 not exceed 575 cans. The City and Contractor shall agree to the location of the public litter and Recycling  
37 cans to be serviced.

38 Contractor shall provide and maintain Collection Containers for the City's use, with the exception of public  
39 litter and public Recycling cans that shall be provided, maintained, and replaced (as needed) by the City.

40 Contractor may integrate Collection of Mixed Materials, Recyclable Materials, and Organic Materials from  
41 City facilities with other Collection services, provided that Contractor attributes Tonnage Collected from City  
42 facilities separately from other Customers.

1 Contractor shall provide the services required by this Section at no charge to the City.

2 **5.8 Collection from Special Events**

3 Contractor shall Collect Mixed Materials and Recyclable Materials at up to 12 special events selected by the  
4 City. Contractor shall provide an adequate number and type of Collection Containers for the special events  
5 and shall coordinate its Collection services with the City. Contractor shall have employee(s) at each event to  
6 keep all Collection points tidy, to empty or exchange Containers as the need arises, and to respond to  
7 overages or spills. Contractor shall prepare and distribute information to the public during such events  
8 describing the Collection options available and promoting Recycling. The Contractor shall report the  
9 Tonnage of material Collected to the City within 10 Business Days of each event.

10 Contractor shall provide the services required by this Section at no charge to the City.

11 **5.9 Abandoned Waste Collection**

12 Contractor shall direct its Collection vehicle drivers to note (i) the addresses of any Premises at which the driver  
13 observes that Solid Waste is accumulating; and (ii) the address, or other location description, at which Solid Waste has  
14 been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within  
15 five (5) Business Days of such observation.

16 Contractor shall Collect Solid Waste abandoned by Generators on public property in the City upon direction  
17 from the City. Contractor shall dispatch a truck to Collect abandoned materials at locations in the City  
18 identified by Contractor or at locations identified by the City. When the Contractor has received a verbal  
19 request from the City to Collect abandoned materials at a specific location, Contractor shall Collect such  
20 materials within 48 hours of receiving the request unless special circumstances warrant a longer period. In this  
21 case, Contractor shall notify the City of such circumstances and the need for additional time to Collect such  
22 materials within 24 hours of the City's verbal notice to Collect abandoned waste. On the day of Collection,  
23 Contractor shall fax or e-mail confirmation that abandoned waste has been Collected, noting location of  
24 waste and its Collection time and date.

25 Contractor shall be responsible for Collection, Transportation, Recycling, Diversion, and Disposal of such  
26 material and City shall pay for actual, documented Disposal Costs. Contractor shall record the date, time,  
27 location, and description of material Collected including the volume of such material; location where such  
28 material was Disposed; and cost of Disposal. Copies of receipts from Disposal Site for Disposal of  
29 abandoned Solid Waste shall be made available by Contractor upon request by the City. Tonnage or volume  
30 of material Collected shall be separately recorded and reported to the City on a quarterly basis.

31 **5.10 HHW Program Support**

32 Contractor shall include, as part of Contractor's Public Education Program, information about HHW  
33 locations supported by the Waste Management Agency where Customers may drop off HHW materials that  
34 are funded from City fees paid under Section 11.2 of this Agreement. In addition, Contractor and City agree  
35 to work together to develop a HHW program to provide for cost efficient, convenient, and environmental  
36 safe collection, processing, and disposal of HHW materials, on an on-call, drop-off, or curbside collection  
37 basis. Any such new HHW program would be established in accordance with section 4.5 of this Agreement.



1                                    **SECTION 6 –STANDARDS FOR COLLECTION SERVICES**

2    **6.1      Operating Hours and Schedules**

3                    **6.1.1    Hours of Collection or Street Sweeping**

4                            **6.1.1.1    Residential Premises**

5    Collection from, or Street Sweeping at, Residential Premises shall only occur between the hours of 6:00 a.m.  
6    and 6:00 p.m., Monday through Friday.

7                            **6.1.1.2    Commercial Premises**

8    Collection from, or Street Sweeping at, Commercial Premises that are two hundred (200) feet or less from  
9    Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.  
10    Collection from, or Street Sweeping at, Commercial Premises more than two hundred (200) feet from  
11    Residential Premises shall only occur between the hours of 5:00 a.m. and 7:00 p.m. The City Manager may  
12    require modifications to hours for Collection from, or Street Sweeping at, Commercial Premises to resolve  
13    noise Complaints, and, in such case, the City Manager may change the allowable operating hours.

14                           **6.1.1.3    Exceptions**

15    In the event of an unforeseen circumstance, the Contractor may Collect from Residential Premises or  
16    Commercial Premises that are two hundred (200) feet or less from Residential Premises between the hours of  
17    5:00 a.m. and 10:00 p.m., Monday through Friday, upon prior written approval from the City Manager.

18                    **6.1.2    Route Schedules**

19    Contractor shall provide City with route maps and daily schedules for each type of Collection and Street  
20    Sweeping service. The City shall review and approve such maps and schedules.

21    Contractor may not change its regularly scheduled Residential Collection days or Street Sweeping schedules  
22    without prior written approval from the City. Contractor shall obtain such written approval from the City 30  
23    calendar days before the effective date of the schedule change. Once approved, Contractor shall notify any  
24    Residential Customer four weeks before any Collection schedule changes. Contractor shall not permit any  
25    Customer to go more than seven calendar days without service during a Collection schedule change.

26    Contractor may not change any Commercial Customer's regularly scheduled Collection days without prior  
27    approval from the Customer.

28                    **6.1.3    Holiday Collection Schedule**

29    Contractor, at its sole discretion, may choose not to provide Collection or Street Sweeping services on a  
30    Holiday. In such event, Contractor shall provide Collection or Street Sweeping services on the Working Day  
31    following the Holiday. The Contractor shall provide Customers notice of Holiday-related changes in  
32    Collection schedules at least two weeks prior to the change; but in no case, shall Contractor notice Customers  
33    three weeks prior to the change.

34                    **6.1.4    Contingency Plan**

35    Contractor shall submit to City, on or before the Commencement Date, a written contingency plan  
36    demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted  
37    service during mechanical breakdowns, and in case of natural disaster or other emergencies.

1     **6.2     Collection Standards**

2             **6.2.1     Servicing Containers**

3     Contractor shall pick up and return each Container to the location where the Occupant properly placed the  
4     Container for Collection. Contractor shall place the Containers upright with lids properly secured. The City  
5     may levy fines for repeat occurrences of Container misplacement in accordance with Section 14.4 of this  
6     Agreement.

7     Contractor shall use due care when handling Containers. Contractor shall not throw, roughly handle, damage,  
8     or break Containers.

9     Contractor, at the request of Customers, shall provide special services including: unlocking Containers;  
10    accessing Container enclosures with a key; or pulling or pushing Containers to the Collection vehicle.  
11    Contractor shall Charge Customers for extra services at Rates not to exceed City-Approved Maximum  
12    Service Rates.

13            **6.2.2     Allocation of City Materials**

14    Mixed Materials, Recyclable Materials, and Organic Materials Collected in the City, which are combined with  
15    materials collected from other jurisdictions, shall be allocated by Contractor to the City's Collection program  
16    based on volume or Tonnage using a method approved by the City.

17            **6.2.3     Instructions to Customer**

18    Contractor shall instruct Customers as to any preparation of Mixed Materials, Recyclable Materials, or  
19    Organic Materials and the proper placement of Containers. If Customers are not adhering to Contractor's  
20    instructions, Contractor shall notify such Customers. In cases of extreme or repeated failure to comply with  
21    the instructions, Contractor may decline to pick-up the Mixed Materials, Recyclable Materials, or Organic  
22    Materials provided that Contractor leaves a tag at least two inches by six inches (2" x 6") in size on the  
23    Container indicating the reason for refusing to Collect the material. Such tag shall also identify the steps  
24    Generator must take to recommence Collection service. If Recyclable Materials or Organic Materials set out  
25    for Collection contain 10% or 1% respectively or greater by volume of Mixed Materials, Contractor shall  
26    Collect materials and leave a warning notice for the Customer. Contractor shall report to the City upon  
27    request any warning notices issued to Customers, and may terminate Recyclable Materials and Organic  
28    Materials Collection service if, after 10 Business Days, high contamination levels continue, unless instructed  
29    otherwise by the City.

30            **6.2.4     Overages**

31    Contractor shall direct its employees not to Collect Mixed Materials beyond each Customer's subscription  
32    level of service unless the business office of Contractor has granted prior authorization to make such  
33    Collection.

34            **6.2.5     Care of Private Property**

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

38    City shall refer Complaints about damage to private property to Contractor. Contractor shall repair all  
39    damage to private property caused by its employees. Contractor shall repair any damages to public property  
40    caused by its employees to its previous condition. In the event of repeat occurrences of property damage, the  
41    Contractor shall pay Liquidated Damages in accordance with Section 14.4.

1           **6.2.6 Litter Abatement**

2                   **6.2.6.1 Minimization of Spills**

3 Contractor shall use due care to prevent vehicle oil and vehicle fuel from being spilled or scattered during  
4 Collection, Transportation, and Street Sweeping operations. If any materials are spilled or scattered during  
5 Collection, Transportation, or Street Sweeping operations, the Contractor shall promptly clean up all spilled  
6 and scattered materials.

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

10 If Contractor fails to perform some or all of the requirements described in this Section, the Contractor shall  
11 pay the City Liquidated Damages as described in Section 14.4.

12                   **6.2.6.2 Clean-Up**

13 During Collection, the Contractor shall clean-up litter in the immediate vicinity of any Container storage area  
14 (including the areas where Containers are delivered for Collection) whether or not Contractor has caused the  
15 litter. Each Collection vehicle shall carry protective gloves, a broom, and shovel at all times for cleaning up  
16 litter. Cat-litter or similar absorbent material shall be used by Contractor for cleaning up liquid spills. The  
17 Contractor shall discuss instances of repeated spillage not caused by it with the Customer of the Premise  
18 where spillage occurs, and Contractor shall report such instances to City. If the Contractor has attempted to  
19 have a Customer stop creating spillage but is unsuccessful, the City will attempt to rectify such situation with  
20 the Customer.

21                   **6.2.6.3 Covering of Loads**

22 Contractor shall cover all open Drop Boxes, with a City-approved cover, at the pickup location before  
23 Transporting materials to an Approved Disposal Site, Approved Recyclable Materials Processing Site or  
24 Approved Organic Materials Processing Site.

25           **6.2.7 Noise**

26 All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal,  
27 state, county and City noise level regulations. Contractor will promptly resolve any Complaints of noise  
28 during the morning or evening hours of the day to the satisfaction of the City. In the event of repeat  
29 occurrences of noise levels in excess of seventy-five (75) db(A), the Contractor shall pay Liquidated Damages  
30 in accordance with Section 14.4.

31   **6.3 Vehicle Requirements**

32           **6.3.1 General**

33 Contractor shall provide a fleet of Collection and Street-Sweeping vehicles sufficient in number and capacity  
34 to efficiently perform the work required by the Agreement in strict accordance with its terms. Contractor  
35 shall have available sufficient back-up vehicles for each type of Collection and Street-Sweeping vehicle used  
36 (e.g., side loader, front loader, roll-off vehicles, and street sweeper) to respond to Complaints and  
37 emergencies. Contractor shall own or lease vehicles.

38 Contractor shall confer with the City before purchasing any new Collection and Street-Sweeping vehicles  
39 during the Term. Contractor shall submit the specifications for all vehicles to the City for review and  
40 approval before acquisition.

1           **6.3.2 Specifications**

2 Contractor shall register all vehicles with the California Department of Motor Vehicles. All such vehicles shall  
3 have watertight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall comply with  
4 California Environmental Protection Agency (EPA) noise emission and air quality regulations and other  
5 applicable noise control regulations.

6 Collection vehicles shall comply with the State of California Air Resources Control Board regulations  
7 requiring the implementation of "Diesel Particulate Matter Control Measure for On-Road Heavy-Duty  
8 Residential and Commercial Solid Waste Collection Vehicle Diesel Engines."

9 Contractor intends to use "split body" vehicles in its Collection services and takes full responsibility for the  
10 performance of such vehicles, including any problems relating to load balancing. Contractor shall not be  
11 reimbursed and Contractor's Compensation shall not be increased for labor-related or vehicle-related cost  
12 increases if the split-body Collection Vehicles result in lower productivity levels than Contractor anticipated  
13 at the time of its proposal to the City or other unanticipated operational conditions.

14           **6.3.3 Vehicle Identification**

15 Contractor's name, local telephone number, and a unique vehicle identification number for each vehicle shall  
16 be prominently displayed on all vehicles, in letters and numbers that are a minimum of 4 inches high.

17 Contractor shall not place the City's logo on its vehicles. Contractor shall not use any Collection vehicles or  
18 backup Collection vehicles identified for use in the City in any other jurisdiction without prior approval from  
19 the City.

20           **6.3.4 Inventory**

21 Contractor shall furnish sufficient equipment to provide all Franchise Services required by this Agreement.  
22 Contractor shall furnish the City a written inventory of all vehicles used in providing service, and shall update  
23 the inventory report annually. The inventory shall list all vehicles by manufacturer, ID number, date of  
24 acquisition, type, capacity, decibel rating, average weight of load, and average loaded axle weights.

25           **6.3.5 Cleaning and Maintenance**

26                   **6.3.5.1 General**

27 Contractor shall maintain all of its properties, facilities, and equipment in a safe, neat, clean and operable  
28 condition at all times.

29                   **6.3.5.2 Cleaning**

30 Collection vehicles shall be thoroughly washed and thoroughly steam cleaned a minimum of one time per  
31 week, or more frequently if necessary, to present a clean appearance of the exterior and interior compartment  
32 of the vehicle. City may inspect vehicles at any time to determine compliance with sanitation requirements.  
33 Contractor shall make vehicles available to the Sonoma County Health Department for inspection, at any  
34 frequency it requests.

35                   **6.3.5.3 Maintenance**

36 Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are  
37 not operating properly shall be taken out of service until they are repaired and operate properly. Contractor  
38 shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and  
39 schedule or in accordance with California Highway Patrol standards whichever are more stringent. All  
40 vehicles shall be painted in a uniform manner that does not create a resemblance between Contractor's  
41 vehicles and City utility vehicles. Contractor shall keep accurate records of all vehicle maintenance, recorded  
42 according to date and mileage, and shall make such records available to the City upon request to the extent  
43 necessary to perform the inspections described in Section 6.8.

1                   **6.3.5.4 Repairs**

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

7                   **6.3.5.5 Storage**

8 Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance  
9 with City's applicable zoning regulations.

10                  **6.3.6 Operation**

11 Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local  
12 ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations  
13 imposed by State or local weight restrictions for vehicles and roads. Contractor shall have each Collection  
14 vehicle weighed at the Approved Disposal Site or Processing Site to determine the unloaded weight ("tare  
15 weight") of the vehicle, and the total loaded weight of each load delivered to the Approved Disposal Site or  
16 Processing Site.

17 On a monthly basis, Contractor shall report any and all loads in excess of the manufacturer's  
18 recommendations or limitations imposed by State or local weight restrictions for vehicles and roads.

19 If the City determines too many instances of overloaded vehicles, the City may require Contractor to install  
20 on-board scales. In the event the City exercises this right, Contractor shall be responsible for installing scales  
21 at its own expense.

22                  **6.4 Container Requirements**

23                  **6.4.1 General**

24 Contractor shall provide all Carts, Bins, and Drop Boxes to all Customers as part of its Collection services.  
25 Contractor-provided Containers shall be designed and constructed to be watertight and prevent the leakage  
26 of liquids. All Containers with a capacity of one cubic yard or more shall meet applicable federal, state, and  
27 local regulations for Bin safety and be covered with attached lids. All Carts shall be manufactured by injection  
28 or rotational molding methods and shall meet the Cart design and performance requirements provided in  
29 Exhibit 8. Contractor shall obtain City's written approval of Cart colors before acquisition. The useful life of  
30 Carts, Bins, and Drop Boxes provided to Customers shall be or longer than 15 years of the date first placed in  
31 service. All Containers, except Carts, shall be painted the Contractor's standard color, and as approved by the  
32 City. All Containers shall prominently be labeled with the Contractor's name and local phone number, and  
33 indicate what can and can be placed in the Containers (i.e., "recyclable materials, organic materials, mixed  
34 materials); Carts labeling shall be molded, hot stamped, or displayed using an adhesive label. With prior  
35 written approval by the City, labeling for Carts may be modified.

36                  **6.4.2 Cleaning, Painting, and Maintenance**

37 All Containers shall be maintained in a safe, serviceable, and functional condition. Contractor shall steam  
38 clean and repaint all Containers, except Carts, at least every two years, or more frequently, to present a clean  
39 appearance. Customers using Carts shall be responsible for cleaning such Carts. If any Container is impacted  
40 by graffiti, Contractor shall remedy the situation within 48 hours.

41                  **6.4.3 Repair and Replacement**

42 Contractor shall repair or replace all Containers damaged by Collection operations within a one-week period.

1 If the repair or replacement cannot be completed within one week, the Contractor shall notify Customer and  
2 a Container of the same size or larger shall be made available until the proper Container can be replaced.

3 At no additional cost, Contractor shall replace Customer Carts that have been stolen or damaged once per  
4 year. Contractor shall allow Customer to exchange Containers for a Container of a different size at no  
5 additional cost once per year. Contractor shall charge Customers for additional Cart replacements at Rates  
6 not to exceed City-Approved Maximum Service Rates.

7 **6.4.4 City's Rights to Containers**

8 Upon expiration or early termination of this Agreement, all Carts, Bins, Compactors and Drop Boxes (for  
9 permanent Customers) acquired by or leased by Contractor and put into service at Customer's Premises  
10 before the first (1st) anniversary of the Commencement Date shall become property of the City. All Carts,  
11 Bins, Containers, and Drop Boxes (for permanent Customers) purchased or leased and put into service at  
12 Customers' Premises on or after the first (1st) anniversary of the Commencement Date that have not been  
13 fully depreciated shall be available to the City, at the City's option, at their net book value. Contractor and  
14 City shall agree on the depreciation method and period of depreciation to be used for Carts, Bins and Drop  
15 Boxes (for permanent Customers) purchased or leased and put into service on or after the first (1st)  
16 anniversary of the Commencement Date and such agreement shall occur on or before the date new  
17 Containers are purchased or leased.

18 At its sole discretion, the City may elect not to exercise its rights with regards to this Section and, in such  
19 case, the Containers shall become the property of the Contractor upon the expiration date of this Agreement  
20 or date of its earlier termination of this Agreement. In such case, Contractor shall be responsible for  
21 removing all Containers in service from Premises and re-using or Recycling such Containers.

22 **6.5 Personnel**

23 **6.5.1 General**

24 Contractor shall furnish such qualified drivers, mechanical, supervisory, Customer service, clerical and other  
25 personnel as may be necessary to provide the services required by this Agreement in a safe and efficient  
26 manner.

27 **6.5.2 Approval of Management**

28 Contractor recognizes the importance of establishing a successful relationship between its management and  
29 City staff. Therefore, the Contractor will allow the City the right to approve the selection of the Contractor's  
30 general manager, customer service manager, and operations manager, provided that the City's approval is not  
31 unreasonably withheld. The City shall have the right to request the Contractor to replace its general manager,  
32 customer service manager, and/or operations manager, if Liquidated Damages levied for events listed in  
33 Section 14.4, with the exception of damages levied for Collection reliability and Collection quality events  
34 items 1, 3, and 9 of Section 14.4, in any three month period exceed \$2,000 or if Liquidated Damages levied  
35 for Collection reliability and Collection quality events items 1, 3, and 9 of Section 14.4 in any three month  
36 period exceed \$45,000. If replacement of the general manager, customer service manager, and/or operations  
37 manager is requested by the City, the Contractor shall provide an interim manager and have 90 calendar days  
38 to replace the manager and shall seek the City's approval of the replacement manager prior to hiring such  
39 Person.

40 **6.5.3 Provision of Field Supervision**

41 Contractor shall designate at least one qualified employee as supervisor of field operations. The field  
42 supervisor will devote at least 50% of his or her time in the field checking on Collection and Street Sweeping  
43 operations, including responding to Complaints.

1           **6.5.4 Driver Qualifications**

2 All drivers shall be trained and qualified in the operation of Collection or Street Sweeping vehicles, and must  
3 have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.  
4 Contractor shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program"  
5 to monitor its drivers for safety.

6           **6.5.5 Customer Service Representative Training**

7 Customer service representatives shall be trained on specific City service requirements, a minimum of once  
8 per quarter. A City information sheet shall be provided to each customer service representative for easy  
9 reference of City requirements and general Customer needs. The information sheet, training agenda, and  
10 associated documentation shall be forwarded to the City each quarter after the training.

11           **6.5.6 Safety Training**

12 Contractor shall provide suitable operational and safety training for all of its employees who operate  
13 Collection or Street Sweeping vehicles or equipment or who are otherwise directly involved in such  
14 Collection, Disposal, or Processing. Contractor shall train its employees involved in Collection to identify,  
15 and not to Collect, Hazardous Waste or Infectious Waste. Upon the City's request, Contractor shall provide a  
16 copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its  
17 trainings.

18           **6.5.7 No Gratuities**

19 Contractor shall not permit its employees to demand or solicit, directly or indirectly, any additional  
20 compensation or gratuity from members of the public for Collection or Street Sweeping services.

21           **6.5.8 Employee Conduct and Courtesy**

22 Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct  
23 themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy, shall  
24 prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as  
25 quietly as possible. If any employee is found not to be courteous or not to be performing services in the  
26 manner required by this Agreement, Contractor shall take all appropriate corrective measures. The City may  
27 require Contractor to reassign an employee, if the employee has conducted himself or herself inconsistently  
28 with the terms of this Agreement.

29           **6.5.9 Uniforms**

30 While performing services under this Agreement, all of the Contractor's employees performing field service  
31 shall be dressed in clean uniforms and shall wear badges or patches that include the employee's name and/or  
32 employee number, and Contractor's name, as approved by the City. Uniforms shall include a highly visible  
33 piece of reflective material measuring at least one square foot.

34 **6.6 Hazardous Waste Inspection and Handling**

35           **6.6.1 Inspection Program and Training**

36 Contractor shall develop a load inspection program that includes the following components: (i) Personnel and  
37 training; (ii) Load checking activities; (iii) Management of wastes; and (iv) Record keeping and emergency  
38 procedures.

39 Contractor's load checking personnel, including its Collection and Street Sweeping vehicle drivers, shall be  
40 trained in (i) the effects of Hazardous Substances on human health and the environment; (ii) identification of  
41 prohibited materials; and (iii) emergency notification and response procedures. Collection vehicle drivers shall  
42 inspect Containers before Collection when practical.

1                   **6.6.2 Response to Hazardous Waste Identified During Collection**

2 If Contractor determines that material placed in any Container for Collection is Hazardous Waste, Designated  
3 Waste, or other material that may not legally be Disposed of at an Approved Disposal Site or handled at a  
4 Processing Site, or presents a hazard to Contractor's employees, the Contractor shall have the right to refuse  
5 to accept such material. The Generator shall be contacted by the Contractor and requested to arrange proper  
6 Disposal. If the Generator cannot be reached immediately, the Contractor shall, before leaving the Premises,  
7 leave a tag at least two inches by six inches (2" x 6") in size, which indicates the reason for refusing to Collect  
8 the material and lists the phone number for the Sonoma County Household Toxic Waste Facility. The  
9 Contractor's environmental technician shall be notified to handle the issue with the Generator. The  
10 Contractor's environmental technician shall be notified by the Contractor and shall guide the Generator to  
11 safely containerizing the Hazardous Waste and shall explain the Generator's options for proper disposition of  
12 such material. Under no circumstances shall Contractor's employees knowingly Collect Hazardous Waste or  
13 remove unsafe or poorly containerized Hazardous Waste from a Collection Container.

