

**AMENDED AND RESTATED  
FRANCHISE AGREEMENT FOR  
EXCLUSIVE SOLID WASTE HANDLING SERVICES**

**Between the**

**CITY OF SIMI VALLEY,  
a California municipal corporation**

**and**

**G.I. INDUSTRIES,  
a Utah Corporation**

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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS .....	2
1.1 Definitions .....	2
1.1.1 Account .....	2
1.1.2 Act .....	2
1.1.3 Affiliate .....	2
1.1.4 Applicable Law .....	3
1.1.5 Bin .....	4
1.1.6 Biohazardous or Biomedical Wastes .....	4
1.1.7 Bulky Waste .....	4
1.1.8 Business Days .....	4
1.1.9 CalRecycle .....	4
1.1.10 Cart .....	5
1.1.11 City .....	5
1.1.12 City Facilities .....	5
1.1.13 City Manager .....	5
1.1.14 Collect or Collection .....	5
1.1.15 Commercial Premises .....	5
1.1.16 Complaint .....	5
1.1.17 Composting .....	6
1.1.18 Construction and Demolition Waste .....	6
1.1.19 Contaminated Container .....	6
1.1.20 Contractor .....	6
1.1.21 Consumer Price Index or CPI .....	6
1.1.22 Customer .....	6
1.1.23 Designated Disposal Site .....	7
1.1.24 Designated Organic Waste Facility .....	7
1.1.25 Designated Recycling Facility .....	7
1.1.26 Dwelling Unit .....	7
1.1.27 Environmental Laws .....	7
1.1.28 E-Waste .....	7
1.1.29 Exempt Waste .....	8
1.1.30 Food Waste .....	8
1.1.31 Green Waste .....	8
1.1.32 Gross Receipts .....	9
1.1.33 Hazardous Substance or Hazardous Waste .....	9
1.1.34 Holiday .....	9
1.1.35 Household Hazardous Waste .....	10
1.1.36 Multi-Family Premises .....	10
1.1.37 Municipal Code .....	10
1.1.38 Organic Waste .....	10
1.1.39 Overage .....	10
1.1.40 Private Street .....	11
1.1.41 Premises .....	11
1.1.42 Process or Processing .....	11

**TABLE OF CONTENTS**  
(continued)

	<u>Page</u>
1.1.43 Prohibited Container Contaminants .....	11
1.1.44 Public Resources Code.....	11
1.1.45 Rates.....	11
1.1.46 Recyclable Materials .....	11
1.1.47 Recycle or Recycling.....	12
1.1.48 Refuse.....	12
1.1.49 Residential Premises .....	12
1.1.50 Roll-off Box .....	12
1.1.51 Roll-off Service.....	12
1.1.52 Single-Family Premises .....	12
1.1.53 Solid Waste.....	13
1.1.54 Solid Waste Handling Services .....	13
1.1.55 Special Waste .....	13
1.1.56 Temporary Service.....	13
1.1.57 Universal Waste .....	13
<b>ARTICLE 2 GRANT AND ACCEPTANCE OF FRANCHISE.....</b>	<b>13</b>
2.1 Grant and Acceptance of Franchise; Termination of Prior Agreement .....	13
2.2 Exclusive Nature of Franchise .....	14
2.2.1 Franchise Rights Exclusive .....	14
2.2.2 Enforcement of Exclusivity .....	14
2.2.3 Operative Date.....	15
2.2.4 Term of Agreement; Effective Date; Option to Extend .....	15
2.3 Conditions to Effectiveness of Agreement .....	15
2.4 Delegation of Authority.....	16
2.5 Limitations on Scope of Franchise.....	16
2.6 City's Right to Direct Changes and Changes in Law .....	17
2.6.1 General .....	17
2.6.2 New Diversion Programs .....	18
2.7 Ownership of Solid Waste.....	18
2.8 Contractor Status.....	19
2.9 Contractor Authorization .....	19
2.10 Annexations .....	19
<b>ARTICLE 3 DIRECT SERVICES .....</b>	<b>19</b>
3.1 Refuse Collection Services .....	19
3.1.1 Refuse Collection – Single-Family Premises .....	20
3.1.2 Refuse Collection for Multi-Family Premises and Commercial Premises .....	20
3.1.3 Commercial Premises Cart Services for Small Business Generators .....	21
3.1.4 Permanent Roll-Off Services.....	21

## **TABLE OF CONTENTS**

(continued)

	<b><u>Page</u></b>
3.2	Recyclable Materials Collection Services ..... 22
3.2.1	Recyclable Materials Collection – Single-Family Premises ..... 22
3.2.2	Recyclable Materials Collection – Multi-Family and Commercial Premises ..... 22
3.2.3	Marketing and Sale of Recyclable Materials ..... 23
3.3	Organic Waste Collection Services ..... 23
3.3.1	Organic Waste Collection – Single-Family Customers ..... 23
3.3.2	Organic Waste Collection – Multi-Family and Commercial Premises ..... 24
3.3.3	Temporary Services ..... 24
3.4	Assistance with Waivers ..... 25
3.5	Additional Services to Customers ..... 26
3.5.1	On-Call Bulky Waste Pick-up ..... 26
3.5.2	Move In/Move Out Service ..... 26
3.5.3	Back Yard Service ..... 27
3.5.4	Holiday Tree Collection Program ..... 27
3.5.5	Holiday Cleanup Service ..... 27
3.5.6	E-Waste Drop-off ..... 27
3.5.7	Door to Door HHW Collection ..... 28
3.5.8	Free Landfill Days ..... 28
3.5.9	Information for New Customers ..... 29
3.5.10	Other Services ..... 29
3.6	Additional Services to City ..... 29
3.6.1	Collection From City Facilities ..... 29
3.6.2	Roll-off Containers for City Use ..... 30
3.6.3	Abandoned Item Collection ..... 30
3.6.4	Street Container Service ..... 30
3.6.5	Composting Bin Distribution Program ..... 30
3.7	Diversion ..... 30
3.7.1	State Diversion Requirements ..... 30
3.7.2	Customer Outreach ..... 32
3.8	Container Contamination and Monitoring and Route Reviews ..... 32
3.8.1	Contamination Monitoring ..... 32
3.8.2	Contamination Fee Limitation for Single-Family Premises ..... 34
3.8.3	Contamination Reporting ..... 34
3.8.4	Route Reviews ..... 35
3.9	Operations ..... 35
3.9.1	Schedule ..... 35
3.9.2	School Zones ..... 35
3.9.3	Collection Routes and Schedules ..... 35
3.9.4	Right of Entry ..... 36
3.9.5	Vehicles ..... 36
3.9.6	Containers ..... 39



## TABLE OF CONTENTS

(continued)

	<u>Page</u>
3.9.7 Container Overages .....	40
3.9.8 Litter Abatement.....	41
3.9.9 Personnel.....	41
3.9.10 Identification Required .....	42
3.9.11 Fees and Gratuities.....	42
3.9.12 Non-Discrimination.....	42
3.9.13 Report of Accumulation of Solid Waste; Unauthorized Dumping.....	43
3.10 Disaster and Emergency Service.....	43
3.10.1 Preparedness.....	43
3.10.2 Disaster and Emergency Service .....	43
3.10.3 City-Wide Effort to Manage Disaster Debris.....	44
3.11 Capacity Guaranty .....	44
3.12 Disposal and Processing Facilities .....	44
3.12.1 Designated Disposal Site .....	44
3.12.2 Designated Recycling Facilities.....	45
3.12.3 Designated Organic Waste Facilities .....	45
3.12.4 Facility Requirements.....	45
3.12.5 Annual Route Audit .....	46
3.12.6 Service Exceptions for Exempt Waste; Notifications.....	46
<b>ARTICLE 4 OTHER SERVICES .....</b>	<b>46</b>
4.1 Services and Customer Billing .....	46
4.1.1 Service Description .....	46
4.1.2 Residential Senior Citizen Discount .....	47
4.1.3 Billings to Accounts .....	47
4.1.4 Account Delinquency .....	48
4.2 Customer Service .....	49
4.2.1 Office Hours .....	49
4.2.2 Website .....	49
4.2.3 Missed Pick-ups.....	49
4.2.4 Complaint Documentation .....	50
4.2.5 Resolution of Customer Complaints.....	50
4.2.6 Government Liaison .....	50
4.3 Public Education and Outreach .....	50
4.3.1 General .....	50
4.3.2 Annual Guide to Solid Waste and Recycling.....	51
4.3.3 Community Events.....	51
4.3.4 Mulch Giveaway.....	51
4.4 Waste Generation/Characterization Studies .....	51

**TABLE OF CONTENTS**  
(continued)

	<b><u>Page</u></b>
ARTICLE 5 CONTRACTOR COMPENSATION, RATES, AND FEES; CITY FEES .....	52
5.1 General .....	52
5.2 Compensation to Contractor .....	52
5.3 Future Adjustments.....	52
5.3.1 Annual Rate Adjustment .....	52
5.3.2 Extraordinary Adjustment.....	55
5.3.3 Impact of Legal Challenges to Adjustments to Rates.....	56
5.3.4 Comparable Rates .....	56
5.4 Franchise Fee .....	57
5.4.1 Franchise Fee Amount.....	57
5.4.2 Disputes Regarding Franchise Fee Remittances .....	57
5.5 Reimbursement of City Costs .....	58
5.5.1 Agreement Negotiation Costs .....	58
5.5.2 Annual Administrative Cost Reimbursement.....	58
5.6 Grants.....	58
ARTICLE 6 RECORDS, REPORTS AND INFORMATION REQUIREMENTS; PERFORMANCE REVIEW .....	59
6.1 General .....	59
6.2 Records .....	59
6.2.1 Solid Waste Service Records.....	59
6.2.2 CERCLA Defense Records.....	59
6.3 Reports .....	60
6.3.1 Report Formats and Schedule .....	60
6.3.2 Monthly Reports.....	60
6.3.3 Quarterly Reports.....	61
6.3.4 Annual Report .....	61
6.3.5 SB 1383 Reporting.....	62
6.4 Adverse Information.....	63
6.5 Right to Inspect Records.....	64
6.6 Periodic Review .....	64
6.7 Performance Review.....	64
ARTICLE 7 INDEMNIFICATION AND INSURANCE .....	65
7.1 Indemnification.....	65
7.2 Hazardous Substances Indemnification.....	66
7.3 Reduction of CERCLA and Other Liabilities.....	67
7.4 Indemnification for Failure to Meet Diversion Requirements.....	67
7.5 Insurance .....	68
7.6 Property Damage.....	71
7.7 Pavement Damage .....	71
7.8 Corporate Guaranty .....	72