14 If Hazardous Waste is found in a Collection Container; Collection area, or Street Sweeping area, that could  
15 possibly result in imminent danger to people or property, the Contractor shall immediately notify the City's  
16 Fire Department using the 911 emergency number. The Contractor shall notify the City of any Hazardous  
17 Waste identified in Containers or left at any Premises within 24 hours of identification of such material.

18                   **6.6.3 Response to Hazardous Waste Identified At Disposal Site or Processing Site**

19 If materials Collected by Contractor are delivered to a facility owned by Contractor for purposes of transfer,  
20 Processing, or Disposal, load checkers and equipment operators at such facility shall conduct inspections in  
21 areas where Collection vehicles unload Mixed Materials, Recyclable Materials, or Organic Materials to identify  
22 Hazardous Wastes. Facility personnel shall remove these materials for storage in approved, on-site, hazardous  
23 materials storage Container(s). Contractor shall make reasonable efforts to identify and notify the Generator.  
24 Contractor shall arrange for removal of the Hazardous Wastes by permitted haulers in accordance with  
25 Applicable Laws and regulatory requirements.

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

31                   **6.6.4 Regulations and Record Keeping**

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

36                   **6.7 Non-Discrimination**

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



1    **6.8     Communication and Cooperation with City**

2            **6.8.1    Communications**

3    If requested, the Contractor shall meet with the City or its agent at least once each month to discuss service  
4    issues. The Contractor's general manager shall have e-mail capabilities to enable the City and the Contractor's  
5    general manager to communicate via e-mail.

6            **6.8.2    Inspection by City**

7    The City or its designated representatives shall have the right to observe and review Contractor operations  
8    and Processing Facilities and enter Premises for the purposes of such observation and review during  
9    reasonable hours without advance notice.

10           **6.8.3   Cooperate with City-Initiated Studies**

11    Contractor shall cooperate with and assist the City or its agent with performance of City-initiated studies of  
12    Mixed Materials, Recyclable Materials, and Organic Materials such as, but not limited to, waste  
13    characterization and composition studies.

14    **6.9     Equipment Yard and Office Facilities**

15    Contractor shall maintain a facility in the City for the purposes of staging and maintaining Collection vehicles  
16    and equipment and providing office space for some of its personnel.

17    **6.10    Recycling and Applicable Law**

18    Contractor shall develop and maintain Recycling practices that comply with the requirements of California  
19    Assembly Bill (AB) 341. In addition, Contractor shall modify its existing Collection, Transportation,  
20    Processing and Disposal practices and/or develop new Collection, Transportation, Processing and Disposal  
21    practices as necessary in order to comply with the requirements of any new Applicable Law that may be  
22    enacted, issued or amended during the Term of this Agreement.

23    **SECTION 7 – STREET SWEEPING**

24    **7.1     General**

25            **7.1.1    Requirements**

26    Contractor shall sweep and wash all City streets and parking lots identified in Section 7.3 and as frequently as  
27    specified in Section 7.3. The Street Sweeping schedule and frequency is subject to revision by the City. The  
28    City shall provide the Contractor with 60 days' notice of any significant changes in the schedule or frequency  
29    of Street Sweeping. If the City exercises its right to revise the Street Sweeping schedule or frequency, the  
30    change shall be made in accordance with the procedures in Section 4.5.

31            The Contractor shall be responsible for obtaining all permits necessary for Street Sweeping services performed  
32    in accordance with the Franchise Agreement, and shall assume liability for any pollution issues that may result from  
33    washing services provided by Contractor and spills upon City streets resulting from Contractor activities, including spills  
34    related to fuel, engine, transmission oil, drive-train oil, and hydraulic fluids. The Contractor shall provide a Best  
35    Management Plan (BMP) for pollution prevention and control.

36            **7.1.2    Equipment**

37    Contractor shall supply Street Sweeping equipment, including all parts and accessories and shall be solely  
38    responsible for its proper license, maintenance, and repairs of the Street Sweeping vehicle as described in  
39    Section 6.3. Street Sweeping vehicles must be equipped with an efficient dust control system. The City may  
40    conduct random checks to ensure compliance.

1 **7.2 Performance Standards for Sweeping and Washing Activities**

2 **7.2.1 General**

3 Street Sweeping will be a year-round activity. Sweeping will be accomplished with a self-propelled rubber-  
4 tired water mist vacuum and broom type sweeper. The sweep will be operated at a speed which will provide  
5 for a timely operation but not so fast so as to leave a noticeable trail of debris behind the sweeper. The  
6 general practice is to sweep only those sections of the pavement surface that are dirty. Normally, this means  
7 sweeping only along the gutter or pavement edge where no gutter exists, cleaning one swath along each curb  
8 to effectively remove street dirt and debris. The sweeper will normally be run close enough to the curb to  
9 allow the gutter broom to sweep all of the gutter dirt and debris out to the main vacuum and broom. To take  
10 advantage of time when parking and traffic are lightest, sweepers may be operated in two shifts with  
11 permission of the City.

12 **7.2.2 Filling Sweeper with Water**

13 Locations to fill sweeper will be designated by the City. Opening and closing procedures will also be as  
14 approved by the City. Contractor shall pay the normal and prevailing rates for water in accordance with  
15 applicable provisions of the City Ordinance, including Title 15 Water and Sewage, and applicable rate setting  
16 resolutions approved by City Council.

17 **7.2.3 City Street Cleaning/Washing**

18 City Street cleaning/washing will be conducted with a self-propelled rubber tired high pressure/jet pressure  
19 washer unit with a minimum water storage capacity of 500 gallons. The minimum pressure will be 500 psi of  
20 pressure at the spray nozzles.

21 Washing will consist of flushing with water only. The operation will start at the centerline or face of median  
22 of the street and work outward towards the edge of paving or the curb and gutter. The Contractor may use  
23 one or more units working in tandem on the wider streets.

24 The washing unit will be used in conjunction with the sweeper to flush the street with water for thorough  
25 cleaning. The washer unit will follow behind the sweeper flushing islands and gutters to remove remaining  
26 dirt and debris. The washer operator will use the same procedures for hydrant usage as described in the  
27 sweeper section. In the event temperatures would fall bellowing freezing, washer unit will be put on hold until  
28 temperatures increase sufficiently to prevent the formation of ice on the street surface.

29 **7.2.4 Breakdown**

30 In the event mechanical problems develop while sweeping or cleaning that will prevent completion of the  
31 daily operation, the supervisor will immediately notify the City. If any hydraulic fluids or oils are released onto  
32 the street, the supervisor will inspect the problem and arrange for immediate clean up. If in the opinion of the  
33 supervisor immediate containment is required, the supervisor will contact the City of Petaluma Fire  
34 Department hazmat unit.

35 **7.2.5 Daily Work Logs**

36 At the end of the day or shift, the operator will fill out a daily work log which will be provided to the City  
37 upon request. The log will include, but is not limited to the following items:

38 **7.2.5.1** Activity description.

39 **7.2.5.2** Date started and completed with times in A.M. or P.M.

40 **7.2.5.3** Job description.

1                   7.2.5.4   Miles swept.

2                   7.2.5.5   Signature.

3   **7.3     Schedule for Sweeping and Washing**

4           **7.3.1   Residential/Commercial Streets**

5                   7.3.1.1   Street Sweeping Activities

6                           7.3.1.1.1   From November 1 through February 28, Residential/Commercial  
7 Street Sweeping shall be conducted weekly on the day following normal Collection activities. In addition, no  
8 less than every other week, Contractor shall provide a vehicle and two-man leaf collection crew to precede  
9 the street sweeper. The leaf collection crew shall be responsible for collecting leaves from the street gutters.

10                           7.3.1.1.2   From March 1 through October 31, Residential/Commercial Street  
11 Sweeping shall be conducted every other week on the day following normal Collection activities.

12                   7.3.1.2   Washing Activities

13 Contractor is not required to wash Residential or Commercial streets.

14           **7.3.2   Arterial and Collector Streets**

15                   7.3.2.1   Street Sweeping Activities

16 Sweeping will be conducted on a once a week cycle on arterial and collector streets listed by the City.

17                   7.3.2.2   Washing Activities

18 Contractor is to wash arterial and collector streets once every three months.

19           **7.3.3   Parking Lots**

20                   7.3.3.1   Sweeping of the following parking lots shall be conducted weekly:

21                           7.3.3.1.1   Park and Ride Lot at Library

22                           7.3.3.1.2   City Corp Yard

23                   7.3.3.2   Sweeping of the following parking lots shall be conducted every other week:

24                           7.3.3.2.1   Petaluma Community Center

25                           7.3.3.2.2   Water Field Office

26                           7.3.3.2.3   Airport Drive Parking Lot

27                           7.3.3.2.4   Prince Park

28                           7.3.3.2.5   Police Department

29                   7.3.3.3   Sweeping of the following parking lots shall be conducted on the first Working  
30 Day following the July 4 holiday:

- 1                           7.3.3.3.1   Park and Ride Lot at Library
- 2                           7.3.3.3.2   Petaluma Community Center
- 3                           7.3.3.3.3   Airport Drive Parking Lot
- 4                           7.3.3.3.4   Prince Park
- 5                           7.3.3.3.5   City Hall Parking Lots

6                   **7.3.3.4   Washing Activities**

7 Contractor is not required to wash parking lots.

8                   **7.3.4   Downtown District**

9                   **7.3.4.1**   Sweeping of streets and alleys in the downtown district will be conducted daily. In  
10 addition, Street Sweeping will also be conducted as soon as possible after special events or functions  
11 described in Section 5.8 of this Agreement.

12                   **7.3.4.2**   Operations will be scheduled to begin after heavy p.m. traffic subsides and be  
13 completed before heavy a.m. commuter traffic develops.

14                   **7.3.4.3   Washing activities**

15                   **7.3.4.3.1**   Washing will be conducted twice every month in the downtown  
16 district as per the enclosed location map.

17                   **7.3.4.3.2**   Power washing and/or steam cleaning of the concourse (which is the  
18 paved alleyway beginning at the Keller Street parking garage and cuts diagonally across Kentucky Street and  
19 through the Putnam Plaza and ends at Petaluma Boulevard) the Friday before the Butter and Eggs Festival  
20 held the last Saturday in April and the Saturday before the Antiques Fair held the last Sunday in September,  
21 where the power washing service or steam cleaning service shall result in a clean and serviceable condition of  
22 the paved alleyway.

23                   **SECTION 8 – PROCESSING, DISPOSAL AND DIVERSION STANDARDS**

24                   **8.1   Recyclable Materials Processing**

25                   **8.1.1   Processing**

26 Contractor agrees to Transport and deliver all Source Separated Recyclable Materials it Collects in the City to  
27 the Approved Recyclable Materials Processing Site. Residue from the Recyclable Materials shall be Disposed  
28 of by Contractor at the Approved Disposal Site. Contractor shall secure sufficient capacity to Process  
29 Recyclable Materials Collected under this Agreement. Contractor shall provide the City, upon request, with  
30 documentation demonstrating availability of such capacity. All costs associated with Transporting to and  
31 Processing Recyclable Materials at the Approved Recyclable Materials Processing Site shall be paid by  
32 Contractor.

33 Contractor, or its Subcontractor, shall keep all existing permits and approvals necessary for use of the  
34 Approved Recyclable Materials Processing Site in full regulatory compliance. Contractor shall, upon request,  
35 provide copies of notices of violation or permits to the City.

1 If Contractor desires to use a Recyclable Materials Processing Site that is different than the Approved  
2 Recyclable Materials Processing Site, it shall request written approval from the City Manager 60 days prior to  
3 use of the site and obtain the City's written approval no later than 10 days prior to use of the site. Contractor  
4 shall not be compensated for paying any increased Transportation and Processing costs associated with the  
5 use of Processing Site(s) different from the Approved Recyclable Materials Processing Site.

6 If Contractor is unable to use the Approved Recyclable Materials Processing Site due to an emergency or  
7 sudden unforeseen closure of the Approved Recyclable Materials Processing Site(s), Contractor may use an  
8 alternative Processing Site provided that the Contractor provides oral and written notice to the City within 24  
9 hours of use of an alternative Processing Site. The written notice shall include a description of the reasons the  
10 Approved Recyclable Materials Processing Site(s) is not feasible, and the period of time Contractor proposes  
11 to use the alternative Processing Site. Contractor shall receive the City's written approval to use the alternative  
12 Processing Site within 24 hours of the City's receipt of the Contractor's written notice. Contractor shall not  
13 be compensated for paying any increased Transportation and Processing costs associated with the use of  
14 Processing Site(s) different from the Approved Recyclable Materials Processing Site.

15 The City reserves the right to direct Contractor to Transport and deliver all Recyclable Materials Collected  
16 pursuant to this Agreement to a Recyclable Materials Processing Site other than the Approved Recyclable  
17 Materials Processing Site. If the City exercises its right under this provision and specifies use of a Recyclable  
18 Materials Processing Site that is different from the Approved Recyclable Materials Processing Site, the City  
19 shall provide written notice to Contractor. Contractor shall then report to the City any differences in the  
20 costs of providing service from the change in site -- as a result, for example, of a decrease the costs of  
21 transportation or a higher tipping fee -- and the City may then confirm its decision to change the site or  
22 rescind it. If the City confirms the change in site, then Maximum Service Rates shall be adjusted  
23 appropriately to accommodate the differences in costs of providing services.

#### 24 **8.1.2 Transfer**

25 Contractor may Transport Recyclable Materials to a transfer station where the materials will be unloaded  
26 from Collection vehicles and loaded into large-capacity vehicles and Transported to an Approved Recyclable  
27 Materials Processing Site. If the Contractor is unable to do so then the Contractor shall be responsible for  
28 making other Transportation arrangements. In such event, Contractor shall not be compensated for any  
29 additional costs. If the Contractor plans to change its transfer method, Contractor shall obtain written  
30 approval from the City prior to making the change. The City's approval shall approve the transfer method  
31 and the facility(ies) Contractor proposes to use.

#### 32 **8.1.3 Marketing**

33 Contractor, or its Subcontractor, shall provide proof to the City that all Recyclable Materials Collected are  
34 marketed for Recycling or re-use in such a manner that materials shall be considered as Diverted in  
35 accordance with the State regulations established by the Act. All residual material from the Processing  
36 activities that is not marketed for use shall be accounted for as Disposal Tonnage at a permitted Disposal Site.  
37 No Recyclable Materials shall be Transported to a domestic or foreign location if Disposal of such material is  
38 its intended use.

39 Upon City request, Contractor, or its Subcontractor, shall provide City with a list of broker/buyers it uses  
40 each quarter. City may audit one broker or buyer per month to confirm that materials are being Recycled. If  
41 Contractor becomes aware that a broker or buyer has illegally handled or Disposed of material generated by  
42 the City or elsewhere, Contractor shall immediately inform the City and terminate its contract or working  
43 relationship with such party immediately.

#### 44 **8.1.4 Disposal of Recyclable Materials Prohibited**

45 Recyclable Materials may not be Disposed of in lieu of Recycling the material, without the expressed written

1 approval of the City. If Contractor believes that it cannot Divert the Recyclable Material from Disposal, then  
2 it shall prepare a written request for approval to Dispose of such material. Such request shall contain the basis  
3 for its belief, describe the Contractor's efforts to arrange for the Diversion from Disposal of such material,  
4 the period required for such Disposal, the incremental costs or cost savings resulting from such Disposal, and  
5 any additional information supporting the Contractor's request. The City shall consider the Contractor's  
6 request and inform Contractor in writing of its decision within 30 calendar days.

7 **8.2 Organic Materials Processing**

8 **8.2.1 General**

9 Contractor shall Transport all Organic Materials Collected in the City to the Approved Organic Materials  
10 Processing Site. Contractor shall pay all costs associated with transfer (if applicable), Transporting,  
11 Processing, Composting and marketing Organic Materials. All Organic Materials shall be Processed for use as  
12 Compost, mulch, or soil amendment and none shall be deposited for Disposal. Residue from the Organic  
13 Materials Processing and Composting activities shall be Disposed of at the Approved Disposal Site.

14 **8.2.2 Processing Arrangements**

15 Contractor shall be solely responsible for guaranteeing sufficient capacity at the Approved Organic Materials  
16 Processing Site to Process, Compost, and market all Organic Materials Collected by Contractor under this  
17 Agreement throughout the Term of the Agreement. The Owner and Operator of the Approved Organic  
18 Materials Processing Site, if different than the Contractor, shall be considered a Subcontractor to Contractor.  
19 Contractor shall cause its Approved Organic Materials Processing Site Subcontractor to Process, Compost,  
20 and market the Organic Materials. Contractor shall provide the City, upon request, with documentation from  
21 the Approved Organic Materials Processing Site Subcontractor guaranteeing and demonstrating the  
22 availability of such sufficient capacity at the Approved Organic Materials Processing Site for all Organic  
23 Materials Collected by Contractor in the City throughout the Term of this Agreement.

24 Contractor shall require its Approved Organic Materials Processing Site Subcontractor to keep all existing  
25 permits and approvals necessary for use of the Approved Organic Materials Processing Site in full regulatory  
26 compliance. Upon City request, Contractor shall obtain copies from its Approved Organic Materials  
27 Processing Site Subcontractor of facility permits and/or notices of violations and shall provide copies of such  
28 documents to the City.

29 Contractor shall observe and comply with all regulations in effect at the Approved Organic Materials  
30 Processing Site and cooperate with the operator thereof with respect to delivery of Organic Materials,  
31 including directions to unload Collection vehicles in designated areas, accommodating operations and  
32 maintenance activities, and complying with Hazardous Waste exclusion programs.

33 If Contractor is unable to use the Approved Organic Materials Processing Site due to an emergency or  
34 sudden unforeseen closure of the Approved Organic Materials Processing Site, Contractor may use an  
35 alternative Organic Materials Processing Site provided that the Contractor provides oral and written notice to  
36 the City and receives written approval from the City at least 24 hours prior to the use of an alternative  
37 Organic Materials Processing Site. The Contractor's written notice shall include a description of the reasons  
38 the Approved Organic Materials Processing Site is not feasible and the period of time Contractor proposes to  
39 use the alternative Organic Materials Processing Site.

40 Contractor may permanently change its selection of the Approved Organic Materials Processing Site  
41 following City's written approval, but Contractor's Compensation shall not be increased for any increased  
42 Transportation, Processing, and Composting costs. If Contractor elects to use an Organic Materials  
43 Processing Site that is different than the Approved Organic Materials Processing Site, it shall request written

1 approval from the City Manager 60 calendar days prior to use of the site and obtain the City's written  
2 approval no later than 10 calendar days prior to use of the site.

3 The City reserves the right to direct Contractor to Transport and deliver all Organic Materials Collected  
4 pursuant to this Agreement to an Organic Materials Processing Site other than the Approved Organic  
5 Materials Processing Site. If the City exercises its right under this provision and specifies use of an Organic  
6 Materials Processing Site that is different from the Approved Organic Materials Processing Site, the City shall  
7 provide written notice to Contractor. Contractor shall then report to the City any differences in the costs of  
8 providing service from the change in site -- as a result, for example, of a decrease the costs of transportation  
9 or a higher tipping fee -- and the City may then confirm its decision to change the site or rescind it. If the  
10 City confirms the change in site, then Maximum Service Rates shall be adjusted appropriately to  
11 accommodate the differences in costs of providing services.

### 12 8.2.3 Processing Standards

13 The following Processing standards shall be met by the Approved Organic Materials Processing Site:

14 8.2.3.1 Pre-Processing activities shall include the inspection for and removal of  
15 Hazardous Waste and glass.

16 8.2.3.2 Composting shall be accomplished by the use of recognized Composting  
17 methods, which have been demonstrated to be able to consistently produce stable, mature Compost Product  
18 that is suitable for general purpose use, similar to the U.S. Composting Council's Class 1 rating.

19 8.2.3.3 Post-Composting Processing activities shall include screening to remove plastics  
20 and other contaminants from the Compost Product.

21 8.2.3.4 The Approved Organic Materials Processing Site Owner and/or operator shall  
22 cooperate with the City or its agent(s), if the City wants to collect data, perform field work, and/or evaluate  
23 and monitor program results related to Organic Materials Collected in the City by the Contractor.

24 8.2.3.5 No portion of the Organic Materials (including source separated Food Scraps)  
25 delivered by Contractor to any Approved Organic Materials Processing Site shall be used as Alternative Daily  
26 Cover.

### 27 8.2.4 Transport

28 Contractor is responsible for Transporting Collected Organic Materials to an Approved Organic Materials  
29 Processing Site. Contractor may haul the Organic Materials in its Collection vehicles to a transfer station  
30 where the Organic Materials will be consolidated into large-capacity transfer vehicles and then Transported to  
31 the Approved Organic Materials Processing Site. If the Contractor plans to change its Transport method,  
32 Contractor shall obtain written approval from the City prior to making the change; pay all costs; and shall not  
33 be reimbursed for any additional costs. The City shall approve the Transport method and the duration the  
34 Transport method is approved to occur.

### 36 8.2.5 Compliance with Applicable Law

37 Contractor warrants throughout the Term that the Approved Organic Materials Processing Site selected by  
38 Contractor is respectively authorized and permitted to accept Organic Materials in accordance with  
39 Applicable Law and is in full compliance with Applicable Law. Contractor shall verify compliance for the  
40 Approved Organic Materials Processing Site that neither it nor its Affiliates own by contacting the local

1 enforcement agency and other regulatory agencies having jurisdiction over the Approved Organic Materials  
2 Processing Site at least quarterly.

3 **8.3 Mixed Materials Disposal**

4 **8.3.1 General**

5 Contractor shall Transport all Mixed Materials Collected in the City to an Approved Disposal Site. Contractor  
6 shall pay all costs associated with transfer (if applicable), Transporting, and Disposal of Mixed Materials. In  
7 addition, Contractor may Dispose of Residue from Recyclable Materials and Organic Materials at the  
8 Approved Disposal Site.

9 **8.3.2 Disposal Arrangements**

10 Contractor shall be solely responsible for guaranteeing sufficient capacity to Dispose all Mixed Materials  
11 Collected by Contractor under this Agreement throughout the Term of the Agreement. The Owner and  
12 operator of the Approved Disposal Site, if different than the Contractor, shall be considered a Subcontractor  
13 to Contractor. Contractor shall cause its Approved Disposal Site Subcontractor to Dispose of Mixed  
14 Materials. Contractor shall provide the City, upon request, with documentation from the Approved Disposal  
15 Site Subcontractor guaranteeing and demonstrating the availability of such sufficient capacity at the Approved  
16 Disposal Site for all Mixed Materials Collected by Contractor in the City throughout the Term of this  
17 Agreement.

18 Contractor shall require its Approved Disposal Site Subcontractor to keep all existing permits and approvals  
19 necessary for use of the Approved Disposal Site in full regulatory compliance. Upon City request, Contractor  
20 shall obtain copies from its Approved Disposal Site Subcontractor of facility permits and/or notices of  
21 violations and shall provide copies of such documents to the City.

22 Contractor shall observe and comply with all regulations in effect at the Approved Disposal Site and  
23 cooperate with the operator thereof with respect to delivery of Mixed Materials, including directions to  
24 unload Collection vehicles in designated areas, accommodating operations and maintenance activities, and  
25 complying with Hazardous Waste exclusion programs.

26 If Contractor is unable to use an Approved Disposal Site due to an emergency or sudden unforeseen closure  
27 of the Approved Disposal Site, Contractor may use an alternative Disposal Site provided that the Contractor  
28 provides verbal and written notice to the City and receives written approval from the City at least 24 hours  
29 prior to the use of an alternative Disposal Site. The Contractor's written notice shall include a description of  
30 the reasons the Approved Disposal Site is not feasible and the period of time Contractor proposes to use the  
31 alternative Disposal Site.

32 If the need to use the alternative Disposal Site is for reasons within Contractor's, or its Disposal  
33 Subcontractor's, reasonable control, Contractor's Compensation shall not be increased for any increased  
34 Transportation, transfer, and Disposal costs associated with use of the alternative Disposal Site.