**TABLE OF CONTENTS**  
(continued)

	<u>Page</u>
ARTICLE 8	DEFAULT, REMEDIES AND LIQUIDATED DAMAGES ..... 72
8.1	Administrative Remedies; Imposition of Damages; Termination ..... 72
8.1.1	Notice of Deficiencies; Response; Appeal ..... 72
8.1.2	City Council Hearing ..... 73
8.1.3	City Council Determination..... 73
8.1.4	Reservation of Rights by City ..... 74
8.1.5	Cumulative Rights ..... 75
8.2	Liquidated Damages ..... 75
8.3	Excuse from Performance ..... 79
8.3.1	Force Majeure ..... 79
8.3.2	Labor Unrest ..... 79
8.3.3	Procedures in Event of Labor Unrest ..... 80
8.4	Assurance of Performance ..... 80
ARTICLE 9	OTHER AGREEMENTS OF THE PARTIES ..... 81
9.1	Relationship of Parties ..... 81
9.2	Compliance with Law ..... 81
9.3	Governing Law ..... 81
9.4	Jurisdiction ..... 81
9.5	Assignment ..... 81
9.6	Contracting or Subcontracting ..... 83
9.7	Binding on Assigns ..... 83
9.8	Transition to the Next Contractor ..... 84
9.9	Parties in Interest ..... 84
9.10	Non-Waiver Provision ..... 84
9.11	Notice..... 84
9.12	Representatives of the Parties..... 85
9.13	City Free to Negotiate with Third Parties ..... 85
9.14	Privacy ..... 86
9.15	Proprietary Information; Public Records ..... 86
9.16	Attorneys' Fees ..... 86
ARTICLE 10	MISCELLANEOUS PROVISIONS ..... 87
10.1	Entire Agreement ..... 87
10.2	Article and Section Headings ..... 87
10.3	References to Laws and Regulations ..... 87
10.4	Interpretation..... 87
10.5	Amendments..... 87
10.6	Severability ..... 87
10.7	Exhibits ..... 88
10.8	Authority..... 88

- Exhibit 1 – Rate Schedule
- Exhibit 2 – City Facilities and Free Services
- Exhibit 3 – Corporate Guaranty
- Exhibit 4 – Customer Outreach Plan
- Exhibit 5 – Example Rate Adjustment Methodology
- Exhibit 6 – Recyclable Materials

## **AMENDED AND RESTATED FRANCHISE AGREEMENT**

THIS AMENDED AND RESTATED FRANCHISE AGREEMENT FOR PROVIDING EXCLUSIVE SOLID WASTE HANDLING WASTE SERVICES (the "Agreement") is effective as of the 10th day of October, 2022 ("Effective Date"), and is entered into by and between the City of Simi Valley, a California municipal corporation ("City") and G.I. Industries, a Utah corporation ("Contractor") (individually, a "Party" or collectively, the "Parties").

### **RECITALS:**

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (the "Act", California Public Resources Code Sections 40000 et seq.) has declared that it is in the public interest to require local agencies to make adequate provision for solid waste handling within their jurisdictions to meet the goals and objectives of the Act.

B. In accordance with the Act, City is required to implement its Source Reduction and Recycling Element ("SRRE") in order to maintain the diversion of 50% of solid waste collected in City from landfill disposal.

C. In accordance with California Public Resources Code Sections 40059(a)(2) and 49300, City has determined that the public health, safety, and welfare require that an exclusive franchise be awarded to a qualified solid waste enterprise for the collection, transportation, recycling, processing, and disposal of solid waste, and for other related services, to meet the goals and objectives of the Act.

D. The City Council previously granted two franchise agreements for solid waste handling services in the City, one to Anderson Rubbish Disposal (the "Anderson Rubbish Disposal Franchise") and one to G.I. Industries (the "G.I. Industries Franchise").

E. The terms of the Anderson Rubbish Disposal Franchise and the G.I. Industries Franchise were both previously extended by the City Council such that both expire on December 31, 2023.

F. On November 20, 2017, the City Council approved the transfer of the Anderson Rubbish Disposal Franchise to G.I. Industries (the "Transfer"), and the Transfer was completed and became final on March 17, 2018.

G. No solid waste enterprise other than Anderson Rubbish Disposal and G.I. Industry were lawfully providing solid waste handling services in the City at the time the Transfer, and hence as a result of the Transfer G.I. Industries currently is the exclusive solid waste enterprise providing solid waste handling services in the City.

H. G.I. Industries is exclusively providing solid waste handling services in the City pursuant to the Anderson Rubbish Disposal Franchise and the G.I. Industries Franchise, which are hereinafter collectively referred to as the "Prior Agreement."



I. The parties have agreed to revise and update the Prior Agreement by entering into this Agreement, which is intended to replace and supersede the Prior Agreement in its entirety, excepting those provisions of the Prior Agreement related to Contractor's obligations involving insurance and indemnification, which shall survive in connection with activities taken by Contractor in the performance of the Prior Agreement.

J. It is the intent of the parties hereto to provide for the exclusive right and franchise for Contractor to provide Solid Waste Handling Services within City, including the collection transportation, processing and disposal of all solid waste from residential and commercial premises within the City, in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, TERMS, AND CONDITIONS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

## **ARTICLE 1 DEFINITIONS**

### **1.1 Definitions.**

The following capitalized words and terms shall have the following meanings, provided that whenever any term used in this Agreement has been defined by the provisions of Title 6, Chapter 3, of the City of Simi Valley Municipal Code, the California Public Resources Code or the California Code of Regulations or the Act, the definitions in the Municipal Code, California Code of Regulations, the Public Resources Code, or the Act shall control.

#### **1.1.1 Account**

"Account" means premises located within the City receiving services pursuant to this Agreement, or the person arranging for services pursuant to this Agreement, as the case may be. The word "Account" is used interchangeably with the word "Customer" in this Agreement.

#### **1.1.2 Act**

"Act" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 *et seq.*), commonly referred to as "AB 939", and implementing regulations of the California Department of Resources Recycling and Recovery (Title 14 and Title 27 of the California Code of Regulations).

#### **1.1.3 Affiliate**

"Affiliate" means all persons (including corporations, limited and general partnerships and sole proprietorships) that 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 owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in Contractor and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent 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.

#### **1.1.4 Applicable Law**

"Applicable Law" means all laws, statutes, regulations, rules, orders, judgments, decrees, permits, approvals, determinations, or other requirement of any foreign, federal, state, county, city, and/or local governmental authority, agency, board, commission, court or other body having applicable jurisdiction, that have the force of law and that apply to or govern the services provided pursuant to this Agreement or the performance of the Parties' respective obligations hereunder, including without limitation the collection, processing, handling, or disposition of Solid Waste, Recyclable Materials, Organic Waste and Construction and Demolition Waste, that are in force on the Effective Date and as they may be enacted, issued, or amended during the term of this Agreement unless otherwise limited. Applicable Law expressly includes, without limitation, the following:

"AB 341" which means Assembly Bill 341 from the 2011-2012 Regular Session of the California Legislature (Chapter 476, Statutes 2011).

"AB 827" which means State of California Assembly Bill No. 827 approved October 2nd. 2019.

"AB 1594" which means Assembly Bill 1594 from the 2013-2014 Regular Session of the California Legislature (Chapter 719, Statutes 2014).

"AB 1699" which means California Assembly Bill 1699 approved September 30, 2016.

"AB 1826" which means Assembly Bill 1826 from the 2013-2014 Regular Session of the California Legislature (Chapter 727, Statutes 2014).

"SB 1383" which means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and

39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, For the purposes of this Agreement, SB 1383 additionally includes the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in November 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

#### **1.1.5 Bin**

“Bin” means a metal container with a capacity of 1.5 to 4 cubic yards, having a hinged lid and wheels, which is serviced by a front-end loading truck.

#### **1.1.6 Biohazardous or Biomedical Wastes**

“Biohazardous or Biomedical Wastes” mean wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms, including, but not limited to, waste resulting from the operation of medical clinics, hospitals and other facilities producing wastes that may consists of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, sharps, contaminated clothing and surgical gloves.

#### **1.1.7 Bulky Waste**

“Bulky Waste” means discarded furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, small household appliances, and other similar items, commonly known as “white goods”); untreated wood waste, tree trunks, and large branches if no longer than two feet in diameter and four feet in length; untreated scrap wood, rocks, sod, and earth, in the aggregate not exceeding one cubic yard per collection; clothing; collapsed cardboard boxes that are bound together; items exceeding 200 pounds in weight or exceeding six (6) feet in length, and similar items that are reasonably able to be handled by one person in a single trip. Bulky Waste does not include items such as car bodies or Construction and Demolition Waste, other items that cannot be handled by one person using an automated lifting mechanism, Universal Waste or Exempt Waste.

#### **1.1.8 Business Days**

“Business Days” means days Simi Valley City Hall is open for business.

#### **1.1.9 CalRecycle**

“CalRecycle” means the State of California Department of Resources Recycling and Recovery, the department within the State Natural Resources Agency responsible for the administration of the Integrated Waste Management Act of 1989, California Public Resources Code Section 40000 *et seq.* (“Act”), or any successor department or agency created or designated for such purpose pursuant to the Act.

#### **1.1.10 Cart**

"Cart" means a plastic container with handles and with an approximate capacity of no less than 32 gallons and no greater than 95 gallons, having a hinged lid and wheels, that is serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping.

#### **1.1.11 City**

"City" means the City of Simi Valley, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as these boundaries may be modified during the term of this Agreement.

#### **1.1.12 City Facilities**

"City Facilities" means all real property and improvements owned or operated by City during the term hereof.

#### **1.1.13 City Manager**

"City Manager" means the City Manager of the City of Simi Valley or his/her designee.

#### **1.1.14 Collect or Collection**

"Collect" or "Collection" means the act of taking physical possession of or gathering for transport by means of a motor vehicle or other means any Solid Waste, Recyclable Materials, Organic Waste, Bulky Waste, Construction and Demolition Waste, and other materials at the place of generation in City for delivery to a transfer, processing, composting or disposal facility.

#### **1.1.15 Commercial Premises**

"Commercial Premises" means a property upon which a business activity is conducted, including but not limited to retail sales, services, manufacturing, assembling, storage, or wholesale operations, but excluding businesses conducted upon Residential Premises that are permitted under applicable zoning regulations and that do not constitute the primary use of the property. Commercial Premises also include hotels, senior citizen housing complexes, and convalescent centers.

#### **1.1.16 Complaint**

"Complaint" means a grievance, criticism, or objection in the form of written letter, email, in person contact, or telephone call made either to City or Contractor regarding Contractor's performance of its duties under the terms of this Agreement. Complaints concern missed pick-ups, property damage caused by Contractor, tardy service, unresponsiveness to requests, billing problems, and

similar issues. Complaints do not include contacts by Customers making normal or standard service requests (e.g., requesting the exchange of a Cart or Bin), and criticisms of rates charged by Contractor (excepting assertions Contractor charged an unauthorized rate) or the City's solid waste ordinance or this Agreement.

#### **1.1.17 Composting**

"Composting" means the controlled biological decomposition of Organic Waste that is source separated from other waste streams, or which are separated at a "compostable material handling operation" or "facility", as those terms are defined in 14 CCR Section 18982(a)(12).

#### **1.1.18 Construction and Demolition Waste**

"Construction and Demolition Waste" means used or discarded construction materials removed from premises during the construction, renovation or demolition of a structure. This includes but is not limited to building waste materials, asphalt, concrete, drywall, metals, roofing materials, soils, untreated wood, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations.