35 Contractor may permanently change its selection of the Approved Disposal Site following City's written  
36 approval, but Contractor's Compensation shall not be increased for any increased Transportation, transfer,  
37 and Disposal costs. If Contractor elects to use a Disposal Site that is different than the Approved Disposal  
38 Site, it shall request written approval from the City Manager 60 calendar days prior to use of the site and  
39 obtain the City's written approval no later than 10 calendar days prior to use of the site.

40 The City reserves the right to direct Contractor to Transport and deliver all Mixed Materials Collected  
41 pursuant to this Agreement to a Disposal Site other than the Approved Disposal Site selected by the  
42 Contractor. If the City exercises its right under this provision and specifies use of a Disposal Site that is



1 different from the Contractor-selected Approved Disposal Site, the City shall provide written notice to  
2 Contractor. Contractor shall then report to the City any differences in the costs of providing service from the  
3 change in site – as a result, for example, of a decrease the costs of transportation or a higher tipping fee -- and  
4 the City may then confirm its decision to change the site or rescind it. If the City confirms the change in site,  
5 then Maximum Service Rates shall be adjusted appropriately to accommodate the differences in costs of  
6 providing services.

7 **8.3.3 Disposal Requirements**

8 The following Disposal requirements shall be met by the Approved Disposal Site:

9 **8.3.3.1** Operation, management, and maintenance of the refuse fill areas including, but  
10 not limited, to the receipt, placement, burying, and compaction of Mixed Materials in the Refuse fill areas;  
11 stockpiling, placement and compaction (if necessary) of daily cover, Alternative Daily Cover, intermediate  
12 cover, and final cover; management of fill operations with regard to fill sequencing, side slopes configuration,  
13 and working face location and configuration;

14 **8.3.3.2** Provision, operation, and maintenance of all equipment, rolling stock, and  
15 supplies necessary for operations, closure, post-closure, and environmental monitoring;

16 **8.3.3.3** Provision and operation of tippers for the purposes of unloading Collection  
17 Vehicle or transfer vehicle trailers;

18 **8.3.3.4** Proper management of dust, odors, litter, vectors, and other potential nuisances;  
19 and

20 **8.3.3.5** Operation, maintenance, and management of leachate and Landfill gas  
21 management systems, groundwater monitoring and management systems, storm water drainage and control  
22 systems, treatment facilities, buildings, on-site roadways, utilities, and any other required facility elements.

23 **8.3.4 Transport**

24 Contractor is responsible for Transporting Collected Mixed Materials to an Approved Disposal Site.  
25 Contractor may haul the Mixed Materials in its Collection vehicles to the transfer station where Mixed  
26 Materials will be consolidated into large-capacity transfer vehicles and then Transported to the Approved  
27 Disposal Site. If the Contractor plans to change its Transport method, Contractor shall obtain written  
28 approval from the City prior to making the change; pay all costs; and shall not be reimbursed for any  
29 additional costs. The City shall approve the Transport method and the duration the Transport method is  
30 approved to occur.

31 **8.3.5 Compliance with Applicable Law**

32 Contractor warrants throughout the Term that the Approved Disposal Site selected by Contractor is  
33 respectively authorized and permitted to accept and Dispose Mixed Materials in accordance with Applicable  
34 Law and is in full compliance with Applicable Law. Contractor shall verify compliance for the Approved  
35 Disposal Site that neither it nor its Affiliates own by contacting the local enforcement agency and other  
36 regulatory agencies having jurisdiction over the Approved Disposal Site at least quarterly.

37 **8.3.6 Closure and Post-Closure Obligations**

38 Contractor, or its Disposal Subcontractor shall safely manage the Disposal Site in full regulatory compliance  
39 with Applicable Law not only during normal Disposal Site operating period but also during the landfill  
40 closure and post-closure periods. Contractor acknowledges that it (or its Subcontractor) is solely responsible  
41 for: (i) the appropriate closure and post-closure activities of the landfill; and, (ii) the establishment and  
42 funding of sufficient any reserve funds to meet its obligations required by Applicable Law for the purposes of

1 providing funds for the payment of costs of closure of the landfill (or any cell within the landfill) or post-  
2 closure activities relating to the landfill. Without limitation, in no event shall the City be responsible for  
3 paying any deficiencies in such required reserves. In addition, the City shall have no responsibility to make  
4 any payments in the event that actual closure and post-closure costs relating to the landfill exceed the  
5 amounts upon which the Contractor's Disposal rate was based on and the amount reserved by the Contractor  
6 for such purposes.

7 **8.4 Diversion Standards**

8 For each year this Agreement is in effect, Contractor shall achieve the minimum Diversion Requirement as  
9 defined in Section 1 of this Agreement. If the Contractor's Diversion Level is less than the Diversion  
10 Requirement for any Agreement year, the following steps shall be followed by the City and Contractor:

11 **8.4.1 Warning**

12 The City shall issue a written warning to the Contractor within 30 calendar days of receipt of the Contractor's  
13 annual report documenting the Diversion Level for the prior Agreement year. The warning notice shall  
14 specify the amount of time (i.e., correction period) the City grants the Contractor from the date of the City's  
15 written Notice (the "Correction Period") to improve its performance and meet the Diversion Requirement or  
16 to establish that the Contractor's failure to meet the Diversion Level is excused under Section 14.6, but in no  
17 event shall the Correction Period be less than 30 days nor more than one year, but if the correction  
18 reasonably requires implementation of a new program, then the minimum Correction Period shall be 180  
19 days.

20 **8.4.2 Opportunity to Improve Performance**

21 Upon receipt of the City's written warning as set forth in Section 8.4.1 above, the Contractor shall either: (i)  
22 modify its Collection, Processing, Diversion, and public education and outreach programs (subject to the  
23 City's approval) to improve its Diversion Level or (ii) submit to the City evidence of Contractor's inability to  
24 comply with the required Diversion Level. If the former, then at the end of the correction period specified by  
25 the City, Contractor shall submit a written report to the City identifying its then-current Diversion Level and  
26 providing supporting documentation. If the City determines that the Contractor's Diversion Level equals or  
27 exceeds the Diversion Requirement, the Contractor shall continue to perform services in such a manner as to  
28 maintain or improve its Diversion Level, and the City shall waive its rights to proceed with steps outlined in  
29 Sections 8.4.3 and 8.4.4 below during the remainder of the then-current Agreement year. If the Contractor  
30 submits evidence that it is unable to meet the Diversion Level then the City shall determine in good faith if it  
31 agrees, and if it agrees, Contractor shall be excused from its failure to meet the Diversion Levels, provided,  
32 however, that Contractor shall in no event be excused from compliance with diversion levels in State or  
33 Federal Law or regulation or regulation at any level superior to that of the City of Petaluma. If the City  
34 disagrees, then Contractor may demand mediation pursuant to Section 15.6.

35 **8.4.3 Liquidated Damages**

36 If the Contractor fails to improve its Diversion Level so that it is equal to or greater than the Diversion  
37 Requirement by the end of the Correction Period specified by the City pursuant to Section 8.4.1, or after the  
38 determination by the City to reject Contractor's claims of inability to do so and, if applicable, the mediation  
39 thereof, the City may levy, and Contractor shall pay, Liquidated Damages in accordance with item number 45  
40 of Section 14.4.

41 **8.4.4 Termination of the Agreement**

42 If Contractor fails to achieve a Diversion Level that equals or exceeds the Diversion Requirement within six  
43 months of the date the City levied Liquidated Damages in accordance with Section 8.4.3 above, the failure to  
44 meet the Diversion Requirement shall be considered an event of default and the City may terminate the  
45 Agreement in accordance with Section 14.1.

1                    **SECTION 9 –CUSTOMER SERVICE, BILLING AND PUBLIC EDUCATION**

2    **9.1      Public Education**

3 Contractor’s public education program shall focus on providing information to Customers in accordance with  
4 the specific requirements described in this Section and Exhibit 6. Educational media shall include, but not be  
5 limited to: biannual newsletters, flyers, door hangers, notification tags, and direct contact. Information shall  
6 be provided to solicit feedback about the service and suggested improvements/changes, and to educate  
7 Customers about source reduction, re-use, and Recycling opportunities. Materials shall be printed on paper  
8 containing the highest levels of Recycled content material as is reasonably practical with a minimum  
9 requirement of 30% post-consumer content based on Federal standards.

10 All public education materials required in this Section and Exhibit 6 shall be printed in English and Spanish,  
11 with reference to where Spanish language materials can be obtained included as part of Contractor’s web site,  
12 made available at Contractor’s Petaluma business office, and made available for mailing to a Customer a upon  
13 request by a Customer.

14 Contractor shall allow the City to review and approve all public education materials.

15 During the Term of the Agreement, the Contractor shall employ at least one (1) full-time equivalent  
16 residential and commercial education coordinator.

17 If Contractor fails to perform some or all of the requirements of the public education program described in  
18 this Section and in Exhibit 6, the Contractor shall pay the City Liquidated Damages as described in Section  
19 14.4.

20                    **9.1.1      Residential Education Program**

21 Contractor shall perform the following public education activities throughout the Term of the Agreement:

22                    **9.1.1.1**      As necessary, Contractor’s outreach coordinator will prepare and distribute a  
23 brochure describing how to prepare Organic Materials for Collection. This brochure shall instruct Customers  
24 as to any necessary preparation of Organic Materials, such as the cutting of items, placement of materials  
25 outside a Cart (provided such material is bundled in lengths less than three feet and bundles that weigh less  
26 than 30 pounds), and the appropriate use and placement of Organic Materials Carts.

27                    **9.1.1.2**      As necessary Contractor’s Outreach Coordinator will prepare and distribute a  
28 brochure describing how to prepare Recyclable Materials for Collection. Contractor shall inform Residents as  
29 to the acceptable materials that can be included in the Recyclable Materials Carts and any common  
30 contaminants to be excluded from Collection.

31                    **9.1.1.3**      Prior to the holiday season, the Outreach Coordinator shall prepare a bill insert  
32 describing the dates, time, and places of all holiday tree Collection Drop Boxes. The same information shall  
33 also be advertised in the Press Democrat and the Argus Courier.

34                    **9.1.1.4**      Contractor’s Outreach Coordinator shall prepare and distribute a flyer describing  
35 the Residential annual clean-ups as described in Section 5.4. Public education materials for the annual clean-  
36 ups shall include preparation, printing, and mailing of a flyer announcing and describing the services and  
37 advertising in the Press Democrat and the Argus Courier.

38                    **9.1.1.5**      Contractor’s Outreach Coordinator shall visit homeowner associations or other  
39 groups to promote and explain the program throughout the Term of the Agreement, as requested by the  
40 associations or scheduled by the City.

1           **9.1.1.6**    A corrective actions notice shall be prepared and used in instances where waste  
2 Generators set out inappropriate materials prior to start-up.

3           **9.1.1.7**    School education programs to teach students about source reduction, re-use, and  
4 Recyclable Materials shall be prepared and made available to schools by Contractor's outreach coordinator.

5           **9.1.1.8**    Non-program related information on source reduction; re-use and Recyclable  
6 Materials (e.g. junk mail reduction, Household Hazardous Waste events, grass cycling, Composting, etc.) shall  
7 be made available by the outreach coordinator. This information will also be included in the "Petaluma  
8 Refuse & Recycling News" newsletter.

9           **9.1.1.9**    Contractor's outreach coordinator will annually prepare a mailing to Residents  
10 describing the Street Sweeping schedule and map.

11           **9.1.1.10**   Contractor's biannual newsletter "Petaluma Refuse & Recycling News" shall be  
12 sent to all Residential and Commercial accounts in Petaluma. The newsletter shall be reviewed and approved  
13 by City staff prior to distribution. A Spanish language version of this newsletter shall be made available  
14 electronically on the Contractor's website, and shall also be made available for pickup from Contractor's  
15 business office in the City. The Spanish language version of the newsletter shall be mailed free-of-charge to  
16 those Customers who have requested it, and Contractor shall maintain a mailing list of those Customers  
17 requesting this service.

18           **9.1.2    Commercial Education Program**

19 Contractor shall perform the following public education activities throughout the Term of the Agreement:

20           **9.1.2.1**    The outreach coordinator will prepare and distribute a Recyclable Materials  
21 resource guide to provide vendors' names, numbers and contacts for purchasing Recycled products, re-use  
22 donation locations, and other Recyclable Materials companies, to be updated annually.

23           **9.1.2.2**    Contractor's biannual newsletter "Petaluma Refuse & Recycling News" shall be  
24 sent to all Residential and Commercial accounts in Petaluma. The newsletter shall be reviewed and approved  
25 by City staff prior to distribution. A Spanish language version of this newsletter shall be made available  
26 electronically on the Contractor's website, and shall also be made available for pickup from Contractor's  
27 business office in the City. The Spanish language version of the newsletter shall be mailed free-of-charge to  
28 those Customers who have requested it, and Contractor shall maintain a mailing list of those Customers  
29 requesting this service.

30           **9.1.2.3**    A corrective actions notice shall be prepared and used in instances where waste  
31 Generators set out inappropriate materials prior to start-up.

32           **9.1.3    All Customers**

33 Contractor, through its "Petaluma Refuse and Recycling News" newsletter or other public education  
34 materials, shall educate Generators regarding proper methods of handling and Disposing of Hazardous  
35 Waste.

36           **9.2    Billing**

37           **9.2.1    General**

38 The City shall establish the maximum Rates and fees that Contractor may Charge Customers for Collection  
39 services pursuant to Section 10. Contractor shall bill all Customers and collect Billings at Rates not to exceed  
40 City-Approved Maximum Service Rates. Contractor shall not Charge Customers in excess of City-Approved

1 Maximum Service Rates and shall Charge all Customers in a consistent and uniform manner so that  
2 Contractor's Rates are the same for the same service level (e.g., the same for the type of material Collected,  
3 Container size, Collection frequency, and/or extra services).

4 The Contractor shall prepare, mail, and collect bills (or shall issue written receipts for cash payments) for  
5 Collection services provided by Contractor. The City shall have the right to review, and approve the Billing  
6 format.

7 Contractor shall make arrangements to allow its Customers to pay bills through the following means: check,  
8 cash, credit card, internet payment service, or automatic withdrawal from banking account. Contractor shall  
9 provide at least one, and preferably two, drop-off location(s) in the City where Customers may deposit their  
10 payments.

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

16 Contractor shall be responsible for collection of payment from Customers with past due accounts ("bad  
17 debt"). Contractor shall make reasonable efforts to obtain payment from delinquent accounts through  
18 issuance of late payment notices, telephone requests for payments, and assistance from collection agencies.

19 **9.2.2 Customer-Specific Billing Instructions**

20 **9.2.2.1 Single-Family and Multi-Plex Billing**

21 Bills for Single-Family and Multi-Plex service shall be mailed to Customers quarterly in advance of the  
22 provision of service. Contractor shall bill each Occupant of the individual units in the Multi-Plex Premises  
23 separately unless otherwise specified by the Owner.

24 **9.2.2.2 Multi-Family Billing**

25 Bills for Multi-Family service shall be mailed to Customers monthly in advance of the provision of service.  
26 Contractor shall bill Owner or property manager of the Multi-Family Premises.

27 **9.2.2.3 Commercial Billing**

28 Bills for Commercial Service (including permanent Drop Box and Compactor services) shall be mailed to  
29 Customers monthly in advance of the provision of service. If Commercial Customers have centralized service  
30 (in which Containers are shared by more than one Commercial Premises), Contractor shall bill one Customer  
31 for centralized services or, at the request of the Commercial Customers sharing the Containers, Contractor  
32 shall treat each Commercial Premises as a separate Customer and shall bill each Customer for service costs  
33 equal to the service Rate divided by the number of Commercial Premises sharing the service.

34 **9.2.3 Service Location Exemption and Life-Line Rates**

35 **9.2.3.1 Service Location Exemption Program**

36 Contractor shall allow for Persons that have a disability as defined by the American Disabilities Act that are  
37 Occupants of Single-Family Premises or Multi-Plex Premises to receive Collection services at a location other  
38 than Curbside at no extra Charge to the Customer. Contractor shall review all applications (which shall  
39 include statements from physicians) made by Customers to determine conformance with this exemption  
40 provision and shall grant exemptions if applicable. With regards to all requirements of this Section, the  
41 Contractor shall make reasonable accommodations with regards to Container and Collection requirements

1 (e.g., Container size and type, placement of Containers for Collection, etc.) at no additional cost to the  
2 Customer.

3 **9.2.3.2 Life-Line Rates**

4 Contractor shall review all applications from Customers requesting life-line Rates for  
5 Collection services. Such applicants shall be required to submit documentation of their then-current PG&E  
6 life-line status. If Customers demonstrate that their PG&E life-line status is current, Contractor shall Charge  
7 such Customers a Rate equal to 75 percent of Contractor's regular Rate for similar service. Contractor shall  
8 review each life-line Customer's eligibility status at least annually.

9 **9.2.4 Bill Inserts**

10 City may direct Contractor to insert mailers (which shall be a single sheet of paper no larger than 8.5 inches  
11 by 11 inches) relating to service with the Bills. The mailers shall be printed on double-sided, post-consumer  
12 content paper and shall fit in standard envelopes. Contractor also agrees to insert with the Billings, mailers  
13 describing activities of the City government. City will provide not less than 30 calendar days' notice to  
14 Contractor before the mailing date of any proposed mailing to permit Contractor to make appropriate  
15 arrangements for inclusion of the City's materials. City will provide Contractor the mailers at least 15 calendar  
16 days before the mailing date. The cost of such inserts and any additional postage shall be paid for by the City.

17 **9.2.5 Review of Billings**

18 Contractor shall review its Billings to Customers to determine (i) if the amount the Contractor is Billing each  
19 Customer is correct in terms of the level of service (i.e., frequency of Collection, size of Container, location of  
20 Container) Contractor is providing such Customer, and (ii) that all parties receiving service are invoiced for  
21 service. Contractor shall review Residential Customer accounts at least annually and Commercial Customer  
22 accounts at least every other year, unless City directs Contractor to do otherwise. Contractor shall submit to  
23 City every year, a written report of the Billing review 30 days after the end of each Rate Period, commencing  
24 in 2013. The scope of the review, the Contractor's work plan, and the format of the report (including  
25 supporting exhibits) shall be submitted to the City for approval no later than 60 days prior to commencement  
26 of the Billing review process. The City may perform this review itself or through use of an agent.

27 **9.3 Customer Service Program**

28 **9.3.1 Program Requirements**

29 **9.3.1.1 Office Location**

30 Contractor shall maintain a business office in the City. The office shall be staffed with at least one Customer  
31 Service Representative capable of accepting payments from Customers, answering service questions, changing  
32 Customer service levels, and resolving other Customer service issues. If another office located outside of the  
33 City assists with Customer service issues related to this Agreement, Contractor must ensure that telephone  
34 calls to it from locations within the City are billed to Customer as "local calls" by all telephone companies.

35 **9.3.1.2 Office Hours**

36 Contractor's Customer service office shall be open to the public from 7 a.m. to 6 p.m. Monday through  
37 Friday. The office may be closed on Saturdays, Sundays and Holidays. Contractor may modify its office hours  
38 only after requesting and receiving written approval from the City.

39 **9.3.1.3 Availability of Representatives**

40 At a minimum, Contractor shall employ two (2) full-time equivalents of Customer service supervisors and

1 Customer service representatives dedicated to serving the City and its Customers. A representative of the  
2 Contractor shall be available from 7 a.m. to 6 p.m. Monday through Friday to communicate with the public in  
3 person and by telephone. A message machine shall be available for Customers to leave messages during non-  
4 business hours. Contractor shall return calls received during non-business hours no later than noon of the  
5 following Working Day. If Contractor fails to perform some or all of the requirements described in this  
6 Section, the Contractor shall pay the City Liquidated Damages as described in Section 14.4.

7 **9.3.1.4 Telephone**

8 Contractor shall maintain a telephone system in operation at its office from 7 a.m. to 6 p.m. and shall have  
9 staff available to answer calls. Contractor shall install telephone equipment sufficient to handle the volume of  
10 calls typically experienced on the busiest days and such telephone equipment shall be capable of recording the  
11 responsiveness to call. If Persons are unable with reasonable effort to reach Contractor's office by phone, or  
12 are subject to waiting time "on hold" of more than three minutes prior to reaching a Customer service  
13 representative, City may require that Contractor install additional telephone lines or hire additional Customer  
14 service representatives. An answering machine shall record Customer calls and voice messages between 6:00  
15 p.m. and 7:00 a.m. If Contractor fails to meet the requirements described in this Section, the Contractor shall  
16 pay the City Liquidated Damages in accordance with Section 14.4.

17 **9.3.1.5 Web Site**

18 Contractor shall develop and maintain a web site describing services provided in the City that is accessible by  
19 the public. The site shall include answers to frequently asked questions, City-Approved Maximum Service  
20 Rates, Recyclable Materials and Organic Materials specifications, Collection service schedule and map, Street  
21 Sweeping service schedule and map, and other related topics. Contractor shall arrange for the City's web site  
22 to include an e-mail link to Contractor and a link to Contractor's web site. The Contractor's web site shall  
23 provide the public the ability to e-mail Contractor.

24 **9.3.1.6 Customer Satisfaction Survey**

25 The City may conduct a Customer satisfaction survey every year.

26 **9.3.1.7 Training**

27 Customer service representatives shall receive training during each quarter of the calendar year on City-  
28 specific service requirements. During the training, a City-specific Collection service and Rate information  
29 sheet, training agenda, and associated documentation shall be provided to employees.

30 **9.3.2 Service Complaints**

31 Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable  
32 resolution of, all Complaints. Contractor shall record in a separate log all Complaints, noting the name and  
33 address of complainant, date and time of Complaint, nature of Complaint, and nature and date of resolution.  
34 The Contractor shall retain this Complaint log for the Term. In addition, Contractor shall compile a summary  
35 statistical table of the Complaint log, satisfactory to the City, and submit the table to City each month.

36 Contractor shall respond to all Complaints received within 24 hours, weekends and Holidays excluded. In  
37 particular, if a Complaint involves a failure to Collect Mixed Materials, Recyclable Materials, or Organic  
38 Materials from a Premises in the City, Contractor shall Collect the material in question within 24 hours of  
39 receipt of the Complaint, provided that Generator has properly placed materials for Collection in accordance

1 with the City's Municipal Code. Contractor shall have e-mail capabilities (accessible through the Contractor's  
2 website) to enable Persons to communicate Complaints to Contractor via e-mail.

3 **9.4 Provision of Emergency Services**

4 Contractor shall provide emergency services at the City's request in the event of major accidents, disruptions,  
5 or natural calamities. Emergency services may include, but are not limited to, assistance handling salvaged  
6 materials, Processing, Composting, or Recycling materials, or Disposing Solid Waste following a major  
7 accident, disruption, or natural calamity. Contractor shall be capable of providing emergency services within  
8 24 hours of notification by the City or as soon thereafter as is reasonably practical in light of the  
9 circumstances. If Contractor cannot provide the requested emergency services, the City shall have the right to  
10 take possession of the Contractor's equipment for the purposes of providing emergency services.

11 **SECTION 10 – CONTRACTOR'S COMPENSATION**

12 **10.1 General**

13 Contractor's Compensation provided for in this Section shall be the full, entire, and complete compensation  
14 due to Contractor for all labor, equipment, materials, and supplies, taxes, insurance, bonds, overhead,  
15 Disposal, profit, and all other things necessary to perform all the services required by this Agreement in the  
16 manner and at the times prescribed.

17 Contractor will not look to City for payment of any sums under this Agreement. Contractor will perform the  
18 responsibilities and duties described in this Agreement in consideration of the right to Charge and Collect  
19 from Customers for services rendered at rates fixed by City from time to time.

20 **10.2 Adjustments to City-Approved Maximum Service Rates**

21 **10.2.1 General**

22 Beginning on July 1, 2013, and annually thereafter, Contractor shall, subject to compliance with all provisions  
23 of this Section 10, shall receive an annual adjustment to the City-Approved Maximum Service Rates as set  
24 forth in Exhibit 1 of this Agreement.