#### **1.1.19 Contaminated Container**

"Contaminated Container" means the presence of Prohibited Container Contaminants in a Container comprising 10% or more of the Container's contents.

#### **1.1.20 Contractor**

"Contractor" means G.I. Industries, a Utah corporation, and its officers, directors, employees, agents, and representatives.

#### **1.1.21 Consumer Price Index or CPI**

"Consumer Price Index" or "CPI" means the Consumer Price Index, for All Urban Consumers, all items index (CPI-U) – Los Angeles, Long Beach, Anaheim, as published by the United States Department of Labor, Bureau of Labor Statistics

#### **1.1.22 Customer**

"Customer" means the person(s) or entity who owns or controls a Premises located within the City receiving services pursuant to this Agreement, or the person or entity arranging for services pursuant to this Agreement, as the case may be. The word "Customer" is used interchangeably with the word "Account" in this Agreement.



### **1.1.23 Designated Disposal Site**

"Designated Disposal Site" means the Disposal Site designated by Contractor for the disposal of all Solid Waste Collected pursuant to this Agreement that is delivered to a facility for disposal.

### **1.1.24 Designated Organic Waste Facility**

"Designated Organic Waste Facility" means the facility designated by Contractor for the processing of Organic Waste Collected pursuant to this Agreement.

### **1.1.25 Designated Recycling Facility**

"Designated Recycling Facility" means the facility designated by Contractor for the processing of Recyclable Materials Collected pursuant to this Agreement.

### **1.1.26 Dwelling Unit**

"Dwelling Unit" means one or more rooms designed for occupancy by one family for living and sleeping purposes and containing kitchen facilities or an area designed for the preparation of food for use solely by one family.

### **1.1.27 Environmental Laws**

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

### **1.1.28 E-Waste**

"E-Waste" means electronic devices as defined in 22 CCR § 66273.9, including but not limited to computers, televisions, VCRs, stereos, copiers, fax machines, and other "covered electronic devices" as defined in Public Resources Code Section 42463. E-Waste does not mean a major appliance, as defined in Public Resources Code Section 42166, or other devices which are: (1) comprised largely of metals; (2) qualify as "scrap metal" as defined in Public Resource Code Section 66260.10; and (3) are recycled.

### **1.1.29 Exempt Waste**

"Exempt Waste" means Biohazardous or Biomedical Waste, Hazardous Substance, Hazardous Waste, Special Waste, Universal Waste (except for E-Waste), sharps, sludge, stable matter, tires, automobiles, boats, boat trailers, or any parts thereof, internal combustion engines, lead-acid batteries, infectious, those wastes under the control of the Nuclear Regulatory Commission or material that facility operator(s), which receive materials from the City and its waste generators, reasonably believe(s) would, as a result of or upon acceptance, Transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in the Contractor's opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or the City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in solid waste generated at residential premises after implementation of programs for the safe Collection, Processing, Recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Exempt Waste also includes any material being collected under the terms of this Agreement at such time as that material is prohibited from being Collected, transported, Processed by Contractor or disposed of in Class III landfills by law.

### **1.1.30 Food Waste**

"Food Waste" means compostable organic materials, excluding Green Waste, that are accepted for disposal and processing by the applicable processing facility utilized by Contractor under this Agreement including: (i) all food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells); (ii) tea bags, coffee grounds, and coffee filters; (iii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking, or handling of food stuffs; and (iv) food-soiled compostable paper. Food Waste is a subset of Organic Waste and shall not include Exempt Waste.

### **1.1.31 Green Waste**

"Green Waste" means shrubbery, tree trimmings, yard waste, grass, weeds, straw or leaves, wood chips and other household garden waste generated from Residential Premises, Multi-Family Premises and Commercial Premises associated with landscaping and no longer useful or wanted. Items include, but are not limited to leaves, grass, weeds, and untreated wood materials from trees and shrubs, and similar materials that fit within a Cart and are generated at any premises. Yucca leaves, palm fronds, tree stumps and tree roots are not considered Green Waste, which shall be treated as Refuse for the purposes of this



Agreement. Green Waste is a subset of Organic Waste and shall not include Exempt Waste.

### **1.1.32 Gross Receipts**

"Gross Receipts" means all monies, fees, charges, , and revenue actually collected or received by Contractor and its subsidiaries, parent companies, or other Affiliates for the Solid Waste Handling Services carried out by Contractor pursuant to this Agreement. Gross Receipts includes, without limitation, (i) monthly or quarterly Customer charges that are received by Contractor for Collection of Solid Waste, without subtracting Franchise Fees, and (ii) fees imposed and collected pursuant to this Agreement, including fees collected from Customers for transportation charges. Gross Receipts, for purposes of this Agreement, do not include (i) revenues derived from the sale of materials Collected by Contractor, or (ii) revenue related to recycling programs paid by government agencies such as payments from CalRecycle pursuant to the California Beverage Container Recycling Program.

### **1.1.33 Hazardous Substance or Hazardous Waste**

"Hazardous Substance" or "Hazardous Waste" means any chemical, pollutant, contaminant, hazardous or toxic substance, constituent or material that under Applicable Law is considered to be hazardous or toxic or is or may be required to be remediated, including without limitation: (a) any substances defined, regulated or listed (directly or by reference) as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic waste", "pollutant," "toxic substances," or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC § 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC § 1802, et seq.; (iii) the Federal Resource Conservation and Recovery Act, 42 USC § 6901 et seq.; (iv) the Clean Water Act, 33 USC § 1251 et seq.; (v) California Health and Safety Code Sections 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC § 7901 et seq.; or (vii) California Water Code § 13050; (viii) any amendments, rules or regulations promulgated under those specified statutes or acts that are currently existing or may later be enacted; and (ix) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or later enacted, including, without limitation, friable asbestos, polychlorinated biphenyls ("PCBs"), petroleum, natural gas, synthetic fuel products, and by-products.

### **1.1.34 Holiday**

"Holiday" shall mean the following days:

New Year's Day  
Memorial Day

Independence Day  
Labor Day  
Thanksgiving Day  
Christmas Day

"Holiday" shall also mean any other day designated as such by the mutual agreement of City and Contractor.

#### **1.1.35 Household Hazardous Waste**

"Household Hazardous Waste" means waste materials meeting the requirements of 14 CCR Section 18502(12) that are generated in small or de minimis quantities at Residential Premises.

#### **1.1.36 Multi-Family Premises**

"Multi-Family Premises" means (i) Residential Premises with more than four (4) Dwelling Units, and (ii) mobile home parks where the Premises cannot physically accommodate 3-Card Service. Contractor may determine (and if City agrees) that a Multi-Family Premises may receive Solid Waste Handling Services with 3-Card Service per Dwelling Unit, in which case each Dwelling Unit at such Multi-Family Premises shall be treated as Single-Family Premises under this Agreement.

#### **1.1.37 Municipal Code**

"Municipal Code" means the Municipal Code of the City of Simi Valley.

#### **1.1.38 Organic Waste**

"Organic Waste" or "Organics" shall have the same meaning as defined in 14 CCR Section 18982, and includes wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, Food Waste and Yard Trimmings, untreated lumber, untreated wood, paper products, printing and writing paper, and manure. Organic Waste does not include Excluded Waste. For the purposes of this Agreement, Contractor shall treat paper products and printing and writing paper as Recyclable Materials.

#### **1.1.39 Overage**

"Overage" means excess Refuse, Organic Waste and Recyclable Materials placed inside a Container that causes the lid on the container to be open, material that is placed on top of the container, or material placed around the container in bags or otherwise.

#### **1.1.40 Private Street**

"Private Street" means property owned and maintained by a homeowners or property owners association, individual, or multiple property owners which is used for vehicular travel by those having express or implied permission or with authority to do so.

#### **1.1.41 Premises**

"Premises" shall mean any land, building, and/or structure within the City where Solid Waste is generated or accumulated.

#### **1.1.42 Process or Processing**

"Process" or "Processing" means the act of reduction, separation, recovery, conversion, or Recycling of Solid Waste.

#### **1.1.43 Prohibited Container Contaminants**

"Prohibited Container Contaminants" means (i) Recyclable Material or Refuse placed in an Organic Waste Container; (ii) Recyclable Material or Organic Waste placed in a Refuse Container; and/or (iii) Organic Waste or Solid Waste placed in a Recyclable Material Container.

#### **1.1.44 Public Resources Code**

"Public Resources Code" or "PRC" shall mean the California Public Resources Code.

#### **1.1.45 Rates**

"Rates" mean the charges for services provided under this Agreement as set by Contractor, subject to the ceiling established by City under its statutory authority, and set forth in Exhibit 1, as may be adjusted from time to time pursuant to the terms of this Agreement.

#### **1.1.46 Recyclable Materials**

"Recyclable Materials" or "Recyclables" means materials generated in or emanating from Premises that have been separated from other Solid Waste for the purpose of delivery to a facility for processing in order that they may be returned to the economic mainstream through available processes and markets; and includes the materials listed in Exhibit 7, which sets forth the materials that are acceptable for placing in Containers designated for Recyclable Materials as of the Operative Date. Recyclable Material shall not include Exempt Waste.

#### **1.1.47 Recycle or Recycling**

“Recycle” or “Recycling” means any process by which materials that would otherwise become Solid Waste for landfill disposal are Collected (whether source-separated, co-mingled, or as mixed waste), separated, or Processed and returned to the economic mainstream in the form of raw materials or products or materials that are salvaged or recovered for reuse.

#### **1.1.48 Refuse**

“Refuse” means all putrescible and nonputrescible solid and semisolid wastes, generated in or upon, related to the occupancy of, remaining in or emanating from Residential Premises or Commercial/Industrial Premises, including garbage, rubbish, trash, refuse, ashes, industrial wastes, vegetable or animal solid or semisolid wastes, and other solid and semisolid wastes. For purposes of this Agreement, Refuse does not include Recyclable Materials listed on Exhibit 7, as it may be amended from time to time, Organic Waste, Bulky Waste, or Exempt Waste.

#### **1.1.49 Residential Premises**

“Residential Premises” means property which is used for residential purposes within the City, including Single-Family Premises; Multi-Family Premises, apartment houses, and condominiums, mixed condominiums and rental housing, mobile home parks, and trailer parks; and businesses conducted upon Single-Family Premises or Multi-Family Premises that are permitted under applicable zoning regulations and that do not constitute the primary use of the property.

#### **1.1.50 Roll-off Box**

“Roll-off Box” means an open-top metal container or closed compactor box with a capacity of ten (10) to forty (40) cubic yards that may be provided by either the Account or Contractor, which is serviced by a roll-off truck.

#### **1.1.51 Roll-off Service**

“Roll-off Service” means Collection, transportation, Recycling, Processing and disposal services that are provided using a Roll-Off Box. Roll-off Service may be provided on a permanent or temporary basis.