25 **Initial Rate Adjustment**

26 The first adjustment to the City-Approved Maximum Service Rates set forth in Exhibit 1 of this Franchise  
27 Agreement shall become effective on July 1, 2013, and shall increase the City-Approved Maximum Service  
28 Rates by exactly 4.39% for RRI adjustments, and an additional 2.15% for one-time adjustment to the  
29 pavement condition franchise fee as set forth in Section 11.1.3. All adjusted City-Approved Maximum  
30 Service Rates shall be rounded to the nearest one cent (\$0.01).

31 **10.2.2 RRI Adjustments**

32 Beginning on July 1, 2014, and on each July 1<sup>st</sup> annually thereafter during the Term of this Agreement, the  
33 City-Approved Maximum Service Rates previously adjusted by Section 10.2.2 above shall be further adjusted  
34 by the Refuse Rate Index ("RRI") Adjustment Methodology set forth in Section 10.3 below. In any year that  
35 the calculation of the RRI results in a negative adjustment percentage, there shall be no adjustment of the  
36 City-Approved Maximum Service Rates. Instead, the negative RRI percentage shall be added to the result of  
37 the subsequent year's RRI calculation and the result shall be the RRI adjustment for that subsequent year.

38 **10.3 RRI Adjustment Methodology**

39 **10.3.1 12-Month Annual Average**

40 The RRI adjustment shall be the sum of the weighted percentage changes for all RRI indices. With the  
41 exception of the "Disposal Fee" and "Organic Waste Processing Fee" indices, the percentage change in each  
42 RRI index shall be calculated using the change in the 12-month annual average of RRI index values between



1 the base year, which shall be the prior preceding calendar year ending December 31<sup>st</sup>, and the preceding  
2 calendar year ending December 31<sup>st</sup> as contained in the most recent release of the source documents listed in  
3 Exhibit 2, which is attached to and included in this Agreement. Therefore, the first RRI adjustment (effective  
4 July 1, 2014) will be based on the percentage changes between the 12-month annual average of the RRI  
5 indices for the calendar year ending December 31, 2012 and the 12-month annual average of the RRI indices  
6 for the calendar year ending December 31, 2013.

7  
8 For the "Disposal Fee" index, the percentage change shall be calculated using the change in the per-Ton tip  
9 fee charged at the Approved Disposal Site between the prior preceding calendar year ending December 31<sup>st</sup>  
10 and the preceding calendar year ending December 31<sup>st</sup>. For the first RRI adjustment (effective July 1, 2014),  
11 the calendar year 2012 tip fee shall be set at the per ton amount listed for the applicable Approved Disposal  
12 Site.

13 For the "Organic Waste Processing Fee" index, the percentage change shall be calculated using the change in  
14 the per-Ton tip fee charged at the Approved Organic Materials Processing Site between the prior preceding  
15 calendar year ending December 31<sup>st</sup> and the preceding calendar year ending December 31<sup>st</sup>. For the first RRI  
16 adjustment (effective July 1, 2014), the calendar year 2012 tip fee shall be set at the per ton amount listed for  
17 the applicable Approved Organic Materials Processing Site.

18 The weighted percentage change for each RRI index shall be calculated using the RRI methodology included  
19 in Exhibit 2.

#### 20 **10.3.2 RRI Financial Information**

21 On or before March 1, 2014, and annually thereafter during the Term of this Agreement, Contractor shall  
22 deliver to City financial information for the specific services performed under this Agreement for the  
23 preceding Agreement Year. Such financial information shall be in the format as set forth in Exhibit 2, or as  
24 may be further revised by City from time to time. If Contractor fails to submit the financial information in  
25 the required format by March 1<sup>st</sup>, it is agreed that Contractor shall be deemed to have waived the RRI  
26 adjustment for that year. Contractor's failure to provide the financial information shall not preclude the City  
27 from applying the RRI using the prior year's financial data, or pro forma data if no prior year financial data is  
28 available, if that application would result in a negative RRI.

29 **10.3.2.1** Annual Adjustments shall be made only in units of one cent (\$0.01). Fractions of  
30 less than one cent (\$0.01) shall not be considered in making adjustments. The indices shall be truncated at  
31 four (4) decimal places for the adjustment calculations.

32 **10.3.2.2** If Contractor's failure to submit the financial information required under Section  
33 10.3.2 is the result of extraordinary or unusual circumstances as demonstrated by Contractor to the  
34 satisfaction of City Manager, City at its sole discretion, may consider the request for the annual RRI rate  
35 adjustment.

36 **10.3.2.3** As of June 1, 2014, and annually thereafter during the Term of this Agreement,  
37 the City Manager shall notify Contractor of the RRI adjustment to the affected City-Approved Maximum  
38 Service Rates to take place on the subsequent July 1<sup>st</sup>.

#### 39 **10.4 City Requested Detailed Rate Review**

40 The City may request a Detailed Rate Review to be conducted following the procedures as specified in  
41 Exhibit 3. However, a Detailed Rate Review shall not be conducted more than once every three (3)  
42 Agreement years. A request for a Detailed Rate Review shall be made in writing at least six (6) months prior  
43 to the July 1<sup>st</sup> rate adjustment date for the year in which the results for the Detailed Rate Review are to be

1 applied. The Contractor shall pay the cost for the Detailed Rate Review, and the cost of such a Detailed Rate  
2 Review is an allowable pass-through cost.

3 **SECTION 11 – CONTRACTOR PAYMENTS TO THE CITY**

4 **11.1 Franchise Fees**

5 In consideration of the exclusive rights provided Contractor herein, Contractor shall pay Franchise Fees to  
6 the City.

7 **11.1.1** Contractor shall pay the City a Franchise Fee each month equal to **10.00%** of Gross Receipts  
8 remitted by Customers for Collection services provided in City. This fee shall be known as the right-of-way  
9 franchise fee.

10 **11.1.2** In addition, Contractor shall pay to the City an additional Franchise Fee of **\$500,000** within  
11 thirty (30) days of the execution of this Agreement, and shall make annual additional Franchise Fee payments  
12 to the City of **\$500,000** on or before September 15<sup>th</sup> of each Agreement year beginning with September 15,  
13 2013.

14 **11.1.3** In addition, Contractor shall pay a Franchise Fee to the City each month equal to **8.12%**  
15 through June 2013 and **10.27%** thereafter of Gross Receipts remitted by Customers for Collection services  
16 provided in City. This fee shall be known as the pavement condition franchise fee.

17 **11.2 HHW and AB 939 Program Fee**

18 Contractor shall pay to the City an amount equal to the applicable fee levied by the Sonoma County Waste  
19 Management Authority for providing the HHW and AB 939 programs to the City. In addition, if the  
20 Approved Disposal Site is an out-of-County landfill, or if the Contractor directs any waste out of the County  
21 for disposal for any reason, the Contractor shall be responsible for the payment of any Joint Powers  
22 Authority (JPA) fees associated with out-of-County disposal.

23 **11.3 Recyclable Materials Revenue Share Payments**

24 The Contractor shall remit Recyclable Materials Revenue Share Payments to the City equal to 35% of the per-  
25 ton net revenue in excess of \$135.00 per ton for all Recyclable Materials for which Contractor receives a net  
26 revenue greater than \$135.00 per ton.

27 **11.4 Other Fees**

28 The City may set "other" fees, as it deems necessary. The amount, time, and method of payment and  
29 adjustment process will be set in a manner similar to that for other fees described in this Section 11.

30 **11.5 Adjustment to Fees**

31 City may adjust the fees established in this Section 11 annually at any time during the Term of this  
32 Agreement. Any City directed changes (increases or decreases) to the Fees in this Section 11 will require an  
33 adjustment in the Maximum Service Rates in an amount equal to any such City directed change.

34 **11.6 Payment Schedule and Late Fees**

35 On or before the 20th day of each month during the Term of this Agreement, Contractor shall remit to City  
36 Franchise Fees, the Vehicle Impact Fee, the HHW and AB 939 Program Fee, the Recyclable Materials  
37 Revenue Share Payment, and other fees as described in this Section. If such remittance is not paid to the City  
38 on or before the 20th day of any month, Contractor shall pay, in addition to the amount owed to City,  
39 Liquidated Damages stated in item number 43 of Section 14.4.

1 Each monthly remittance to City shall be accompanied by a statement itemizing each fee paid; detailing  
2 calculation of all fees; and stating Rate Revenues, by Service Type, for the monthly period collected from all  
3 operations conducted or permitted by this Agreement.

4 **11.7 Contract Administration Fee**

5 Contractor shall pay to the City an annual Contract Administration Fee of **\$41,000** for the purpose of  
6 covering costs associated with monitoring this Franchise Agreement. The amount of this fee shall be adjusted  
7 annually on each July 1st by the same percentage used to adjust the City-Approved Maximum Service Rates  
8 for that year, as determined by an RRI adjustment or Detailed Rate Review. If the Contractor waives its rights  
9 to a rate adjustment in any given year, the City shall not be precluded from adjusting this fee by calculating  
10 the RRI using the prior year's financial data, or pro forma data if no prior year financial data is available.

11 **11.8 Performance Review Cost**

12 The Contractor shall to the City the cost of performance reviews in 2017 and 2022, up to a maximum of  
13 **\$60,000** in 2017 and a maximum of **\$70,000** in 2022.

14 **SECTION 12 – RECORD KEEPING, REPORTING AND PERFORMANCE REVIEWS**

15 **12.1 Record Keeping**

16 **12.1.1 General**

17 Contractor must create, maintain and preserve all Franchise Records for the Franchise Term and for 5 years  
18 after the Franchise Agreement's expiration or earlier termination. Franchise Records and data shall be  
19 maintained in logical order and organized and stored in a manner that permits efficient access to and retrieval  
20 of particular Franchise Records. Upon the City's request, Franchise Records shall be promptly retrieved by  
21 Contractor and provided to the City.

22 **12.1.2 Accounting Records**

23 Contractor shall maintain full, complete, accurate financial, statistical and accounting records pertaining to  
24 cash, Billing and provision of all Franchise Services and all activity under the Franchise, prepared on an  
25 accrual basis in accordance with generally accepted accounting principles. Gross Receipts from provision of  
26 Franchise Services or otherwise from or related to the Franchise, shall be recorded as revenues in accounts of  
27 Contractor for purposes of calculating Franchise Fees, regardless of whether such Gross Receipts are actually  
28 received or generated by Contractor, contractors of Contractor or related or Affiliated entities or other  
29 entities.

30 **12.1.3 Compliance with Records Requirements of AB 939 and Other Government Records**  
31 **Requirements**

32 Contractor shall collect data and keep sufficient and accurate records and prepare reports as necessary to  
33 comply with all the requirements of AB 939 and all other federal, state and local laws and regulations  
34 applicable to the Franchise and Contractor's performance of the Franchise Services.

35 **12.1.4 Franchise Services Records**

36 Contractor shall maintain records of:

37 **12.1.4.1** Franchise Services, Customer Billings, and Collections, including service  
38 exemption information;

1                    **12.1.4.2**    Weight and volume of material Collected by type (Mixed Materials, Recyclable  
2 Materials, and Organic Materials), and by Service Type (Residential Cart Collection, Commercial Cart and Bin  
3 Collection, Drop Box);

4                    **12.1.4.3**    All Collection and Disposal routes used in the performance of the Franchise  
5 Services;

6                    **12.1.4.4**    Facilities and equipment used in the performance of Franchise Services, and  
7 related costs;

8                    **12.1.4.5**    Personnel engaged in the performance of Franchise Services and all labor and  
9 personnel costs;

10                   **12.1.4.6**    Facilities and equipment operations, maintenance and repair activities and related  
11 costs;

12                   **12.1.4.7**    Tonnage of Mixed Materials, Recyclable Materials and Organic Materials listed  
13 by Processing Site or Disposal Site where such materials were delivered;

14                   **12.1.4.8**    Tonnage of Recyclable Materials and Organic Materials Collected and Diverted  
15 from Disposal;

16                   **12.1.4.9**    Recyclable Materials and Organic Materials Collection participation and setout  
17 rates;

18                   **12.1.4.10**    Diversion Rate;

19                   **12.1.4.11**    Recyclable Materials sales revenue;

20                   **12.1.4.12**    Franchise Services revenue by service category (Residential Cart Collection,  
21 Commercial Cart and Bin Collection, Drop Box);

22                   **12.1.4.13**    Franchise revenue from other than Franchise Services; and

23                   **12.1.4.14**    End use and markets for recovered materials.

24                   **12.1.5    Transfer, Processing, Diversion, and Disposal Records**

25 Contractor shall maintain records of transfer, Processing, Diversion, and Disposal of all Solid Waste,  
26 Recyclable Materials, and Yard Trimmings Collected by Contractor.

27                   **12.1.6    Other Programs Records**

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

29                   **12.1.6.1**    Plans, tasks, and milestones; and

30                   **12.1.6.2**    Accomplishments in terms such as dates, activities conducted, quantities of  
31 products used, produced or distributed, and numbers of participants and responses.

1           **12.1.7 Customer Service Records**

2 Records shall be maintained by Contractor for City related to:

3           **12.1.7.1**    Number of calls;

4           **12.1.7.2**    Average hold time for calls; percentage of calls answered in 30 seconds;  
5 percentage of calls answered in 3 minutes;

6           **12.1.7.3**    Categories (missed pickups, Complaints, damage, etc.) of calls;

7           **12.1.7.4**    Training materials and records;

8           **12.1.7.5**    Complaint log noting the name and address of complainant, date and time of  
9 Complaint, nature of Complaint, and nature and date of resolution;

10           **12.1.7.6**    New Customer log.

11           **12.1.8 CERCLA Defense Records**

12 City views its ability to defend itself against Comprehensive Environmental Response, Compensation and  
13 Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the City  
14 regards its ability to prove where Solid Waste Collected and Street Sweeping materials are taken for transfer  
15 or Disposal, as well as where they are not taken, to be matters of concern. Contractor shall maintain, retain  
16 and preserve records which can establish where Solid Waste Collected and Street Sweeping materials were  
17 Disposed (and therefore establish where they were not). This provision shall survive the expiration or earlier  
18 termination of this Agreement. Contractor shall maintain these records for a minimum of 10 years beyond  
19 expiration or earlier termination of the Agreement. Contractor shall provide these records to City (upon  
20 request or at the end of the record retention period) in an organized and indexed manner rather than  
21 destroying or disposing of them.

22           **12.1.9 Inspection of Records**

23 The City, its auditors and other agents, shall have the right, during regular business hours, to conduct  
24 unannounced on-site inspections of accounting systems, income tax returns, payroll tax reports, specific  
25 documents or records required by this Agreement, or any other similar records or reports of the Contractor  
26 and all companies conducting operations addressed in this Agreement, that the City shall deem, at its sole  
27 discretion, necessary to evaluate reports, rate applications, and the Contractor's performance provided for in  
28 this Agreement. The City may make copies of any documents it deems relevant to this Agreement.

29           **12.1.10 Record Security**

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

33           **12.2 Reporting**

34           **12.2.1 General**

35 The Contractor shall submit all reports required by this Section 12.2 electronically and in hard copy in a  
36 format acceptable to the City.

1 Contractor shall submit monthly reports within 30 calendar days after the end of the reporting month.  
2 Contractor shall submit quarterly reports within 45 calendar days after the end of the report quarter.  
3 Contractor shall submit annual reports no later than 45 calendar days after the end of the each Rate Period.

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

5 Public Works and Utilities Director  
6 City of Petaluma  
7 555 North McDowell Boulevard  
8 Petaluma, CA 94954

9 and

10 Director of Finance  
11 City of Petaluma  
12 11 English Street  
13 Petaluma, CA 94952

#### 14 **12.2.2 Monthly Reports to the City**

15 Contractor shall submit monthly reports to the City which present the following information. The City may  
16 review and request changes to Contractor's report formats and content and Contractor shall not unreasonably  
17 deny such requests.

##### 18 **12.2.2.1 Financial Information**

19 Gross Receipts and corresponding Franchise Fee payments due to the City in accordance with Section 11.1.

##### 20 **12.2.2.2 Mixed Materials Services**

21 Total Tonnage Collected, Diverted, and Disposed by Service Type.

##### 22 **12.2.2.3 Recyclable Materials Services**

23 Tonnage Collected and Recycled/Processed by Service Type and Tonnage of Residue Disposed by Service  
24 Type. If the Processing Site handles Recyclable Materials Collected in the City and from other parties, provide  
25 a description of how the quantities of Recyclable Materials are tracked and allocated to the City.

##### 26 **12.2.2.4 Organic Materials Services**

27 Tonnage Collected and Composted/Processed by Service Type. If the Processing Site handles Organic  
28 Materials Collected in the City and from other parties, provide a description of how the quantities of Organic  
29 Materials are tracked and allocated to the City.

##### 30 **12.2.2.5 Diversion Level**

31 Tonnage Diverted by Contractor divided by the Tonnage Collected by Contractor multiplied by 100. The  
32 report shall state the Tonnage Diverted and Tonnage Collected as well as the calculated Diversion Level.

#### 33 **12.2.3 Quarterly Reports to the City**

34 Contractor shall submit to the City quarterly reports which shall present the following information by each  
35 month's data in the reported quarter and include a quarterly average. In addition, each quarterly report shall  
36 show the past four quarters average for data comparison.

##### 37 **12.2.3.1 Financial Information**

38 A summary of Gross Receipts and corresponding Franchise Fee payments remitted to the City for each  
39 month in accordance with Section 11.1.

- 1                   **12.2.3.2 Mixed Materials Services**
- 2                           **12.2.3.2.1** Quarterly summary of monthly report required in Section 12.2.2.2.
- 3                           **12.2.3.2.2** Accounts collected by Service Type. Include number of accounts, as  
4 well as number of total yards for Bin service; and number of pulls, deliveries, and pickups for Drop Box and  
5 Compactor Service.
- 6                           **12.2.3.2.3** Solid Waste Tonnage Disposed listed separately by Disposal Site.
- 7                   **12.2.3.3 Recyclable Materials Services**
- 8                           **12.2.3.3.1** Quarterly summary of the monthly report information required by  
9 Section 12.2.2.3.
- 10                          **12.2.3.3.2** Accounts collected by Service Type. Include number of accounts, as  
11 well as number of total yards for Bin service; and number of pulls, deliveries, and pickups for Drop Box and  
12 Compactor Service.
- 13                          **12.2.3.3.3** Participation percentage by Service Type (number of accounts actually  
14 serviced / number of accounts scheduled for service).
- 15                          **12.2.3.3.4** Tonnage by Recyclable Materials commodities and Service Type.
- 16                          **12.2.3.3.5** Identification of severe market depressions for Recyclable Materials  
17 and contingency plans for such events.
- 18                   **12.2.3.4 Organic Materials Services**
- 19                           **12.2.3.4.1** Quarterly summary of the monthly report information required by  
20 Section 12.2.2.4.
- 21                           **12.2.3.4.2** Accounts collected by Service Type. Include number of accounts, as  
22 well as number of total yards for Bin service; and number of pulls, deliveries, and pickups for Drop Box and  
23 Compactor Service.
- 24                           **12.2.3.4.3** Participation percentage by Service Type (number of accounts actually  
25 serviced / number of accounts scheduled for service).
- 26                   **12.2.3.5 Diversion Level**
- 27                           **12.2.3.5.1** Quarterly summary of the monthly report information required by  
28 Section 12.2.2.5.
- 29                           **12.2.3.5.2** Variance from Diversion Goal
- 30                   **12.2.3.6 Customer Service**
- 31                           **12.2.3.6.1** Number of Customer, Generator, or other Person calls by category  
32 (e.g., missed pickups, scheduled clean-ups, Billing concerns, damage claims, etc.)

1                           **12.2.3.6.2**    Number of Complaints, resolved Complaints, and number of  
2 Complaints which were unresolved for more than five Business Days. Provide explanations on unresolved  
3 calls.

4                           **12.2.3.6.3**    Number of new Commercial Recyclable Materials and Organic  
5 Materials Customers by Cart, Bin, and Drop Box services.

6                           **12.2.3.6.4**    Customer Service overview sheet, training agenda, and other training  
7 supplements provided at the quarterly Customer service meeting.

8                           **12.2.3.6.5**    Call center reports documenting the number of calls received per  
9 month (or quarter), the percentage of calls answered within 30 seconds, and the percentage of calls answered  
10 within 3 minutes.

11                           **12.2.3.7 Account Information**

12 In table format, the number of Customers and service levels for all Service Types and the number of service  
13 location exemptions granted.

14                           **12.2.3.8 Annual Clean-Ups**

15                           **12.2.3.8.1**    Disposal Tonnage.

16                           **12.2.3.8.2**    Diversion Tonnage by commodity.

17                           **12.2.3.8.3**    Number of participants.

18                           **12.2.3.8.4**    Names of Re-use Vendors that participated.

19                           **12.2.3.9 Holiday Tree Services**

20 In the first quarterly report of the calendar year, Tonnage of Holiday trees collected at the Drop Box sites.

21                           **12.2.3.10 Abandoned Waste Collection**

22 Quarterly report in accordance with Section 5.9.

23                           **12.2.3.11 Education Activities**

24                           **12.2.3.11.1**    Public education materials produced and total number of each  
25 distributed.

26                           **12.2.3.11.2**    Dates, times, and group names of meetings attended.

27                           **12.2.3.11.3**    Dates, times, and names of school where presentations were  
28 performed.

29                           **12.2.3.12 Pilot and New Programs**

30 For each pilot and/or new program, Activity related and narrative reports on goals and milestones and  
31 accomplishments; description of problems encountered, actions taken, and any recommendations to facilitate  
32 progress; and description of vehicles, personnel, and equipment utilized for each program.

33                           **12.2.3.13 Overloaded Vehicles**

34 In table format, list all Transported loads in excess of manufacturer's recommendations or limitations



1 imposed by State or local weight restrictions for vehicles and roads. The table shall include vehicle number,  
2 date of occurrence, vehicle tare weight, load weight, total loaded vehicle weight, and the manufacturer's and  
3 regulatory weight restriction.

4 **12.2.3.14 Customer Notices for High Contamination**

5 List of customers that received warning notices from Contractor for contamination levels in excess of  
6 standards specified in Section 6.2.3.

7 **12.2.3.15 Summary Assessment**

8 **12.2.3.15.1** Summary assessment of the overall Solid Waste, Recyclable Materials,  
9 and Yard Trimmings program from Contractor's perspective relative to financial and physical status of  
10 program.

11 **12.2.3.15.2** Description of the physical status is to relate to how well the  
12 program is operating for efficiency, economy, and effectiveness relative to meeting all the goals and objectives  
13 of this Agreement including particularly the Diversion Goal.

14 **12.2.3.15.3** Recommendations and plans to improve.

15 **12.2.3.15.4** Highlights of significant accomplishments and problems.

16 **12.2.3.16 Other Reports**

17 Provide a summary, including number of events or incidents and Tonnage Collected (if applicable) of the  
18 following:

19 **12.2.3.16.1** Special events (Section 5.8).

20 **12.2.3.16.2** Warnings to Customers (Section 6.2.3).

21 **12.2.3.16.3** Hazardous Waste incidents (Section 6.6.2).