#### **1.1.52 Single-Family Premises**

“Single-Family Premises” means (i) Residential Premises with one (1) to four (4) Dwelling Units, and (ii) mobile home parks. Contractor may determine (and if City agrees) that Single-Family Premises may receive Solid Waste Handling Services with permanent Bin or Roll-off Service, in which case such Premises shall be treated as a Multi-Family Premises under this Agreement.

### **1.1.53 Solid Waste**

"Solid Waste" has the meaning defined in Public Resources Code Section 40191, and includes all putrescible and non-putrescible solid and semi-solid waste, generated in or upon, related to the occupancy or, remaining in or emanating from Residential Premises or Commercial Premises, including Recyclable Materials, Food Waste, Green Waste, Organic Waste, Construction and Demolition Waste, and Refuse. Solid Waste does not include Exempt Waste.

### **1.1.54 Solid Waste Handling Services**

"Solid Waste Handling Services" means the Collection, and thereafter transportation, handling, storage, transfer, processing and/or disposal of Solid Waste.

### **1.1.55 Special Waste**

"Special Waste" means non-Hazardous Waste and non-Hazardous Substances that qualify as "designated waste" under Applicable Law, and are required to be accompanied by a written manifest or shipping document describing such waste under Applicable Law, or requires special handling at any transfer/processing facility or disposal site.

### **1.1.56 Temporary Service**

"Temporary Service" means Solid Waste Handling Service provided on a temporary, as-needed basis to any Premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Roll-off Boxes.

### **1.1.57 Universal Waste**

"Universal Waste" means waste materials that are conditionally exempt from classification as hazardous waste pursuant to Title 22 of the California Code of Regulations (22 CCR), Section 66261.9, including but not limited to: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR Section 66273.4; (iii) lamps as described in 22 CCR Section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR Section 66273.6.

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

### **2.1 Grant and Acceptance of Franchise; Termination of Prior Agreement**

**2.1.1** Subject to the terms and conditions of this Agreement and the requirements of Applicable Law, City grants to Contractor an exclusive franchise to perform Solid Waste Handling Services in City, including specifically the



exclusive right to Collect, transfer, transport, Recycle, Process, and dispose of all Solid Waste generated at any Premises in the City.

**2.1.2** The exclusive franchise granted by this Agreement includes the right for Contractor to conduct business on City's rights-of-way as more fully described herein in order to carry out its obligations as set forth in this Agreement, including by: allowing the placement and/or storage of its Containers in rights-of-way; allowing Collection Vehicles to drive at a pace, and repeatedly stop in, rights-of-way in a manner which disrupts traffic to the degree reasonably necessary to carry out its obligations hereunder, and which actions would otherwise be prohibited and a violation of laws applicable to the general public; and, Collecting, delivering and otherwise servicing Containers within rights of way and disrupting traffic as may be reasonably necessary to do so. The franchise hereby granted includes the right to encroach on City's rights-of-way for the forgoing purposes, without the need for an encroachment permit being issued to Contractor or its Customers (as would be required of the general public to use City's rights-of-way in a similar manner) in connection with the services Contractor provides hereunder; provided however, Contractor's rights to use the City's rights-of-way may be limited by the City Manager as necessary for the protection of health, safety and public welfare. Notwithstanding the franchise rights granted herein to impede traffic as may be necessary to perform services hereunder, Contractor shall take reasonable steps to schedule Collection of Containers in a manner that endeavors to minimize the impact of its business activities on the flow of traffic.

**2.1.3** Contractor accepts the franchise granted by this Agreement on the terms and conditions set forth herein.

**2.1.4** The Parties agree that, upon the Operative Date, this Agreement supersedes the Prior Agreement, and that the Prior Agreement is of no further force or effect, excepting those provisions of the Prior Agreement related to Contractor's obligations involving insurance and indemnification, which shall survive in connection with activities taken by Contractor in the performance of the Prior Agreement.

## **2.2 Exclusive Nature of Franchise**

### **2.2.1 Franchise Rights Exclusive**

During the term of this Agreement, except as otherwise provided in Section 2.7, or as may otherwise be provided by federal or state law, the rights granted to Contractor under this Agreement shall be exclusive to Contractor.

### **2.2.2 Enforcement of Exclusivity**

City shall be responsible for enforcing the exclusive rights in this Agreement. Contractor shall reasonably assist City in its efforts to enforce the exclusivity of this



Agreement. In addition, City shall adopt such ordinances or other regulations as it deems necessary or desirable to protect the exclusive rights granted in this Agreement. City shall have the right, but not the obligation, to enforce the exclusivity in this Agreement, including by instituting appropriate legal proceedings, and/or to request that Contractor do so. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City as permitted by Applicable Law.

### **2.2.3 Operative Date**

The Operative Date of this Agreement is January 1, 2023. The Operative Date is the date upon which Contractor shall commence providing Solid Waste Handling Services in accordance with this Agreement.

### **2.2.4 Term of Agreement; Effective Date; Option to Extend**

- A. The initial term of this Agreement commences on the Effective Date and expires at 11:59 p.m. on December 31, 2033 (the "Term"), unless earlier terminated pursuant to Article 8.
- B. The Term of this Agreement may be extended by mutual agreement of the parties twice for a period of five (5) years each. Under no circumstances shall City be obligated to extend the Term. If Contractor desires to extend the Term, it shall provide City with written notice of its desire to do so at least one (1) year before the expiration of the initial Term and at least six (6) months before the expiration of any extended Term.
- C. Prior to the extension of the Term of this Agreement under subsection B above, a billing audit and performance review shall be conducted, which shall commence after receipt of the notice set forth in subsection B above. Contractor agrees to reimburse City for the costs incurred by City for this review up to a maximum of \$10,000.