22 **12.2.4 Annual Reports to the City**

23 Contractor shall submit annual reports to the City in the form of the quarterly reports and shall provide the  
24 same type of information as required pursuant to Section 12.2.3 of this Agreement, summarized for the  
25 preceding four quarters. The annual report shall also include a complete inventory of equipment used to  
26 provide all service. The following information shall also be submitted with the annual report:

27 **12.2.4.1 Contractor Officers and Board Members**

28 Provide a list of Contractor's officers and members of its board of directors with the annual report.

29 **12.2.4.2 Financial Information**

30 At the request of the City or in conjunction with a Detailed Rate Review as described in Section 10.4, within  
31 120 calendar days after the close of Contractor's fiscal year, Contractor shall deliver to the City four copies of  
32 the audited financial statements and profit and loss statements of Contractor for the preceding fiscal year.  
33 Financial statements shall show Contractor's results of operations, including the specific revenues and  
34 expenses in connection with the operations provided for in this Agreement. The financial statements and  
35 footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP)

1 consistently applied and fairly reflecting the results of operation and Contractor's financial condition. Annual  
2 financial statements shall be audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a  
3 Certified Public Accountant (CPA) licensed (in good standing) to practice public accounting in the State of  
4 California as determined by the State of California Department of Consumer Affairs Board of Accountancy,  
5 and that the CPA opinion on Contractor's annual financial statements shall be unqualified, and that the  
6 supplemental schedule be prepared on a compiled basis.

7 If Contractor provides an audited consolidated financial statement of its parent company, then the financial  
8 statements required by this Agreement shall include a supplemental combining schedule showing  
9 Contractor's results of operations for the services provided under the terms of the Agreement separately  
10 from others included in the financial statements. Such schedule shall be prepared in an income and expense  
11 format documenting the allocation of expenses and attribution of revenues for the services provided under  
12 the terms of the Agreement separately from Contractor's other operations. The format of the supplemental  
13 schedule shall be reviewed and approved by the City. The supplemental schedule may be reviewed by an  
14 independent CPA firm that is different from the firm that prepared the Contractor's overall audited financial  
15 statements.

#### 16 **12.2.4.3 Related-Party Entities**

17 At the request of the City or in conjunction with a Detailed Rate Review as described in Section 10.4,  
18 Contractor shall provide the City with a copy of each Affiliate's (whose cost of services are not specified by  
19 this Agreement or regulated by other government contract that the Affiliate is a party to) financial statements  
20 for that fiscal year, or within 120 calendar days of each Affiliate's fiscal year-end, if timing does not coincide  
21 with the annual report date.

22 Contractor agrees that all financial transactions with all Affiliates shall be approved in advance in writing and  
23 be provided (coinciding with a Detailed Rate Review) to the City in a separate disclosure letter. This letter  
24 shall include, but not be limited to, the following information:

25 A general description of the nature of each Affiliate transaction, or type of (for many similar) transaction, as  
26 applicable. Such description shall include for each (or similar) transaction, amounts, specific Affiliate, basis of  
27 amount (how amount was determined), description of the allocation methodology used to allocate any  
28 common costs, and profit amount.

29 At the City's request, Contractor shall provide the City with copies of working papers or other documentation  
30 deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall  
31 be provided to the City within 120 calendar days after the end of the Contractor's fiscal year.

#### 32 **12.2.4.4 Operational Information**

33 In addition to requirements stated elsewhere in this Agreement, the annual report shall include the following  
34 information:

35 **12.2.4.4.1 Routes by Service Type.** Number of routes per day, types of  
36 vehicles, crew size per route, number of full time equivalent (FTE) routes, number of accounts per route,  
37 total hours per Service Type per day and per year, and average cost per route.

38 **12.2.4.4.2 Personnel.** Organizational chart, job classifications and number of  
39 employees (e.g. administrative, Customer service representatives, drivers, supervisors, educational staff),  
40 annual wages by job classification including benefits, number of full time equivalent (FTE) positions for each  
41 job classification, number of hours per job classification per day and per year.

1                           **12.2.4.4.3 Productivity Statistics.** Number of accounts per Service Type,  
2 number of setouts per Service Type, Tons per route per day.

3                           **12.2.4.4.4 Maintenance.** Average cost per vehicle type.

4                           **12.2.4.4.5 Operational Changes.** Number of routes, staffing, supervision,  
5 Collection services.

6                           **12.2.4.4.6 Equipment.** An inventory of equipment in accordance with Section  
7 6.3.4.

8                           **12.2.4.4.7 Billing.** Billing review in accordance with Section 9.2.5.

9                   **12.2.5 Cal Recycle Annual Reports**

10 Contractor must prepare annual reports in accordance with applicable Cal Recycle annual reporting  
11 requirements for submission to the City for review and comment and Contractor revision as needed prior to  
12 submission to Cal Recycle. Annual Cal Recycle reports must be submitted in draft form to the City at least 60  
13 days prior to the date such reports are due to be submitted to Cal Recycle in order to permit review and if  
14 necessary revision prior to its submission to Cal Recycle.

15                   **12.2.6 Event-Specific Reporting**

16                           **12.2.6.1 Special Event Collection**

17 As required by Section 5.8, the Contractor shall submit to the City a written report identifying the Tonnage of  
18 Solid Waste and Recyclable Materials Collected and any suggestions Contractor proposes for the next event.  
19 The report shall be submitted no later than 10 Business Days following each event.

20                           **12.2.6.2 Report of Unauthorized Dumping**

21 As required by Section 5.9, Contractor shall report: (i) the addressés of any Premises at which the driver  
22 observes that Solid Waste is accumulating; and (ii) the address, or other location description, at which Solid  
23 Waste has been dumped in an apparently unauthorized manner. The report shall be delivered to the City  
24 within five Business Days of such observation.

25                           **12.2.6.3 Hazardous Waste**

26 Upon City request, the Contractor shall notify the City of any Hazardous Waste identified in Containers or  
27 left at any Premises within 24 hours of such request.

28                           **12.2.6.4 Warning Notices for High Level of Contaminates**

29 As required by Section 6.2.3, Contractor shall report to the City any warning notices issued to Customers for  
30 high levels of contaminates found in the Recyclable Materials or Organic Materials Containers. The report  
31 shall be delivered to the City within 24 hours of issuance of the warning notice.

32                   **12.2.7 Notification of Unexpected Cost Increases**

33 Within 10 Business Days of becoming aware that Contractor costs have increased or will increase such that  
34 any rate affected by such costs may increase by 2 percent or more from the prior year's rate, Contractor will  
35 give City written notice of such cost increase and the estimated rate increase that may result.

1           **12.2.8 Additional Reporting**

2   The Contractor shall also promptly provide the City with any additional reports as the City may reasonably  
3   require.

4           **12.3 Performance Reviews**

5   City, in its sole discretion, may require performance reviews in accordance with this provision. Although the  
6   Contractor may make recommendations concerning the selection of contractors for conducting performance  
7   reviews, the City will select such contractors in the City's sole discretion. Except as provided in Section 11.8,  
8   the Contractor will pay the cost of performance reviews as an other payment included in Contractor's  
9   monthly Franchise payments. Contractor will cooperate fully with each performance review and provide all  
10   operational, financial and other information deemed helpful by the City or its contractor conducting the  
11   performance review within 30 days of a request for such information. Prior to conducting a performance  
12   review, City or Contractor may request a conference to establish the scope of the performance review. If a  
13   performance review identifies non-compliance with the Franchise Agreement, the City may recover  
14   Liquidated Damages for such non-compliance, and exercise any of its remedies under Section 14 of the  
15   Franchise Agreement or Applicable Law. In its sole and exclusive discretion, the City may require that the  
16   Contractor take prescribed measures to cure any non-compliance identified in the performance review, and  
17   may require amendments to the Franchise Agreement to avoid such non-compliance in the future. The City  
18   plans to conduct a performance review once every five (5) years beginning in calendar year 2017; however,  
19   the City may choose to alter the schedule of its performance reviews without consulting the Contractor.  
20   Contractor shall pay to the City the cost of performance reviews in 2017 and 2022 as specified in Section  
21   11.8. However, any performance review that identifies non-compliance with the Franchise Agreement will  
22   not be counted as one of the performance reviews that the Contractor is required to pay for as required by  
23   Section 11.8.

24           **12.4 Audit**

25   The City, its auditors and any and all other City agents and/or authorized representatives and any other  
26   authorized government agencies will have the right during regular business hours and upon 24-hours' notice  
27   (providing that if notice is given on a Friday, inspection will not occur until the second business day of the  
28   next week) to inspect, review and copy all Franchise Records of the Contractor. The City may, in its sole  
29   discretion, select a qualified independent firm to perform audits.

30   Contractor agrees to make appropriate Contractor representatives available to meet with the City, its auditors,  
31   agents and/or authorized representatives or other authorized government agency to produce, review, discuss  
32   and verify any Franchise Records and to fully cooperate with any audit conducted by or on behalf of the City  
33   or any other government agency.

34           **12.5 Audit Costs**

35   Contractor will pay all costs associated with audits conducted by or on behalf of the City relating to  
36   Contractor's requests for rate increases, changes to the Franchise Fee, amendments to rate calculations, or  
37   any other changes to the Franchise sought by Contractor. Such audit costs will be paid by the Contractor to  
38   the City as an other payment included in Contractor's monthly Franchise payments. The City may also  
39   conduct, at Contractor's expense, up to seven (7) audits during the Franchise Term to:

40           **12.5.1 Verify Customer Billings and City-Approved Maximum Service Rates have been properly**  
41   calculated.

- 1           12.5.2 Determine the accuracy of RRI calculations and rate adjustments based on them.
- 2           12.5.3 Verify that the Franchise Fees and other Franchise payments required to be paid the City  
3 under this Franchise Agreement have been properly calculated and paid.
- 4           12.5.4 Verify Contractor's compliance with the Franchise Agreement reporting requirements.
- 5           12.5.5 Verify Contractor's compliance with the performance standards of the Franchise Agreement.
- 6           12.5.6 Verify the Diversion percentages reported by the Contractor.

7           Any audit that identifies substantial non-compliance with the Franchise Agreement will not be  
8 counted in the total number of audits the City may conduct or have conducted at Contractor expense during  
9 the Franchise Term.

10 **12.6 Reconciliation of Contractor Franchise Payments Following Audit**

11 If an audit conducted under this Franchise Agreement indicates that any Contractor Franchise payment has  
12 been less than the amount required under the Franchise Agreement, the Contractor will reimburse the City  
13 for the full amount of the underpayment, as well as all costs associated with the audit, in accordance with  
14 Section 12.5, within 10 days of receipt of written notice by the City. If an audit conducted under this  
15 Franchise Agreement indicates that any Contractor Franchise payment has been greater than the amount  
16 required under the Franchise Agreement, the City will provide the Contractor written notice of the  
17 overpayment(s), and the Contractor may apply the amount of the overpayment(s) as a credit against the  
18 Franchise payment due immediately following the City's notice.

19 **SECTION 13 – INDEMNITY, INSURANCE, BOND**

20 **13.1 Indemnification**

21           13.1.1 To the maximum extent permitted by law, Contractor shall, at its own expense, indemnify,  
22 defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold  
23 harmless the City and its officers, officials, employees, agents and volunteers ("indemnitees") from and  
24 against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative  
25 proceedings, regulatory proceedings, civil penalties and fines, judgments, rulings, or other disposition by a  
26 body of competent jurisdiction, expenses and costs (including, without limitation, claims, expenses, attorneys'  
27 fees and costs and fees of litigation) (collectively, "liability") of every nature, whether actual, alleged or  
28 threatened arising out of, resulting from or in any way connected with the Franchise, including, but not  
29 limited to:

- 30           13.1.1.1 Contractor's performance of the Franchise Services;
- 31           13.1.1.2 The Contractor's failure to comply with any of the terms of the Franchise  
32 Agreement;
- 33           13.1.1.3 Any non-compliance of the Franchise, the Franchise Agreement or the Franchise  
34 Services with the AB 939;
- 35           13.1.1.4 Any irregularity, illegality, voidness or other defect in the award of the Franchise  
36 Agreement to Contractor and/or the procurement process that led to the authorization and execution of the

1 Franchise Agreement with Contractor, and/or any related legislation of the City, and/or any related legal  
2 challenge brought by a third party;

3 **13.1.1.5** Any repair, cleanup, disposal or detoxification or preparation and implementation  
4 of any removal, remedial response, closure or other plan (regardless of whether undertaken due to  
5 governmental action) concerning any Hazardous Substance or Hazardous Wastes at any place where the  
6 Contractor Transports, stores or Disposes of Solid Waste pursuant to this Franchise Agreement. The  
7 foregoing indemnity is also intended to operate as an agreement pursuant to section 107(c) of CERCLA, 42  
8 U.S.C. section 9607(c) and California Health and Safety Code section 25364, to defend, insure, protect, hold  
9 harmless and indemnify the City from liability;

10 **13.1.1.6** Any violation or alleged violation concerning or related to the Franchise, the  
11 Franchise Agreement, the Franchise rates, the Franchise Fee, the Franchise payments, the Franchise Services,  
12 or otherwise related to the Franchise of any requirement of any federal, state or local law, ordinance, statute,  
13 regulation, regulatory permit or constitutional provision, including, but not limited to, Proposition 218 and  
14 Proposition 26;

15 **13.1.1.7** Any claims that the City is a generator of Solid Waste in any facility that is owned,  
16 or was once owned, by the County of Sonoma;

17 **13.1.1.8** Any claims that the City is a generator of Solid Waste in any facility that is used by  
18 the Contractor to Dispose, Process, or transfer Solid Waste; and

19 **13.1.1.9** Any claims arising from closure and post-closure monitoring of any landfill into  
20 which waste generated in the City is placed, as well as any claims associated with environmental  
21 contamination, cleanup or other related matters. Contractor shall also obtain from the Owner of any facility  
22 receiving any of the City's waste streams, and from the parent of such Owner, a written agreement to defend,  
23 indemnify and hold the City harmless from and against any such claims as stated in this Section, and shall  
24 supply the City with a copy thereof and with each renewal or extension thereof.

25 **13.1.2** Except as otherwise provided in the Franchise Agreement, Contractor waives any and all  
26 rights to express or implied indemnity against the indemnitees concerning any liability of the Contractor  
27 arising out of or in connection with the Franchise or Contractor's failure to comply with any of the terms of  
28 the Franchise Agreement.

29 **13.1.3** Contractor's obligation to indemnify, defend and hold harmless under this provision shall  
30 not be excused because of the Contractor's inability to evaluate liability, or because Contractor evaluates  
31 liability and determines that the Contractor is not or may not be liable.

32 **13.1.4** Contractor must respond within 30 calendar days to any tender for defense and indemnity  
33 by the City, unless the time for responding has been extended by an authorized representative of the City in  
34 writing.

35 **13.1.5** The City may, at the City's option and sole discretion, elect not to tender defense of the City  
36 to liability under this Section 13.1 to Contractor and may instead elect to defend City against any liability  
37 under this Section 13.1 using the City's own attorneys, and upon notice of such election to the Contractor,  
38 Contractor will pay to City City's costs and expenses incurred, including, but not limited to, the reasonable  
39 attorneys' fees and other costs of defense and the cost of any penalties, fines, judgments, rulings, or other  
40 disposition by a body of competent jurisdiction concerning such liability. The Contractor will pay such costs  
41 as an other payment included in Contractor's monthly Franchise payments.

1    **13.2    Insurance**

2            **13.2.1    General**

3    Before the Franchise Agreement takes effect, Contractor, at its own cost and expense, must procure  
4    "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries  
5    to Persons or damages to property that may arise from or in connection with the Franchise or the  
6    performance of the Franchise Services by the Contractor or its agents, representatives, employees, or  
7    contractors, and submit to the City certificates of insurance and endorsements evidencing insurance coverage  
8    that meet the requirements of this Section 13.2. Contractor must maintain the insurance policies and coverage  
9    amounts required by this section throughout the Franchise Term. Contractor may not allow any contractor or  
10   Affiliate to commence work on the Franchise Services until Contractor and/or the contractor/Affiliate has  
11   obtained all insurance required by the Franchise Agreement for the contractor(s)/Affiliate(s) and submitted  
12   certificates of insurance and endorsements evidencing such coverage to the City. Failure to maintain the  
13   insurance coverage required or other failure to comply with the requirements of this Section 13.2 will be an  
14   event of default subject to the remedies in Section 14 of this Franchise Agreement. Contractor shall also  
15   obtain such other insurance coverages and limits as may be required by the City prior to the signed execution  
16   of this Agreement.

17            **13.2.2    Workers' Compensation Insurance**

18   Contractor must, at its sole cost and expense, maintain statutory workers' compensation insurance and  
19   employer's liability insurance for any and all Persons employed directly or indirectly by Contractor. The  
20   statutory workers' compensation insurance and employer's liability insurance must be provided with limits of  
21   not less than **one million dollars (\$1,000,000)** per occurrence. The insurance must be endorsed to waive all  
22   rights of subrogation against the City and its officials, officers, employees, and volunteers for loss arising  
23   from or related to the Franchise or the Franchise Services.

24            **13.2.3    General Commercial and Automobile Liability Insurance**

25            **13.2.3.1**   Contractor, at its own cost and expense, must maintain commercial general and  
26   automobile liability insurance for the Term of this Franchise Agreement in an amount not less than **ten**  
27   **million dollars (\$10,000,000)** per occurrence, combined single limit coverage for risks associated with  
28   Franchise Services. If a commercial general liability insurance or an automobile liability form or other form  
29   with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Franchise  
30   Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall  
31   include, but shall not be limited to, protection against claims arising from bodily and personal injury,  
32   including death resulting therefrom, and damage to property resulting from activities contemplated under this  
33   Franchise Agreement, including the use of owned and non-owned automobiles. The automobile liability  
34   policy shall be endorsed to delete the pollution and/or the asbestos exclusion and add the Motor Carrier Act  
35   endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state  
36   authorities.

37            **13.2.3.2**   Required commercial general coverage shall be at least as broad as Insurance  
38   Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services  
39   Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services  
40   Office form number GL 0404 covering broad form comprehensive general liability. Automobile coverage  
41   must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1  
42   ("any auto"). No endorsement may be attached limiting the coverage.

1           **13.2.4 Employee Blanket Fidelity Bond**

2 Contractor, at its own cost and expense, must maintain an Employee Blanket Fidelity Bond in the amount of  
3 \$500,000 per employee, covering dishonesty, forgery, alteration, theft, disappearance, destruction (inside or  
4 outside).

5           **13.2.5 Pollution, Environmental Impairment and Professional Liability Insurance**

6 Contractor, at its own cost and expense, must maintain for the Franchise Term pollution, environmental  
7 impairment liability and professional liability insurance in an amount not less than **ten million dollars**  
8 **(\$10,000,000)** each occurrence/**ten million dollars (\$10,000,000)** policy aggregate covering liability arising  
9 from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if  
10 commercially available, without involvement of the City, automatically broaden in its form of coverage to  
11 include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants.  
12 The policy shall stipulate this insurance is primary and no other insurance carried by the City will be called  
13 upon to contribute to a loss suffered by the Contractor hereunder and waive subrogation against the City and  
14 other additional insureds. Any deductible or self-insured retention under the required professional liability  
15 insurance may not exceed \$150,000 per claim.

16           **13.2.6 Endorsements**

17 Insurance coverage required pursuant to the Franchise Agreement must include or be endorsed to include the  
18 following:

19           **13.2.6.1** The City and its officers, officials, employees, agents, and volunteers will be  
20 covered as additional insureds with respect to each of the following: liability arising out of activities, work or  
21 operations performed by or on behalf of Contractor in carrying out the Franchise Services, including  
22 materials, parts or equipment furnished in connection with such work or operations, products and completed  
23 operations of Contractor; Premises owned, occupied, or used by Contractor; pollution, including asbestos  
24 pollution; and automobiles and equipment owned, leased, or used by the Contractor. The coverage shall  
25 contain no special limitations on the scope of protection afforded to City or its officers, officials, employees,  
26 agents, or volunteers.

27           **13.2.6.2** Required insurance coverage must be primary insurance with respect to the City  
28 and its officers, officials, employees, agents and volunteers. No insurance or self-insurance maintained by the  
29 City may be called upon to contribute to a loss under the coverage.

30           **13.2.6.3** Any failure of Contractor to comply with reporting provisions of the policy will  
31 not affect coverage provided to City and its officers, officials, employees, agents, and volunteers.

32           **13.2.6.4** Required insurance coverage may not be suspended, voided, canceled, reduced in  
33 coverage or in limits, except after 30 days' prior written notice has been given to the City.

34           **13.2.7 Other Provisions**

35           **13.2.7.1** All insurance required under this Section 13.2 must be placed with insurers with a  
36 Best's rating of no less than A:VII unless otherwise approved by the City.

37           **13.2.7.2** Any deductibles or self-insured retentions must be declared to and approved in  
38 writing by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or  
39 self-insured retentions as respects the City, its officers, officials, employees, agents, and volunteers, or the  
40 Contractor shall provide evidence satisfactory to the City guaranteeing payment of losses and related



1 investigations, claim administration and defense expenses. Notwithstanding the foregoing, the City may elect  
2 not to accept any deductibles or self-insured retentions offered by Contractor. If the City does accept a self-  
3 insured retention, then the policy must provide that it may be paid by the additional insureds.

4           **13.2.7.3** Contractor must furnish the City with original certificates and amendatory  
5 endorsements affecting coverage required by this section.

6           **13.2.7.4** Contractor must include all contractors and Affiliates that perform any Franchise  
7 Services or provide any equipment, employees or materials to Contractor in the performance of any  
8 Franchise Services as insureds under its policies or shall furnish separate certificates and endorsements for  
9 each such contractor or Affiliate. All coverages for contractors and Affiliates are subject to all of the  
10 requirements in this section.

11           **13.2.7.5** Facilities used by Contractor to Dispose, Process, or transfer Solid Waste must, at a  
12 minimum, meet the requirements as included in Sections 13.2.1, 13.2.2, 13.2.3, 13.2.4, 13.2.5, and 13.2.6.1  
13 above.

14           **13.2.7.6** Contractor must furnish the City with original certificates and amendatory  
15 endorsements affecting coverage of all facilities used by Contractor to Dispose, Process, or transfer Solid  
16 Waste.

### 17 **13.3 Faithful Performance Bond**

18 Before the Franchise Agreement becomes effective, Contractor must file with the City a faithful performance  
19 bond payable to the City, securing the Contractor's faithful performance of each and every one of its  
20 obligations under the Franchise Agreement. The City may recover from the Contractor's surety as much of  
21 the penal sum of the bond as necessary to reimburse the City for costs, damages, expenses, attorneys' fees,  
22 staff costs and any other damages incurred by the City in providing or obtaining substitute Franchise service  
23 in the event the Contractor fails in the performance of any of the Franchise Services and/or the City exercises  
24 its right to perform Franchise Services as set forth in Section 14.3 of the Franchise Agreement due to the  
25 Contractor's failure in performance of the Franchise Services. The principal sum of the bond shall be  
26 **\$3,500,000**. The bond must be executed by an official authorized to bind the Contractor and by an attorney  
27 in-fact authorized to bind the surety. The bond surety must be a corporate surety admitted to issue surety  
28 bonds in the State of California, with financial condition and record of service satisfactory to the City in  
29 accordance with Applicable Law. The performance bond must be renewed as necessary to remain in force  
30 without lapse throughout the Franchise Term. Failure to maintain the performance bond in effect without  
31 lapse throughout the Franchise Term will be an event of default subject to the remedies in Section 14 of the  
32 Franchise Agreement. The bond premium and any renewal premium will be paid by the Contractor.

## 33 **SECTION 14 – DEFAULT, TERMINATION AND LIQUIDATED DAMAGES**

### 34 **14.1 Events of Default**

35 Each of the following will constitute a breach of the Franchise Agreement, and, if such breach is not cured  
36 within 30 days from written notice by the City to Contractor of such breach, or, in case of failure to provide  
37 Collection services, if such breach is not cured within five (5) Working Days of written notice by the City to  
38 the Contractor of such breach, then such breach will be deemed an event of default under this Franchise  
39 Agreement:

1           **14.1.1 Failure to Perform**

2 Any failure to perform Contractor's obligations under the Franchise Agreement, including, but not limited to:

3           **14.1.1.1** Any act or omission by Contractor that violates the terms, conditions, or  
4 requirements of this Franchise Agreement.

5           **14.1.1.2** Failure to provide Collection services required under the Franchise Agreement for  
6 a period of five (5) consecutive Working Days or more for any reason within the control of Contractor or, in  
7 the event of a labor dispute or strike, within seven (7) consecutive Working Days.

8           **14.1.1.3** Any unexcused termination of any Franchise service or suspension of operations  
9 by Contractor.

10           **14.1.2 Misrepresentation or False Warranty**

11 After the Franchise Agreement becomes effective, any representation, disclosure, assurance or warranty made  
12 to the City by Contractor in connection with or as an inducement to entering into the Franchise Agreement  
13 or any future amendment to the Franchise Agreement, that proves to be false or misleading in any material  
14 respect as of the time such representation or disclosure is made.

15           **14.1.3 Violation of Regulations**

16 Contractor's violation of any ruling, order, or filing, demand, or other written direction of any regulatory  
17 body having jurisdiction over Contractor's performance of the Franchise Services or the Franchise, provided  
18 that Contractor may contest any such written direction by appropriate proceedings conducted in good faith,  
19 during which contest no breach of the Franchise Agreement will be deemed to have occurred pending final  
20 disposition of the contest.

21           **14.1.4 Seizure or Attachment of Equipment**

22 Seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession of,  
23 Contractor's operating equipment or facilities, including, but not limited to, Contractor's vehicles,  
24 maintenance or office facilities, or any part thereof so as to impair Contractor's ability to perform its  
25 obligations under the Franchise Agreement and that cannot be released, bonded or otherwise lifted within  
26 five (5) Working Days.

27           **14.1.5 Contractor Debt**

28 The Contractor filing a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor  
29 relief, or other similar law now or later in effect, or consenting to the appointment of or taking possession by  
30 a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor  
31 or necessary for performance of the Franchise Agreement), trustee (other than as security for an obligation  
32 under a deed of trust), custodian, sequestrator (or similar official) of Contractor for any part of Contractor's  
33 operating assets or any substantial part of Contractor's property, or any general assignment for the benefit of  
34 Contractor's creditors, or failure to pay Contractor's debts as they become due or any action in furtherance of  
35 any of the foregoing.

1           **14.1.6 Court Order or Decree**

2 Any decree or order for relief of any court or tribunal having competent jurisdiction over the Contractor in  
3 any involuntary case brought under any bankruptcy, insolvency, debtor relief or similar law now or later in  
4 effect, or Contractor's consenting to or failure to oppose any such proceeding, or any such court or tribunal  
5 entering a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or  
6 similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or  
7 ordering the winding up or liquidation of the affairs of Contractor.

8           **14.1.7 Failure to Provide Performance Assurances**

9 Contractor's failure to provide reasonable assurances of performance under the Franchise Agreement as  
10 required under Section 14.7.

11           **14.1.8 Other Circumstances Constituting Events of Default**

12 Other circumstances that constitute an event of default include, but are not limited to:

13           **14.1.8.1** Contractor's failure to notify the City in writing within five (5) Business Days of  
14 Contractor's receipt of any notice of violation or other official communication from any agency having  
15 regulatory authority over the Franchise, the Franchise Agreement, Contractor, or Contractor's operations  
16 where such communication may impair Contractor's ability to perform its obligations under the Franchise  
17 Agreement.

18           **14.1.8.2** Lapse, expiration, termination, non-renewal, or reduction in scope or amount of  
19 any insurance, letter of credit, bond or other instrument, security or obligation required under the Franchise  
20 Agreement.

21           **14.1.8.3** Contractor failure to timely pay the City any amounts owed to the City under the  
22 Franchise Agreement, including, but not limited to, failure to timely pay the City any Franchise payments.

23           **14.1.8.4** Contractor failure and/or refusal to timely provide the City with required  
24 information, reports, data and/or Franchise Records required under the Franchise Agreement, including, but  
25 not limited to, refusal or failure to timely provide Franchise reports.

26           **14.1.8.5** Violation of any permit conditions, regulations or laws applicable to Contractor's  
27 facilities operations.

28           **14.1.8.6** Any purported assignment, subcontracting or other transfer or delegation of rights  
29 or obligations under this Agreement without first complying with the requirements of Section 14.8 of this  
30 Agreement.

31           **14.1.8.7** Failure to achieve or maintain the City's AB 939 Diversion goals and other AB 939  
32 requirements, and/or failure to comply with the requirements of Section 8.4.

33           **14.2 Termination Upon Event of Default**

34           **14.2.1** Upon the occurrence of one or more event of default, the City may terminate the Franchise  
35 Agreement upon 10 Working Days' prior written notice to Contractor of the City's intent to terminate the  
36 Franchise Agreement. The notice will include a brief description of the event(s) of default justifying  
37 termination.

1           **14.2.2** Within five (5) Working Days after the date of the City's notice of intent to terminate the  
2 Franchise Agreement due to event(s) of default, the Contractor may submit to the City a written request for  
3 an informal hearing before the City Council to dispute the existence of event(s) of default. The City will  
4 schedule an informal hearing before the City Council within 25 Working Days of receipt of the Contractor's  
5 written request, and termination of the Franchise Agreement will be stayed pending issuance of the City  
6 Council determination regarding the existence of one or more events of default. At the hearing, the  
7 Contractor may present evidence in writing and through testimony of its employees and others relevant to the  
8 event(s) of default. The only subject matter considered at the informal hearing before the City Council will be  
9 information regarding the existence of one or more event of default.

10           **14.2.3** Failure by the Contractor to submit a written request for a hearing within five (5) Working  
11 Days after the City's notice of intent to terminate the Franchise Agreement due to event(s) of default will  
12 constitute Contractor failure to exhaust administrative remedies regarding termination of the Franchise  
13 Agreement and will irrevocably waive Contractor's right to dispute or oppose termination of the Franchise  
14 Agreement. If Contractor fails to timely request a hearing, termination of the Franchise Agreement due to  
15 event(s) of default will require no hearing or proceeding to become effective, and termination will become  
16 effective on the date given in the notice of intent to terminate.

17           **14.2.4** The City will provide Contractor with a written explanation of the City Council's  
18 determination regarding the existence of one or more events of default under the Franchise Agreement. The  
19 City Council's determination regarding whether one or more events of default exist under the Franchise  
20 Agreement will be final.

21           **14.2.5** If a hearing has been requested and following the hearing the Council finds that an event of  
22 default exists, termination of the Franchise Agreement will become effective on the date of notice of the City  
23 Council's determination. Upon termination of the Franchise agreement due to event(s) of default, the  
24 Franchise Agreement and all of its terms will cease to be in effect, except for such terms or provisions of the  
25 Franchise Agreement that by its terms survive termination, and all obligations and liabilities of the City to the  
26 Contractor under the Franchise Agreement will cease and be fully discharged. Upon termination of the  
27 Franchise Agreement due to event(s) of default, the City may recover from the Contractor and the  
28 performance bond surety all direct and indirect costs incurred by the City due to the event(s) of default,  
29 including, but not limited to, the City's cost of obtaining substitute Franchise Services, and the City may  
30 negotiate with other contractors for the provision of the Franchise Services.

### 31 **14.3 City's Right To Perform or Have Performed the Franchise Services**

#### 32 **14.3.1 General**

33 In addition to any and all other legal or equitable remedies, in the event that Contractor, for any reason  
34 whatsoever, fails, refuses, or is unable to provide any Franchise Service for a period of five (5) consecutive  
35 Working Days (or seven (7) consecutive Working Days in the case of labor dispute), and if, as a result thereof,  
36 Solid Waste accumulates in the City to such an extent, in such a manner, or for such a time that the City finds  
37 in its sole discretion that such accumulation endangers or menaces the public health, safety or welfare, then  
38 the City shall have the right, but not the obligation, without payment to Contractor, upon 24 hours' prior  
39 notice to Contractor during the period of such accumulation, to perform or have performed the Franchise  
40 Services in accordance with this Section 14.3.1. Notice of Contractor's failure, refusal or neglect to provide  
41 Franchise Services may be given orally by telephone to Contractor and written confirmation of such oral  
42 notification shall be sent to Contractor within 24 hours of the oral notification.

43           **14.3.1.1** City may perform, or have performed, Franchise Services pursuant to this Section  
44 14.3.1 with the City's own or other personnel without liability to Contractor; and/or

1           **14.3.1.2** City may use any of Contractor's land, equipment, facilities and other property  
2 useful in providing Franchise Services to perform or have performed the Franchise Services.

3           **14.3.2 Contractor Cooperation**

4 Contractor agrees that to help mitigate in part the damages that the City and the public will suffer in the event  
5 of failure of the Contractor to perform Franchise Services pursuant to this Section 14.3:

6           **14.3.2.1** Contractor will fully cooperate with the City to effect the transfer of possession of  
7 property to the City for the City's use to perform or permit performance of the Franchise Services.

8           **14.3.2.2** Contractor will, if the City so requests, and to the extent feasible, keep in good  
9 repair and condition all such property, provide all motor vehicles with fuel, oil and other service, and provide  
10 such other service as may be necessary to maintain said property in operational condition for provision of the  
11 Franchise Services.

12           **14.3.2.3** The City may immediately engage all or any personnel necessary or useful for  
13 performing any or all of the Franchise Services, including, if the City so desires, employees previously or then  
14 employed by Contractor. Contractor further agrees, if the City so requests, to furnish the City the services of  
15 any or all management or office personnel employed by Contractor whose services are necessary or useful for  
16 performing Franchise Services, including Billing and Collection for such Franchise Services.

17           **14.3.2.4** The City agrees that the City assumes responsibility for the proper and normal use  
18 of equipment and facilities while in the City's possession for performance of the Franchise Services pursuant  
19 to this Section 14.3.

20           **14.3.2.5** The Contractor agrees that the City's exercise of its rights under this Section 14.3  
21 does not constitute a taking of private property for which compensation must be paid; will not create any  
22 liability on the part of City to Contractor; and does not exempt Contractor from or excuse the Contractor's  
23 obligations under Section 13, which are meant to apply to circumstances arising under this Section 14.3,  
24 provided that Contractor is not required to indemnify City against claims and damages arising from the active  
25 negligence or willful misconduct of City or its officers, officials, employees, agents, or volunteers acting under  
26 this Section 14.3.

27           **14.3.3 Duration of the City's Possession**

28 The City has no obligation to acquire or maintain possession of Contractor's property and/or continue its use  
29 in providing any Franchise Services for any period of time and may, at any time, in its sole discretion,  
30 relinquish possession to Contractor. The City's right to retain temporary possession of Contractor's property,  
31 and to perform or have performed the Franchise Services, will continue until Contractor can demonstrate to  
32 the City's satisfaction that it is ready, willing, and able to resume performance of the Franchise Services, or for  
33 180 days, whichever occurs first.

34           **14.3.4 Forfeiture of Bonds**

35 In addition to all other remedies available to the City under this Agreement, in the event of a breach of any of  
36 the material terms or conditions of this contract by Contractor, the City may make a claim for the amount of  
37 its actual damages plus its reasonable attorneys' fees upon Contractor's \$3,500,000 performance bond.

1 **14.4 Liquidated Damages**

2 **14.4.1** The Parties recognize that, should the Contractor breach its obligations under this  
3 Agreement, it would be impractical and extremely difficult to ascertain the actual damages that the City and  
4 its residents have suffered. The Parties agree that the Liquidated Damages amounts specified in this Section  
5 14.4 represent a reasonable estimate as of the date of execution of this Agreement of the amount of the  
6 damages the City and the public will suffer for the specified breaches, without prejudice to the City's right to  
7 treat uncorrected non-performance as an event of default. Liquidated Damages are paid as damages, and not  
8 as a penalty. The City may request, and the Contractor must provide, at Contractor's sole expense and by any  
9 reasonable time requested by the City, any information in Contractor's possession pertaining to potential  
10 incident(s)/non-performance subject to Liquidated Damages.

11 **14.4.2** Prior to assessing Liquidated Damages, the City shall give Contractor written notice of its  
12 intent to do so. The notice will include a brief description of the incident(s)/non-performance giving rise to  
13 the damages.

14 **14.4.3** Within five (5) Working Days after the date of the City's notice of intent to assess  
15 Liquidated Damages, the Contractor may submit to the City a written request for a meeting with the City  
16 Manager to dispute or oppose the assessment. The City will schedule a meeting within 25 Working Days of  
17 receipt of the Contractor's written request. At the meeting, the Contractor may present evidence in writing  
18 and through testimony of its employees and others relevant to the incident(s)/non-performance. Failure by  
19 the Contractor to submit a written request for a meeting within five (5) Working Days after the City's notice  
20 of intent to assess Liquidated Damages will constitute Contractor failure to exhaust administrative remedies  
21 regarding imposition of Liquidated Damages and will irrevocably waive Contractor's right to dispute or  
22 oppose assessment of Liquidated Damages specified in City's notice to the Contractor. If Contractor fails to  
23 timely request a meeting, assessment of Liquidated Damages will require no meeting or proceeding to  
24 become effective.

25 **14.4.4** The City will provide Contractor with a written explanation of its determination on each  
26 incident(s)/non-performance prior to authorizing the assessment of Liquidated Damages. The decision of  
27 whether to assess Liquidated Damages shall be made by the City Manager and shall be final. The City may  
28 assess Liquidated Damages for each calendar day or event of non-compliance with the Franchise Agreement.

29 **14.4.5** Liquidated Damages assessed by the City must be identified in Contractor's monthly  
30 Franchise payment statement and paid as Liquidated Damages in the monthly Franchise payment  
31 immediately following notice of assessment by the City. If Contractor does not identify assessed Liquidated  
32 Damages in the monthly Franchise Fee payment statement and pay assessed Liquidated Damages in the  
33 monthly Franchise Fee payment immediately following notice of assessment by the City, the City may in its  
34 sole discretion treat such failure as an event of default subject to the remedies in this Section 14.

35 In the event that the Contractor fails to perform fully any of the Contractor's obligations under this Franchise  
36 Agreement (other than "Events of Default" pursuant to Section 14.1), the Contractor shall be in breach of  
37 this Franchise Agreement. Upon delivery of written notice to the Contractor and as provided in Section 14.4,  
38 the City may impose the following Liquidated Damages upon the Contractor, in addition to any other  
39 available remedies the City may have.

40 Contractor may be assessed the following Liquidated Damages if Contractor fails to fulfill its obligations with  
41 regards to the events listed in this Section in accordance with the terms and conditions of the Agreement with  
42 regards to the time frame for accomplishing each event and nature of the responsibility associated with the  
43 event, unless otherwise stated in this Section:

<b>COLLECTION RELIABILITY</b>		
1.	<b>Maintain Collection Schedule.</b> For failure to Collect from all Customers on a route on the scheduled day (unless non-collection was warranted pursuant to this Agreement)	\$25/ Container
2.	<b>Start New Customer.</b> For each failure over 5 during Rate Period to commence service to a new Customer within 7 calendar days after order received and account number established	\$150/event
3.	<b>Missed Pick-Ups.</b> For each failure over 15 during Rate Period to Collect Mixed Materials, Recyclable Materials, or Organic Materials, which has been properly set out for Collection by a Customer on the scheduled Collection day	\$150/event
4.	<b>Consecutive Missed Pick-Ups.</b> For each failure to Collect Mixed Materials, Recyclable Materials or Organic Materials which has been properly set out for Collection, from the same Customer on 2 consecutive scheduled pick ups	\$150/event

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<b>COLLECTION AND STREET SWEEPING QUALITY</b>		
5.	<b>Leaks, Litter or Spills.</b> For each occurrence over 5 during the Rate Period of unreasonable leaks, litter, or spills of Mixed Materials, Recyclable Materials, or Organic Materials near Containers or on public streets and failure to pick up or clean up such material immediately	\$300/event
6.	<b>Improper Container Placement.</b> For each occurrence over 12 during the Rate Period of failure to replace Containers in original position, upright, with lids attached to or on Carts or Bins	\$150/event
7.	<b>Care of Private Property.</b> For each failure over 24 during the Rate Period of not closing a Customer's gate, crossing planted areas, or damaging private property (including private vehicles)	\$300/event
8.	<b>Repair of Private Property.</b> For each occurrence over 5 during the Rate Period of failure to repair damage to property within 30 days of the date the damage was reported	\$250/event
9.	<b>Unauthorized Collection or Sweeping Hours.</b> For each occurrence over 5 the during Rate Period of Collecting Mixed Materials, Recyclable Materials, and Organic Materials or sweeping streets during unauthorized hours	\$300/event
10.	<b>Excessive Noise.</b> For each occurrence over 12 during the Rate Period of excessive noise	\$300/event
11.	<b>Non-Collection Tags.</b> For each failure over 12 during the Rate Period of not tagging Containers which have not been Collected explaining the reason for non-Collection	\$150/event

COLLECTION AND STREET SWEEPING QUALITY		
12.	<b>Cleaning Collection Vehicles.</b> For each occurrence over 5 during the Rate Period of failure to clean Collection Vehicles one time per week	\$150/event
13.	<b>Cleaning Public Containers.</b> For each failure to power wash public litter and Recyclable Materials receptacles, Containers, metal liners, and lids twice a year	\$150/ Container/ event
14.	<b>Discourteous Behavior.</b> For each occurrence of discourteous behavior by Collection Vehicle personnel, customer service personnel, or other employees of Contractor	\$500/event
15.	<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	\$2,500/ incident

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CUSTOMER SERVICE RESPONSIVENESS		
16.	<b>Call Responsiveness.</b> For each failure to answer the telephone during business hours specified in the Agreement or failure for answering machine to record call during non-business hours specified in the Agreement	\$300/event
17.	<b>30-Second Call Hold Time.</b> Failure to answer 90 percent of calls received during office hours within 30 seconds	\$2 per call for each call not answered in accordance with the standard
18.	<b>3-Minute Call Hold Time.</b> Failure to answer 100 percent of calls received during office hours within 3 minutes	\$2 per call for each call not answered in accordance with the standard
19.	<b>After-Hours Call Returns.</b> Failure to return 100 percent of calls received on Contractor's answering machine by 5:00 p.m. of the Working Day following receipt of the Complaint	\$2 per call not returned in accordance with the standard
20.	<b>Complaint Level.</b> Failure to maintain Complaint level below 0.005% where the percent is calculated equal to the number of Complaints divided by the total service opportunities (the total Residential stops and Commercial lifts performed in the reporting period)	\$2 per Complaint for each Complaint above the 0.005% threshold
21.	<b>Respond to Complaint or Service Request.</b> For each failure to inform Customer, within one (1) Working Day of receipt of the Complaint or service request, of the action Contractor will take to remedy a Complaint or to respond	\$300/event



CUSTOMER SERVICE RESPONSIVENESS		
	to a service request	
22.	<b>Resolve Complaint or Service Request.</b> For each failure to resolve or remedy a Complaint or Service Request within five (5) Working Days of receipt of Complaint or Service Request with the exception of missed pick-ups which are addressed below	\$300/event
23.	<b>Collection of Missed Pick-Ups.</b> For each failure to Collect missed Containers within 25 hours of receipt of the Complaint	\$300/event

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REPORTING AND NOTICING		
24.	<b>Annual Reports.</b> Failure to submit annual reports in the timeframe specified in this Agreement.	\$300/day report is overdue
25.	<b>Report Hazardous Waste.</b> For each failure to notify the appropriate authorities of reportable quantities of Hazardous Waste	\$500/event
26.	<b>Application for Contractor's Compensation.</b> Failure to submit application for Contractor's Compensation in accordance with the timeframe established in the Agreement	\$300/day report is overdue

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PUBLIC EDUCATION		
27.	Failure to make school presentations in each Rate Period in accordance with this Agreement	\$300/event
28.	Failure to prepare and distribute to residents door hanger, flyer or mailer to Customers regarding specific Collection day, holiday, holiday tree, and clean-up events	\$150/day for each day until mailer is sent
29.	Failure to conduct community presentations targeted at residents	\$150/event
30.	Failure to prepare and mail biannual newsletter to all residents in accordance with the schedule approved by the City	\$150 day for each day until mailer is sent
31.	Failure to prepare and distribute "how-to" brochures for each of the four business types	\$150/day
32.	Failure to conduct training meetings for businesses	\$150/day
33.	Failure to meet with business associations	\$150/day

**Franchise Agreement Between the City of Petaluma and PR&R 11/19/2012**

<b>PUBLIC EDUCATION</b>		
34.	Failure to conduct waste audits and submit audit reports	\$150/audit
35.	Failure to provide comprehensive report of findings and suggestions to each company for which an audit was performed	\$150/day
36.	Failure to distribute periodic update for holiday tree Recycling on or before December 25 of each year	\$150/day for each day until mailer is sent (not to each \$1,000)
37.	Failure to develop outreach program for individual Commercial sectors	\$150/day
38.	Failure to prepare and during Rate Period update a Recycling resource guide	\$150/day
39.	Failure to participate in special events listed in this Agreement	\$300/event-day

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<b>OTHER</b>		
40.	<b>Disposal of Recyclables.</b> For each Ton of Recyclable Materials Disposed of without written approval of the City	\$250/Ton
41.	<b>Use of Unauthorized Facilities.</b> For each Ton of Mixed Materials, Recyclable Materials, or Organic Materials Disposed or Processed at a facility not approved for use under the provisions of this Agreement	\$250/Ton
42.	<b>Maintain Website.</b> Failure to maintain accurate and complete website dedicated to the services Contractor provides the City.	\$150/day
43.	<b>Late Remittance of Fees to City.</b> Failure of Contractor to remit fees due to the City 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
44.	<b>Failure to Sweep Streets.</b> Failure to sweep streets in accordance with the schedule presented in Section 7.	\$100/day

<b>OTHER</b>		
45.	Failure to achieve the Diversion Requirement as set forth in Section 8.4.	Per Reporting Period: \$10,000 plus the current per ton disposal fee multiplied by the number of tons that should have been Diverted to achieve the Diversion Requirement but was Disposed
46.	<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

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2 In placing Designee's initials at the places provided below, each party specifically confirms the accuracy of the  
 3 statements made above and the fact that each party has had ample opportunity to consult with legal counsel  
 4 and obtain an explanation of liquidated damage provisions of the time that the Agreement was made.

5 Contractor \_\_\_\_\_ City \_\_\_\_\_  
 6 Initial Here: \_\_\_\_\_ Initial Here: \_\_\_\_\_

7 **14.5 City's Remedies Cumulative; Injunctive Relief, Specific Performance**

8 The City's rights to terminate the Franchise Agreement and to take possession of Contractor's property are  
 9 not mutually exclusive, and the City's termination of the Franchise Agreement will not constitute an election  
 10 of remedies. Instead, all remedies provided in the Franchise Agreement will be in addition to any and all other  
 11 legal and equitable rights and remedies the City may have under law rule or regulation. Due to the nature of  
 12 the *Franchise Services and the protection to the public from potential harms of Refuse* afforded by  
 13 performance of the Franchise Services, the need for compliance with the Franchise Agreement to protect the  
 14 public health, safety and welfare from potential harms of Refuse, the practical difficulties, delay, expense, and  
 15 threat to the public that may result from non-compliance with the Franchise Agreement and/or the need to  
 16 obtain substitute performance of the Franchise Services by another contractor, the remedy of damages for  
 17 event(s) of default is inadequate, and the City may seek and be granted by a tribunal of competent jurisdiction  
 18 injunctive relief and/or specific performance as a remedy for harms that may result from event(s) of default.

19 **14.6 Excuse of Performance**

20 **14.6.1** *The Contractor will be excused from performing Franchise Services or Contractor*  
 21 *obligations under the Franchise Agreement to the extent the Contractor is actually prevented from*  
 22 *performing by reason of flooding, earthquakes, tsunami, war, civil insurrection, riot, or other similar*  
 23 *catastrophic event beyond the control of and not the fault of the Contractor. Labor unrest, including, but not*

1 limited to, strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by  
2 Contractor's employees or directed at Contractor, or a contractor or supplier of Contractor, will not excuse  
3 Contractor's performance, and Contractor will be obligated to continue to perform in accordance with the  
4 Franchise Agreement, and to provide Franchise Services notwithstanding such labor unrest. Further, even  
5 where catastrophic events beyond the Contractor's control and not the fault of Contractor may excuse  
6 performance of the Franchise Services or other Contractor obligations under the Franchise Agreement in  
7 accordance with this provision, Contractor agrees, in such event, to the maximum reasonable extent, to make  
8 arrangements to provide alternate Collection and Disposal services to protect the public health, safety and  
9 welfare.

10 **14.6.2** As soon as possible, and no later than within 24 hours of occurrence of an event that the  
11 Contractor believes excuses Contractor performance, Contractor will provide City notice of such event  
12 describing the facts the Contractor believes excuse performance, and the particular services and/or other  
13 performance the Contractor believes are excused, and the approximate length of time the Contractor believes  
14 such performance is excused. Such notice must be by telephone, facsimile, email, overnight delivery or  
15 courier. If such notice is by telephone, Contractor will provide the City written notice within 24 hours of the  
16 telephone notice. Contractor will comply with the emergency plans of the City and Sonoma County in the  
17 event of a declared disaster.

18 **14.6.3** The partial or complete interruption or discontinuance of Contractor's performance caused  
19 by one or more of the events described in this Section 14.6 and that may excuse Contractor performance will  
20 not constitute an event of default. However, upon occurrence of an event or events excusing Contractor  
21 performance, the City may perform or have performed Franchise Services in accordance with Section 14.3,  
22 and if Contractor is excused from performing for a period of 30 Working Days or more the City may, in its  
23 sole discretion, terminate the Franchise Agreement in accordance with Section 14.2.

#### 24 **14.7 City Right to Demand Performance Assurances**

25 If Contractor is the subject of any labor unrest, including work stoppage or slowdown, sick-out, picketing or  
26 other concerted job action; or appears in the reasonable judgment of the City to be unable to regularly pay its  
27 bills as they become due, or is the subject of a civil or criminal judgment or order for violating an  
28 environmental law, and for such reasons or others the City Manager concludes in good faith that Contractor's  
29 ability to perform in accordance with the Franchise Agreement is in doubt, the City may, at its option and in  
30 addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and  
31 proper performance of the Franchise Services and any and all other Franchise Agreement obligations, in such  
32 form and substance as the City Manager determines in good faith is reasonably necessary under the  
33 circumstances to evidence continued ability to perform in accordance with the Franchise Agreement. If  
34 Contractor fails or refuses to provide satisfactory assurances of Contractor performance in the form and by  
35 the date required by the City, such failure or refusal will be an event of default subject to the remedies in this  
36 Section 14.

#### 37 **14.8 Assignment of Franchise**

##### 38 **14.8.1 City Consent**

39 Contractor understands and agrees that the Franchise Services are vital to the City and its residents and  
40 businesses, and that the City has relied on Contractor's representation of its experience and financial and  
41 other resources in authorizing Contractor to provide Franchise Services under the Franchise Agreement.  
42 Except as permitted in accordance with this Section 14.8, Contractor may neither assign its rights nor  
43 delegate, subcontract, or otherwise transfer its obligations under the Franchise Agreement to any other  
44 Person or entity without the prior written consent of the City. Any such purported assignment made without  
45 the prior written consent of the City will be void and constitute an event of default. City will have no

1 obligation whatsoever to consider any proposed assignment of any part of the Franchise Agreement if at any  
2 time while the Contractor seeks such assignment an uncured event of default exists:

3 **14.8.2 Assignment Requirements**

4 If Contractor applies to the City for consent to assign the Franchise, the City may deny or approve such  
5 request in the City's sole discretion, subject to Applicable Law. Contractor assignment requests, to be  
6 considered by the City, must, at a minimum, comply with the following, in addition to providing any  
7 additional information reasonably requested by the City to assist in the City's consideration of the request:

8 **14.8.2.1** Contractor must pay the City its costs incurred for staff time, consultant fees and  
9 attorneys' fees incurred to evaluate the suitability of any proposed assignee, and to review, draft and finalize  
10 any documentation required to approve and implement any assignment.

11 **14.8.2.2** Contractor shall furnish the City with audited financial statements of the proposed  
12 assignee's operations for the immediately preceding 5 operating years.

13 **14.8.2.3** Contractor must furnish the City with satisfactory proof that the proposed  
14 assignee has the demonstrated technical capability to perform all Franchise Services and any other  
15 information required by the City to ensure the proposed assignee can fulfill the terms of the Franchise  
16 Agreement in a timely, safe, and effective manner, including:

17 **14.8.2.3.1** That the proposed assignee has at least 10 years of Solid Waste  
18 management experience on a scale equal to or exceeding the scale of operations required to perform the  
19 Franchise Agreement;

20 **14.8.2.3.2** That, in the last 5 years, the proposed assignee has not received any  
21 citation, fine, penalty, censure or other sanction from any local, state, federal, or local government agency, or,  
22 if so, that the Contractor has provided the City with a complete list and copies of such sanctions;

23 **14.8.2.3.3** That the proposed assignee has at all times conducted its operations  
24 in an environmentally safe and conscientious fashion; and

25 **14.8.2.3.4** That the proposed assignee conducts its Solid Waste management  
26 practices in full compliance with all applicable federal, state, and local laws and regulations governing the  
27 Collection, Transportation, Processing, and Disposal of Mixed Materials, Recyclable Materials and Organic  
28 Materials, including Hazardous Substances as identified in Title 32 of the California Code of Regulations, as  
29 may be amended from time-to-time.

30 **14.8.2.4** The City reserves the right to approve a requested assignment conditioned on an  
31 increase in the required performance bond, the levels, kinds, or types of required insurance, or on any other  
32 change in the Franchise Agreement terms that the City believes is necessary or appropriate to adequately  
33 provide for the performance of the Franchise Services and protect the public.

34 **14.8.3 Assignment Fee**

35 **14.8.3.1** To be considered, assignment applications must include an assignment fee in the  
36 amount of \$500,000 to pay for any and all costs incurred, including the cost of staff time and consultant fees,  
37 related to the assignment application and City's analysis of the assignment application. Any amount remaining  
38 in the assignment fee upon completion of the City's assignment analysis, after deduction of all costs incurred  
39 by the City related to the assignment, will be credited to the Contractor.

1           **14.8.3.2** Contractor payments for assignment costs are in addition to and not in lieu of any  
2 other fees, charges or amounts Contractor is required to pay the City pursuant to the Franchise Agreement.

3           **14.8.3.3 Interfamilial Assignment**

4 The amount of the assignment fee may reduced or waived if the assignment is an instance of Interfamilial  
5 Assignment as defined in Section 1; however, in such case Contractor shall still be required to reimburse the  
6 City for any and all costs incurred in relation to the Interfamilial Assignment.

7           **14.8.4 Transition**

8 Any approval to assign the Franchise is conditioned on Contractor cooperating with the City and assignee(s)  
9 to produce an orderly transition of the Franchise Services without interruption, which cooperation will  
10 include, but not be limited to, Contractor providing route lists, Customer account and Billing information,  
11 equipment inventories, and other information and assistance reasonably necessary to effect an orderly  
12 transition in Franchise Services.

13           **SECTION 15 – MISCELLANEOUS PROVISIONS**

14 **15.1 Amendment to Franchise Agreement**

15           **15.1.1** The Franchise Agreement may only be amended by a writing signed by representatives  
16 authorized to bind the City and the Contractor.

17           **15.1.2** The City and Contractor understand and agree that future changes in the law and/or  
18 regulations applicable to or governing the performance of the Franchise Services, including, but not limited  
19 the implementation of increased diversion requirements pursuant to AB 939, and applicable provisions of the  
20 Petaluma Municipal Code, may require amendments to some of the terms, conditions or obligations under  
21 the Franchise Agreement. In the event any future Change in Law and/or regulations applicable to or  
22 governing the performance of the Franchise Services requires changes in the Franchise Agreement or  
23 obligations of the Contractor, then the City and Contractor agree to enter into good faith negotiations  
24 regarding amendment of the Franchise Agreement to accommodate such changes in Applicable Law or  
25 regulations or to accommodate the public welfare. Such good faith negotiations may include reasonable and  
26 appropriate compensation adjustment for any increase or decrease in the Franchise Services or other  
27 Franchise obligations. The City and the Contractor agree not to unreasonably withhold agreement on such  
28 amendments.

29 **15.2 Parties to Meet Annually**

30 The City and Contractor agree to meet annually between July 1 and September 30, on the request of either  
31 party, to discuss Customer service and any other topics of mutual concern arising out of the Franchise  
32 Agreement.

33 **15.3 Relationship of the Parties**

34 The Parties agree that Contractor will perform the Franchise Services as an independent contractor and not  
35 as an employee or agent of the City. Persons employed or utilized by Contractor in the performance of the  
36 Franchise Services will not be employees or agents of the City.

1    **15.4    Compliance with Law**

2    In performing the Franchise Services, Contractor shall at all times, at its sole cost, comply with all applicable  
3    federal, state and local laws and regulations now in force and as they may be enacted, issued, or amended  
4    during the Franchise Term, including, but not limited to, all permit requirements applicable to personnel,  
5    facilities, land, and equipment, used to provide Franchise Services, and all ethical laws, rules and regulations  
6    applicable to the Contractor and its performance of the Franchise Services, including, but not limited to, the  
7    gift and other limits and restrictions contained in the Political Reform Act, California Government Code  
8    section 81000 and following, the implementing regulations of the Fair Political Practices Commission in Title  
9    II, section 18109 and following of the California Code of Regulations, and the City of Petaluma's Conflict of  
10   Interest Code, all as from time to time amended.

11   Notwithstanding the above, neither Contractor nor its employees or agents shall provide, directly or  
12   indirectly, any gifts or gratuities to any City employee or representative, with the exception, in Contractor's  
13   sole discretion, of small holiday gifts of nominal value.

14    **15.5    Governing Law and Venue**

15    The laws of the State of California and other Applicable Law shall govern the rights, obligations, duties and  
16    liabilities of the Parties to and the interpretation of the Franchise Agreement. Any action or proceeding that is  
17    initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in  
18    this Franchise Agreement shall be brought in a state court in Sonoma County or in the United States District  
19    Court for the Northern District of California. Each party consents to service of process in any manner  
20    authorized by California law.

21    **15.6    Dispute Resolution**

22    In the event of any dispute arising under the Franchise Agreement, the City and Contractor shall continue  
23    performance of their respective obligations under the Franchise Agreement and shall attempt to resolve such  
24    disputes in a cooperative manner, including, but not limited to, negotiating in good faith. By agreement of the  
25    City and the Contractor or as required by any provision in the Agreement, any unresolved dispute arising  
26    under the Franchise Agreement may be submitted to non-binding mediation before a recognized mediator  
27    having experience with and the subject matter of the Franchise Agreement and that is mutually acceptable to  
28    the Parties. The costs of any mandatory mediation under this Agreement shall be borne by the party  
29    demanding mediation.

30    **15.7    Non-Discrimination**

31    Contractor will not discriminate against any employee of Contractor or applicant for employment because of  
32    race, religion, creed, color, national origin, ancestry, disability, sex, sexual orientation, or age. Contractor will  
33    take affirmative action to ensure that applicants are employed and that employees are treated during  
34    employment without regard to their race, religion, creed, color, national origin, ancestry, disability, sex, sexual  
35    orientation, or age.

36    **15.8    Binding on Successors**

37    All of the terms, covenants and conditions contained in the Franchise Agreement will continue and bind all  
38    successors-in-interest of Contractor.

1    **15.9    Transition to Next Contractor**

2    One year prior to the conclusion of the Franchise Term, or if the City chooses to terminate this Franchise  
3    Agreement as a result of an uncured event of default, Contractor shall provide the City with such information  
4    as may reasonably be requested to assist in the competitive bidding process and/or the smooth transition to  
5    the next contractor. If the City awards a Franchise Agreement to a new contractor, Contractor will cooperate  
6    with the City and new contractor to ensure an orderly transition of the Franchise Services without service  
7    interruption. If the Contractor fails to fully cooperate with a contractor transition in accordance with this  
8    provision, Contractor agrees that City may recover the costs incurred due to such failure of cooperation from  
9    the Contractor or its performance bond surety, and that in addition, the City, may, in its sole discretion,  
10    declare the Contractor ineligible to be considered for award of future competitive procurements of the City  
11    for a period of 5 years from the City's declaration of ineligibility.

12   **15.10   Survival**

13   The following provisions will survive the expiration or earlier termination of the Franchise Agreement:

14   **15.11   Parties in Interest**

15   Nothing in the Franchise Agreement is intended to confer or confers any rights on any Persons other than  
16   the Parties to the Franchise Agreement and their successors and permitted assigns.

17   **15.12   Waiver**

18   Waiver by either party of any breach or violation of any provisions of the Franchise Agreement will not waive  
19   and will not be deemed to be a waiver of any breach or violation of any other provision nor of any  
20   subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party  
21   of any monies which become due under the Franchise Agreement shall not be deemed to be a waiver of any  
22   preexisting or concurrent breach of violation by the other party of any provision of the Franchise Agreement.

23   **15.13   Notice to Parties**

24   All notices under the Franchise Agreement shall be in writing, and delivered in person to the addressee's  
25   normal place of business, or sent by registered mail, or other commercial courier where date and place of  
26   delivery can be confirmed, postage prepaid. Notices shall be effective upon delivery.

27   Notices required to be given to City shall be addressed as follows:

28                   City of Petaluma  
29                   Attn: Dan St. John  
30                   11 English Street  
31                   Petaluma, CA 94952

32   Notices required to be given to Contractor shall be addressed as follows:

33                   Petaluma Refuse and Recycling  
34                   Attn: Steve McCaffrey, Director  
35                   Petaluma Refuse & Recycling  
36                   P.O. Box 1916  
37                   Santa Rosa, CA 95402



1 **15.14 City Free to Negotiate with Third Parties**

2 The City may, at any time, investigate all options for the provision of the Franchise Services. Without limiting  
3 the generality of the foregoing, the City may solicit proposals from Contractor and from third parties for the  
4 provision of any or all Franchise Services and may negotiate and execute agreements for such services that  
5 will take effect upon the expiration, or earlier termination of the Franchise Agreement due to the City's  
6 exercise of its right to terminate the Franchise Agreement due to an event of default.

7 **15.15 Section Headings**

8 The section headings in the Franchise Agreement are for convenience of reference only and are not intended  
9 to be used in the construction of this Franchise Agreement, nor to alter or affect any of the Franchise  
10 Agreement provisions.

11 **15.16 References to Laws**

12 All references in the Franchise Agreement to laws shall be understood to include such laws as they may be  
13 subsequently amended or recodified, unless otherwise expressly provided.

14 **15.17 Interpretation/Drafting**

15 The Franchise Agreement shall be interpreted and construed reasonably and neither for nor against either  
16 party, regardless of the degree to which either party participated in its drafting. Each of the Parties has  
17 received the advice of legal counsel prior to signing the Franchise Agreement. The Parties acknowledge that  
18 no other party or agent or attorney has made any promise, representation, or warranty whatsoever, express or  
19 implied, not contained in the Franchise Agreement concerning the Franchise Agreement subject matter to  
20 induce another party to execute the Franchise Agreement. The Parties agree no provision or provisions will  
21 be subject to any rules of construction based upon any party being considered the party "drafting" the  
22 Franchise Agreement.

23 **15.18 Integration**

24 The Franchise Agreement represents the entire and integrated agreement between the City and Contractor  
25 and supersedes all prior negotiations, representations or agreements, whether written or oral. If a discrepancy,  
26 disagreement, ambiguity, inconsistency or difference in interpretation of terms arises as between terms or  
27 provisions of the Franchise Agreement and any exhibit(s) made a part of the Franchise Agreement, this  
28 Franchise Agreement term or provision will control and shall be deemed to reflect the intent of the Parties  
29 with respect to the subject matter hereof.

30 **15.19 Recovery of Attorneys' Fees**

31 If a party to the Franchise Agreement brings any action, including an action for declaratory relief, to enforce  
32 or interpret any term of the Franchise Agreement, the prevailing party or the non-defaulting party, as the case  
33 may be, will be entitled to recover its reasonable attorneys' fees in addition to any other relief to which that  
34 party may be entitled. The court may set such fees in the same action or in a separate action brought for that  
35 purpose.

1 **15.20 Severability**

2 Every provision of the Franchise Agreement is intended to be severable. If a court of competent jurisdiction  
3 shall hold any provision of the Franchise Agreement invalid, illegal, or unenforceable, the validity, legality,  
4 and enforceability of the remaining provisions shall not in any way be affected or impaired.

5 **15.21 Counterparts**

6 The Franchise Agreement may be executed in counterparts, each of which shall be considered an original.

7 **15.22 Exhibits**

8 Each of the exhibits listed below is attached hereto and incorporated herein and made a part hereof by this  
9 reference.

10 **15.23 Time**

11 Time is of the essence in this Franchise Agreement and of each provision hereof.

12 **15.24 Corporate Guaranty**

13 Upon Contractor's execution of this Agreement, Contractor shall provide to City a fully executed corporate  
14 guaranty by The Ratto Group of Companies, Inc. as guarantor of Contractor's performance of all terms and  
15 conditions of this Agreement. The corporate guaranty shall bind The Ratto Group of Companies, Inc. to  
16 perform each and every term and condition of this Agreement in the event of Contractor's failure. Said  
17 corporate guaranty shall be executed by a corporate officer duly authorized by the corporation to fully bind  
18 The Ratto Group of Companies, Inc. to perform each and every term and condition of this Agreement and  
19 shall remain binding throughout the Franchise Term.

20 **15.25 Compliance with Ordinance**

21 Contractor agrees to comply with all terms and conditions of all applicable ordinances now in effect or  
22 hereafter enacted by the City.

23 **15.26 Living Wage Ordinance**

24 Contractor shall comply fully with all applicable requirements of Petaluma Municipal Code, Chapter 8.36,  
25 Living Wage (the "Living Wage Ordinance"), as the same may be amended from time to time. Any  
26 amendment to the Living Wage Ordinance having the effect of increasing Contractor's costs may be a  
27 Change of Law if it satisfies the qualifications therefor under section 1.15. Upon the City's request,  
28 Contractor shall promptly provide to the City documents and information verifying Contractor's compliance  
29 with the requirements of the Living Wage Ordinance, and shall, within fifteen (15) calendar days of the  
30 Effective Date of this Agreement, notify each of its affected employees of the amount of wages and time off  
31 that are required to be provided to them pursuant to the Living Wage Ordinance. The Acknowledgement  
32 and Certification Pursuant to the City of Petaluma Living Wage Ordinance, attached to this Agreement as  
33 Exhibit 12, shall be a part of this Agreement for all purposes, and Contractors that are subject to Living Wage  
34 Ordinance requirements, as determined by the City, must provide a properly completed Exhibit 12 in  
35 accordance with the requirements of the Living Wage Ordinance. Contractor's noncompliance with the  
36 applicable requirements of the Living Wage Ordinance shall constitute cause for City's termination of this  
37 Agreement pursuant to Section 14 hereof.

38

Franchise Agreement Between the City of Petaluma and PR&R 11/19/2012

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

3

4 CITY OF PETALUMA

PETALUMA REFUSE AND RECYCLING,  
5 INC.

6

7 \_\_\_\_\_  
8 John Brown, City Manager

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

9

Its: \_\_\_\_\_

10

11

12 ATTEST:

13

14 \_\_\_\_\_  
15 Claire Cooper, City Clerk

16

17

18

19 APPROVED AS TO FORM:

20

21 \_\_\_\_\_  
22 Joshua Genser, City Attorney

23

24

**LIST OF EXHIBITS**

- 1
- 2
- 3        1.        City-Approved Maximum Service Rates
- 4        2.        Refuse Rate Index
- 5        3.        Detailed Rate Review Methodology
- 6        4.        City Facilities
- 7        5.        Approved Facilities
- 8        6.        Public Education Plan
- 9        7.        Diversion Plan
- 10       8.        Cart Specifications
- 11       9.        Vehicle Specifications
- 12       10.       Replacement Schedule
- 13       11.       Corporate Guaranty

Exhibit 1a CITY-APPROVED MAXIMUM SERVICE RATES SINGLE-FAMILY RESIDENTIAL SERVICES					
<b>A. RESIDENTIAL CART SERVICE</b>					
	Garbage Cart Sizes (gallons)	<b>20</b>	<b>35</b>	<b>65</b>	<b>95</b>
1	Monthly Curbside Rate	\$8.26	\$14.64	\$27.75	\$45.79
2	Monthly Curbside Rate – Lifeline	\$6.19	\$10.98	\$20.81	N/A
3	Extra Pickups	\$2.07	\$3.66	\$6.94	\$11.45
<b>B. ADDITIONAL BULKY ITEM PICKUP</b>					
1	Bulky Item Pickup	\$30.00	For 2 items less than 100 pounds		
2	Collection of Large Items Containing Freon	\$30.00	For each item		
<b>C. ADDITIONAL CART REPLACEMENT</b>					
1	Cart Replacement	\$10.91	Each replacement in addition to one per year at no additional cost		

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Exhibit 1b CITY-APPROVED MAXIMUM SERVICE RATES COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SERVICES						
Mixed Materials Collection (includes Recyclable Materials Collection)						
Container Size	Collection Frequency					
	1x / week	2x / week	3x / week	4x / week	5x / week	6x / week
35-gallon Cart	\$25.68	N/A	N/A	N/A	N/A	N/A
65-gallon Cart	\$44.66	N/A	N/A	N/A	N/A	N/A
95-gallon Cart	\$63.65	N/A	N/A	N/A	N/A	N/A
1.5-CY Bin	\$217.43	\$358.58	\$511.14	\$620.59	\$859.92	\$1,047.22
2-CY Bin	\$255.43	\$433.48	\$604.57	\$880.20	\$1,122.38	\$1,204.32
3-CY Bin	\$341.77	\$587.46	\$966.32	\$1,303.62	\$1,655.02	\$2,030.62
4-CY Bin	\$375.51	\$723.02	\$1,088.07	\$1,476.69	\$1,883.63	\$2,308.25
6-CY Bin	\$513.89	\$873.92	\$1,358.01	\$1,843.01	\$2,351.30	\$3,018.56
Yard Trimmings Collection						
Container Size	Collection Frequency					
	1x / week	2x / week	3x / week	4x / week	5x / week	6x / week
35-gallon Cart	\$19.26	N/A	N/A	N/A	N/A	N/A
65-gallon Cart	\$33.49	N/A	N/A	N/A	N/A	N/A
95-gallon Cart	\$47.74	N/A	N/A	N/A	N/A	N/A
1.5-CY Bin	\$163.07	\$268.94	\$383.35	\$465.44	\$644.94	\$785.42
2-CY Bin	\$191.57	\$325.11	\$453.43	\$660.15	\$841.79	\$900.99
3-CY Bin	\$256.32	\$440.59	\$724.74	\$977.71	\$1,241.26	\$1,522.96
4-CY Bin	\$281.63	\$542.26	\$816.06	\$1,107.52	\$1,412.72	\$1,731.19
6-CY Bin	\$385.42	\$655.44	\$1,018.51	\$1,382.26	\$1,763.47	\$2,263.92
Lock Service	\$10.91	Per lock per month				
Pushout Charge	\$18.00	Per 25 feet per month				
Lock and Push	\$18.00	Per month				
Lock Installation	\$160.36	Per install				
Container Cleaning	\$54.54	Each				
Cart Replacement	\$10.91	Each (in addition to one per year at no cost)				
Extra Pick-up	Monthly rate divided by 4					

Exhibit 1c CITY-APPROVED MAXIMUM SERVICE RATES - DROP BOX SERVICES					
10 CY Debris Box	\$187.35	Per Pull		10 CY Compactor	\$182.43 Per Pull
15 CY Debris Box	N/A			15 CY Compactor	\$265.67 Per Pull
20 CY Debris Box	\$221.40	Per pull		20 CY Compactor	\$354.22 Per Pull
25 CY Debris Box	N/A			25 CY Compactor	\$442.78 Per Pull
30 CY Debris Box	\$265.64	Per pull		30 CY Compactor	\$531.35 Per Pull
40 CY Debris Box	\$265.64	Per pull		40 CY Compactor	\$708.46 Per Pull

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Exhibit 1d CITY-APPROVED TIPPING FEES		
Disposal Charge Per Ton	\$65.26	Redwood Landfill
Recyclable Materials Processing Charge Per Ton	\$-0-	Novato Disposal Services MRF
Organic Waste Processing Charge Per Ton	\$32.43	Sonoma Compost
Mixed C&D, Inerts, Wood Waste Processing Charge Per Ton	\$65.26	Redwood Landfill (transferred for processing at Davis Street MRF)

**Exhibit 2**  
**REFUSE RATE INDEX**

The "Refuse Rate Index" (RRI) Adjustment shall be calculated in the following manner:

1. The Operating Costs of providing Collection Services in the Service Area for the designated fiscal period (January to December) shall be prepared in the format set forth in the "Operating Cost Statement – Description" on the following page of this Exhibit.
2. The Operating Costs of providing Collection Services in the Service Area shall be broken down into one of the following seven Operating Cost Categories: Labor; Fuel; Vehicle Replacement; Maintenance, Disposal Fee, Organic Materials Processing Fee, and All Other. Each Operating Cost Category is then assigned a weighted percentage equal to that Operating Cost Category's proportionate share of the total of the Operating Costs as shown for all Operating Cost Categories.
3. The indices listed below are used to calculate the percentage change for each Operating Cost Category. The percentage change in each index is calculated between the two previous subsequent twelve-month fiscal periods (January to December). The percentage change between the average of index values from January 2012 to December 2012 and the average of index values from January 2013 to December 2013 for each Operating Cost Category, for example, will serve as the basis for the first RRI Adjustment effective July 1, 2014. For the "Disposal Fee" and "Organic Materials Processing Fee" Operating Cost Categories, the percentage change will be calculated using the change in the per-Ton tip fees between the two preceding calendar years.

<u>Operating Cost Category</u>	<u>Index</u>
<b>Labor</b>	BLS Series ID: ceu6056210008 Production Workers-Waste Collection
<b>Fuel</b>	California - Ultra Low Sulfur Diesel - Monthly: <a href="http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp">http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp</a>
<b>Vehicle Replacement</b>	BLS Series ID: pcu336211336211 Truck, bus, car and other vehicles bodies, for sale separately.
<b>Vehicle Maintenance</b>	BLS Series ID: pcu333924333924 Parts and attachments for Industrial work trucks.
<b>Disposal Fee</b>	The per-Ton tip fee charged at the Approved Disposal Site.
<b>Organic Materials Processing Fee</b>	The per-Ton tip fee charged at the Approved Organic Materials Processing Site.
<b>All Other</b>	Consumer Price Index, Series ID: CUURA422SA0 CPI-All Urban Consumers, All Items, San Francisco.

4. The percentage weight (see number 2 above) for each Operating Cost Category is then multiplied by the percentage change (see number 3 above) in each Operating Cost Category's appropriate index to calculate a weighted percentage change for each Operating Cost Category. The weighted percentage changes for each Operating Cost Category are then added together to calculate the RRI Adjustment percentage to be used for adjusting the City-Approved Maximum Service Rates.



Exhibit 2  
REFUSE RATE INDEX

**Operating Cost Statement - Description**

**Operating Cost Category**

<b>Labor:</b>	List all administrative, officer, operation and maintenance salary accounts.  List payroll tax accounts directly related to the above salary accounts.  List all employee benefit accounts including health insurance costs, workmen's compensation premiums, and retirement plan costs.
<b>Fuel:</b>	List all fuel and oil accounts.
<b>Vehicle Replacement:</b>	List all Collection and Collection related vehicle depreciation accounts.  List all vehicle lease or rental accounts related to Collection or Collection related vehicles.
<b>Vehicle Maintenance:</b>	List all Collection or Collection related vehicle parts accounts.
<b>Disposal Fee:</b>	List all Landfill Disposal related accounts.
<b>Organic Materials Processing Fee:</b>	List all Organic Materials Processing related accounts.
<b>All Other:</b>	List all other expense accounts related to the services provided under this Contract. This category includes all insurance (except for those listed under "Labor" above), including general liability, fire, truck damage, extended coverage and employee group medical and life; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; office supplies; postage; trade association dues and subscription; advertising; and miscellaneous other expenses.

Exhibit 3  
DETAILED RATE REVIEW METHODOLOGY

**1. Request for Detailed Rate Review**

At least six months prior to a normally scheduled July 1st RRI, the City or the Contractor may request that a Detailed Rate Review be conducted. In the event that either the City or the Contractor requests a Detailed Rate Review, the Detailed Rate Review shall be based on the audited financial statements for the complete fiscal year (January to December) preceding the given July 1<sup>st</sup> rate adjustment.

Contractor shall assemble and submit such information as necessary to support assumptions made with regard to forecasts used to develop their Service Rates. Contractor shall provide all information from related party entities regarding any material transactions between Contractor and those related party entities. Service Rates shall be adjusted based on the forecasted annual cost of operations, profit, and forecasted Pass-Through Costs reviewed as set forth below.

a. Forecasted annual cost of operations. The forecasted annual cost of operations shall consist of the sum of:

- Forecasted labor-related costs
- Forecasted vehicle-related costs
- Forecasted other costs
- Forecasted depreciation expense

Each of these sums shall be reviewed based on the following:

- i. **Determination of actual costs.** Contractor's financial statement will be reviewed to determine Contractor's costs for each of the foregoing categories during the fiscal year involved. City will use the audited financial statements to determine that costs have actually been incurred and have been assigned to the appropriate category.
- ii. **Adjustment of actual costs.** City may adjust the actual costs in two ways: (1) to exclude any non-allowable costs, set out below, and (2) to exclude and/or reduce any costs that were not reasonably and necessarily incurred in the performance of the services provided in accordance with this Agreement.

Costs that may be deemed non-allowable include, but are not limited to, the following:

- i. Payments to directors and/or owners of Contractor unless paid to reasonably compensate for services actually rendered.
- ii. Promotional, entertainment, and travel expenses, unless authorized in advance by City.
- iii. Payments to repair damage to property of City or other parties, including the City or County for which Contractor is legally liable.
- iv. Fines or penalties of any nature.
- v. Liquidated Damages assessed under Section 14.4 of this Agreement.
- vi. Federal or state income taxes.
- vii. Charitable or political donations.

Exhibit 3

DETAILED RATE REVIEW METHODOLOGY

- viii. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which City and Contractor are adverse parties, unless Contractor is the prevailing party in said proceedings.
- ix. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or other wrongdoing, are in issue and occasions in part the attorney's fees and expenses claimed, provided, however, such attorney's fees will be allowed to the extent Contractor can demonstrate they were reasonable and necessary and a cost of doing business, and were not the result of any intentional or willful misconduct by Contractor or its employees; and attorney's fees and expenses incurred by Contractor in a court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate strict liability for City arising from the action of its citizens or ratepayers (such as in a CERCLA lawsuit).
- x. Payments to related party entities for products or services, in excess of the fair market value for those products or services. For purposes of this Agreement, related party expenses are those resulting from transactions between Contractor and another company (companies) that has (have) common ownership or management control. Except as otherwise provided below the amount of these transactions shall be based on the actual cost to the related party and shall include no profit. To demonstrate the actual cost to the related company, Contractor shall provide, at a minimum, the invoice for the good or service, the receiving document, the corresponding canceled check and the basis for the transaction. Whenever possible, materials shall be delivered directly to Contractor or the related party entity, as appropriate. Because the following types of related party transactions have existed, they have been specifically addressed below:

1. Management Fees: Contractor pays management fees to North Bay Corporation, a related party. The management fee compensates North Bay Corporation for its management team's time spent in managing the operations and administering the Contractor (including the time of Mr. James Ratto). For purposes of determining Contractor's Compensation in accordance with this Agreement, a management fee of \$134,400 annually shall be stipulated and the North Bay Corporation management team, including Mr. James Ratto, shall not otherwise be compensated for these same services. This stipulated amount shall not be adjusted during the Term of this Agreement or any extension period.
2. Site Rent Expense: Contractor operates from facilities it leases from Redwood Empire Realty, LLC, a related party. For purposes of determining Contractor's Compensation in accordance with this Agreement, a lease amount of \$84,000 annually shall be stipulated. This stipulated amount shall not be adjusted during the Term of this Agreement or any extension period.
3. Equipment Rental: Contractor leases equipment from North Bay Corporation, a related party, and is entitled to compensation for depreciation and interest expense related to this equipment.

For purposes of this Agreement, Contractor shall be entitled to

Exhibit 3

DETAILED RATE REVIEW METHODOLOGY

compensation for equipment depreciation whether leased or purchased by the Contractor, based on the following useful lives:

- 5 Years: Computers and software, office equipment. All used or refurbished Collection vehicles.
- 7 Years: All new Collection vehicles.
- 10 years: Bins, Carts, and Debris Boxes.

Contractor shall be required to provide to City (or City's representative) documentation of the original cost of the equipment.

For purposes of this Agreement, Contractor shall be entitled to compensation for interest expense on equipment leases assuming financing of one hundred percent (100%) of the original cost and based on the Prime Rate of the Bank of America NT & SA in effect at the time the equipment was first leased.

4. Employee Health Insurance: Contractor purchases employee health insurance for both itself and related parties and is entitled to compensation for Contractor's cost of this insurance. Because the premium is allocated among several companies, Contractor's Compensation shall be calculated by dividing the premium by the total number of employees covered and multiplying the quotient by the number of Contractor's employees. If Contractor provides ongoing administration of the health insurance program for itself and related parties, the full cost of such administration shall be distributed among the parties and the Contractor on the basis of the number of employees covered. To determine the amount of compensation due the Contractor, Contractor shall submit to City (or City's designated representative) a copy of the insurance broker's invoice, the corresponding canceled check and the calculations described above, including corresponding documentation supporting the values used (e.g., total employees covered).
5. Automotive Liability Insurance: Contractor purchases automotive liability insurance for both itself and related parties and is entitled to compensation for Contractor's cost of this insurance. Because the premium is allocated among several companies, Contractor's Compensation shall be calculated by prorating the premium among related parties and Contractor on the basis of the actual total liability premiums paid for vehicles of each company. To determine the amount of compensation due Contractor, Contractor shall submit to City (or City's designated representative) a copy of the insurance broker's invoice, the corresponding canceled check and the calculations described above, including corresponding documentation supporting the values used (e.g., total vehicles covered).
6. Fuel Expense: If fuel is pumped into both Contractor's trucks and other trucks, Contractor shall submit to City (or City's designated representative) a copy of the fuel invoices, the receiving documents, the corresponding canceled checks and copies of the fuel log, and calculations supporting the amount of fuel expense claimed by Contractor.

Exhibit 3

DETAILED RATE REVIEW METHODOLOGY

- b. Forecasts of Costs. Allowed Costs of operations for the Contractor's prior fiscal year will be used to evaluate the forecasted cost for upcoming year. The review will evaluate forecasted labor-related costs, vehicle-related costs, and other costs, including Pass-Through Costs as outlined below.
- c. Depreciation Expense. Depreciation expense will be calculated by dividing the actual purchase price of the assets by the number of years in the Term of the Agreement. The result is the forecasted depreciation expense for the rate year.
- d. Profit. Profit or return to Contractor shall be determined by City applying an operating ratio so as to provide for reasonable costs of service and adequate rate of return to Contractor. The rate of return or profit shall be reasonably sufficient to allow for financial soundness of Contractor's operations within the service area of this Agreement, when operated under efficient and economical management, and to provide a return to Contractor over the Term of the Agreement commensurate with the level of business risk, the competitive market place and the necessity to provide the public with reasonable rates. For purposes of this Agreement, the City-determined operating ratio shall be 88% as of the date of the execution of this Agreement.

Exhibit 4 CITY FACILITIES	
Building / Facility	Building / Facility
Airport	Bond Park
Mission St. Park	Bassett St
Penrod Park	La Tercera Park
Industrial Drive (Train)	Park & Recreation Dept. (Caulfield Ln.)
St. Vincent's Park	Cherry Valley Park
Shollenberger Park	Lucchesi Park
Eagle Park	Mc Dowell Park
West Haven	Oak Hill Park
City of Petaluma, Mc Near Park	Wise Man Park
American Alley	Henry St. Park
Southgate Dr.	Leghorn Park
Prince Park	Morning Glory Park
Sonoma Mtn. Park	Rocky Park
Coplin Bus Stop	Walnut Park
Sunny Slope Rd.	Miwok Park
Elm Street	Arroyo Park
Flanigan Trail	Washington St. Park
Sunrise Dr.	Water St. Park
Willard St.	Westridge Dr. Park
City of Petaluma Animal Services	Park and Recreation Dept. on Jefferson St.

Exhibit 4 CITY FACILITIES	
Building / Facility	Building / Facility
Sonoma Mt. Pkwy at Columbard	Park and Recreation Dept. on Kentucky St.
D St. Post Office	Mc Dowell Blvd. (near Wells Fargo Bank)
Park and Recreation Dept. on Daniel Dr.	City of Petaluma City Hall on English St.
Park and Recreation Dept. on Del Oro Cir.	Downtown
City of Petaluma City Hall on Post St.	City of Petaluma Police Dept.
City of Petaluma Fire Dept. #1	City of Petaluma Water Dept.
City of Petaluma Fire Dept. #2	Mc Near Park
City of Petaluma Fire Dept #3	Petaluma Swim Center
Prince Park	City of Petaluma City Hall
4 <sup>th</sup> St (By Bus Depot between C & D St)	Curbside at City Park Parking (A St.)
Petaluma Blvd (in front of Starbucks Coffee)	Petaluma Community Center
End of Water St	City of Petaluma Water Conservation (2 <sup>nd</sup> St)
Keller St. (Between Washington and Western St.)	City of Petaluma (Hopper St)

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Exhibit 5 APPROVED FACILITIES													
<b>Approved Disposal Site(s)</b>													
	<table border="1"> <thead> <tr> <th>Site name</th> <th>SWIS #</th> </tr> </thead> <tbody> <tr> <td>Redwood Landfill (Current)</td> <td>21-AA-0001</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Site name	SWIS #	Redwood Landfill (Current)	21-AA-0001								
Site name	SWIS #												
Redwood Landfill (Current)	21-AA-0001												
<b>Approved Organic Materials Processing Site(s)</b>													
	<table border="1"> <thead> <tr> <th>Site Name</th> <th>SWIS #</th> </tr> </thead> <tbody> <tr> <td>Sonoma Compost - Central Compost Site (Current)</td> <td>49-AA-0260</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Site Name	SWIS #	Sonoma Compost - Central Compost Site (Current)	49-AA-0260								
Site Name	SWIS #												
Sonoma Compost - Central Compost Site (Current)	49-AA-0260												
<b>Approved Recyclable Materials Processing Site(s)</b>													
	<table border="1"> <thead> <tr> <th>Site Name</th> </tr> </thead> <tbody> <tr> <td>Novato Disposal Services MRF(Current)</td> </tr> </tbody> </table>	Site Name	Novato Disposal Services MRF(Current)										
Site Name													
Novato Disposal Services MRF(Current)													



Exhibit 6

PUBLIC EDUCATION PLAN

Petaluma Refuse & Recycling shall perform the following services as part of the public education program. Material will be printed in English and Spanish as required by the Agreement.

Public Education Activities to Be Performed throughout the Term of the Agreement

- As necessary, Petaluma Refuse & Recycling Outreach Coordinator will prepare and distribute a brochure describing how to prepare Organic Materials for Collection. This brochure shall instruct Customers as to any necessary preparation of Organic Materials, such as the cutting of items, placement of materials outside a Cart (provided such material is bundled in lengths less than five feet and bundles that weigh less than 30 pounds), and the appropriate use and placement of Organic Materials Carts.
- As necessary, Petaluma Refuse & Recycling Outreach Coordinator will prepare and distribute a brochure describing how to prepare Recyclable Materials for Collection. Petaluma Refuse & Recycling shall inform Residents as to the acceptable materials that can be included in the Recyclable Materials Carts and any common contaminants to be excluded from Collection.
- Prior to the holiday season, the Outreach Coordinator shall prepare a bill insert describing the dates, time, and places of all holiday tree collection and drop boxes. The same information shall also be advertised in the Press Democrat and the Argus Courier
- Petaluma Refuse & Recycling Outreach Coordinator shall visit homeowner associations or other groups to promote and explain the program throughout the term of the agreement, as requested by the associations or scheduled by the City.
- A corrective actions notice shall be prepared and used in instances where waste generators set out inappropriate materials.
- School education programs to teach students about source reduction, reuse, and recyclable materials shall be available to schools by Petaluma Refuse & Recycling Outreach Coordinator.
- Non-program related information on source reduction; reuse and recyclable materials (e.g. junk mail reduction, household hazardous waste events, grass cycling, composting, etc.) shall be made available by the Outreach Coordinator. This information will also be included in Petaluma Recycle News.
- Petaluma Refuse & Recycling shall publish and mail informational newsletters twice per year to be mailed to all Residential and Commercial accounts in Petaluma. The newsletter shall be reviewed and approved by City staff prior to distribution.
- The City may direct Petaluma Refuse & Recycling to insert mailers with the Bills.

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Exhibit 7  
DIVERSION PLAN

**Waste Reduction and Reuse**

Petaluma Refuse and Recycle will fully participate in promoting waste reduction activities by publishing relevant content in all of its education and outreach materials, as deemed appropriate by the City and County. Content will be geared toward the audience. Here are a few initiatives the Company has identified to support:

**Paperless Customer Interface**

Petaluma Refuse and Recycle will implement a paperless communication with customers. Customers who enlist in the program will receive all communications, through our website [www.unicycler.com](http://www.unicycler.com).

**Bio-Stack Compost Bins**

Petaluma Refuse and Recycle will promote home composting. The Bio-stackable compost bin is an easy way to divert food and yard waste from the trash and produce rich compost for all types of gardening. The Bio-Stack is durable, light, and makes the turning of heavy compost piles less backbreaking. Petaluma Refuse and Recycling takes pride in promoting responsible managing of waste to our community. We are happy to provide our customers with this wonderful alternative and educating about waste reduction. Information will be available in our website at [www.unicycler.com](http://www.unicycler.com); also will be promoted annually in a newsletter.

**Increasing Diversion**

- **Friendly and Progressive Public Education:** Petaluma Refuse & Recycling will provide materials which conveys the City's Diversion goal and initiates, the importance of those goals to individuals, and provide additional resources. Petaluma Refuse & Recycling Outreach Coordinator will visit all new commercial accounts and deliver them a packet of recycling resources, improving the signage on their bins, and working with the customers to improve their recycling program. Besides visiting new businesses, Petaluma Refuse & Recycling Outreach Staff will respond to customer requests and referrals from route supervisors for customers that do not have recycling or have contamination in their recycling. Recycling Outreach staff also service schools and multifamily complexes with outreach. Addresses from multifamily complexes are collected for newsletter distribution to promote awareness for recycling. School presentations are given as well as tours of The Ratto Group's Recycling Center.
- **Website:** Petaluma Refuse & Recycling will provide a website geared towards waste diversion in Petaluma. Website will include information such as: Recycling guide, Bill Pay, Newsletters, Hazardous Waste Disposal, Go Green Section, Fun Videos, Contact information, and much more. Residents will be able to sign up for automated billing, and pay bills on line at [www.on-line-billpay.com](http://www.on-line-billpay.com).

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Exhibit 8  
CART SPECIFICATIONS

**A. CART DESIGN REQUIREMENTS**

**1. General**

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

**2. Cart Handles**

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

**3. Cart Lid**

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

**4. Cart Colors**

The Solid Waste, Recyclable Materials, and Yard Trimmings Carts will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Solid Waste Carts shall be black, brown or gray. Recyclable Materials Carts shall be blue. Yard Trimmings Carts shall be green. Contractor may propose other colors for Carts, which are subject to approval by the City. For all colors including those prescribed in this paragraph, the Contractor shall obtain written approval from the City for the Cart color before Contractor's purchase of the Carts.

**5. Identification Markings**

All markings on the Containers shall be approved by the City in advance of ordering Carts. An arrow (at least 3 inches by 5 inches) hot stamped in white color shall be placed on the lid, indicating the direction of Cart placement.

In character size of no less than 3/16 inch, the phrase:

PLACE CONTAINER WITH ARROW FACING  
STREET FOR COLLECTION  
COLOQUE EL RECIPIENTE CON LAS FLECHAS  
HACIA LA CALLE

Exhibit 8

CART SPECIFICATIONS

Additionally, the **SOLID WASTE, RECYCLING** or **ORGANIC MATERIALS** must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

**B. CART PERFORMANCE REQUIREMENTS**

**1. General**

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

**2. Cart Load Capacity**

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-68	130
30-35	70
20	40

**3. Cart Durability**

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

**4. Chemical Resistant**

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

**5. Stability and Maneuverability**

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or an open

Exhibit 8  
CART SPECIFICATIONS

position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

**6. Lid Performance**

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

**7. Reparability**

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

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**Exhibit 9**  
**VEHICLE SPECIFICATIONS**

**Residential**

Truck Number	License #	GVW	Model	Fuel Type
900P	8A07226	54,000	Peterbilt Side loader	ULSD
901P	8A07228	54,000	Peterbilt Side loader	ULSD
903P	8A07223	54,000	Peterbilt Side loader	ULSD
904P	8A07224	54,000	Peterbilt Side loader	ULSD
905P	8A07225	54,000	Peterbilt Side loader	ULSD

**Residential**

Truck Number	License #	GVW	Model	Fuel Type
906P	8A07112	54,000	Peterbilt Side loader	ULSD
907P	8A07113	54,000	Peterbilt Side loader	ULSD
911P	8A07230	54,000	Peterbilt Side loader	ULSD
912P	8A07231	54,000	Peterbilt Side loader	ULSD
937R	8A07232	54,000	Peterbilt Side loader	ULSD

**Residential/ Commercial**

Truck Number	License #	GVW	Model	Fuel Type
300P	7W98433	32,000	Freightliner Rear loader	ULSD

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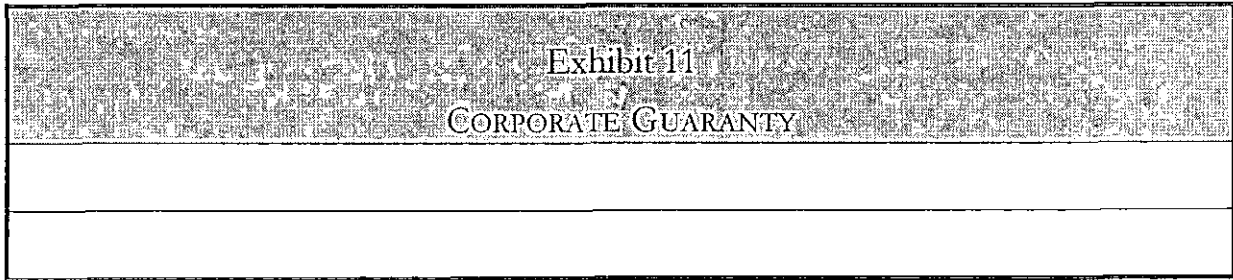
**Exhibit 10**  
**REPLACEMENT SCHEDULE**

**Refurbish**

<b>Year</b>	<b># of Trucks</b>
2014	4 Trucks
2015	3 Trucks
2016	3 Trucks
2017	3 Trucks
2018	3 Trucks
2019	3 Trucks

**Replace**

<b>Year</b>	<b># of Trucks</b>
2016	4 Trucks
2017	3 Trucks
2018	3 Trucks
2019	3 Trucks
2020	3 Trucks
2021	3 Trucks



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Exhibit 12 CONTRACTOR'S CERTIFICATION OF COMPLIANCE WITH CITY OF PETALUMA LIVING WAGE ORDINANCE

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