## **2.3 Conditions to Effectiveness of Agreement**

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this Agreement:

- A. **Accuracy of Representations.** All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date.
- B. **Furnishing of Insurance and Corporate Guaranty.** Contractor shall have furnished evidence of the insurance required by Section 7 hereof, and shall provide the Corporate Guaranty required by Section 7.8 hereof.

- C. **Effectiveness of the City Council Action.** City's resolution approving this Agreement shall have become effective under California law.

## **2.4 Delegation of Authority**

The administration of this Agreement by City shall be under the supervision and direction of the City Manager. Any and all actions specified in this Agreement, unless otherwise stated, shall be taken by the City Manager or other persons duly authorized to do so by the City Manager.

## **2.5 Limitations on Scope of Franchise**

Notwithstanding any other provisions set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude:

- A. The sale or donation of Recyclable Materials by a Customer to other persons; provided however, to the extent permitted by law, if the generator of such Recyclable Materials or Customer is required to pay monetary or nonmonetary consideration of any kind to any person or entity other than Contractor. The fact the Customer is provided a reduction or discount in price (or in other terms of consideration for services related to the Collection, transportation, transfer, or processing of Solid Waste) shall not be considered a sale or donation.
- B. The Collection, transportation, processing, Recycling and/or disposal of any Solid Waste otherwise within the scope of this Agreement by a Self-Hauler as that term is used in the Municipal Code, or any other City ordinance, resolution, regulation, or policy, as such may be adopted or amended from time to time.
- C. Bulky Waste removed from a Single-Family Premises by a property cleanup or maintenance company as an incidental part of the total cleanup, delivery, or maintenance service offered by such company rather than as a hauling service.
- D. Yard Waste removed from a Residential or Commercial Premises by a gardening, landscaping, or tree trimming company using its own equipment and employees as an incidental part of a total service offered by such company, as opposed to a hauling service.
- E. Organic Waste generated by an agricultural use on a lot where such use is permitted pursuant to applicable provisions of the Municipal Code, and where such Organic Waste is transported by the Customer (or by the Customer's full-time employees) to a properly permitted processing facility.
- F. Construction and Demolition Waste removed from a Residential or Commercial Premises that is incidentally removed by a duly-licensed construction or demolition company, or as part of a total service offered by

such company (as opposed to a hauling service), and where the company uses its own equipment and employees.

- G. Except as provided otherwise herein, the Collection, transportation, or disposal of Hazardous Contaminants; Hazardous Substances; Hazardous Waste; Universal Waste” and/or “e-waste”; biohazardous waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease and similar waste; Special Waste; or other materials which do not constitute Solid Waste.
- H. The Collection and transportation for disposal, processing or diversion of Solid Waste by City through its officers or employees in the normal course of their employment.
- I. Edible Food which is Collected from a Customer by a Food Recovery Organization or Food Recovery Service for the purposes of food recovery; or which is Self-hauled by the Customer to another person(s), such as a person from a Food Recovery Organization, for the purposes of food recovery, regardless of whether the Customer donates, sells, or pays a fee to the other person(s) to Collect or receive the Edible Food.
- J. The grant to Contractor of the exclusive franchise granted herein shall be interpreted in a manner consistent with Applicable Laws. The scope of this exclusive franchise shall be limited by current and developing state and federal laws with regard to Solid Waste handling, control of Recyclable Materials, Solid Waste flow control, and related matters. If future interpretations of current law, or the enactment of new laws or local ordinances, limit the ability of City to lawfully grant the scope of franchise services specifically set forth herein, Contractor agrees that the scope of the franchise hereby granted shall be limited to those services that may be lawfully provided and City shall not be responsible for any lost profits that may be claimed by Contractor; provided, however, that Contractor shall be entitled to a rate adjustment in accordance with Section 5.3.2 for any change in applicable law impacting the services contemplated herein and performed by Contractor under this Agreement. In that event, it is the responsibility of Contractor to minimize the financial impact to whatever extent is reasonably feasible.

## **2.6 City’s Right to Direct Changes and Changes in Law**

### **2.6.1 General**

City may direct Contractor to perform additional services (including new diversion programs, etc.) or to modify the manner in which it performs existing services or bills for services. In addition, changes in Applicable Law may necessitate that Contractor provide new or additional services under this Agreement or cause changes to fees, charges, or surcharges, incurred by Contractor or charged by

City. Pilot programs and innovative services that may entail new collection methods, different kinds of services or new requirements for Customers, are included among the kinds of changes that City may direct or a change in Applicable Law may require. Contractor shall be entitled to an adjustment to the Rates under Section 5.3.2 for providing additional or modified services related to any such City directed change or any change in Applicable Law. Contractor shall also be entitled to an adjustment to the Rates under Section 5.3.2 to account for any increased fees, charges, or surcharges incurred by Contractor impacting Contractor's services or performance under this Agreement.

### **2.6.2 New Diversion Programs**

In conjunction with the requirements of Section 2.6.1, Contractor shall present, within 30 days of a written request from City or other such time as the Parties may agree, a proposal to provide additional or expanded diversion services, which may include, among other things, additional Collection frequency and materials, new or additional methods for processing collected materials, enhanced customer outreach programs, or assisting City with implementation of the requirements of Applicable Law. The proposal shall contain a complete description of the following, as appropriate:

- Collection methodology to be employed (equipment, staff resources, etc.).
- Equipment to be used (vehicle number, types, capacity, age, etc.).
- Labor requirements (number of employees by classification).
- Type of containers to be used.
- Program publicity, education, and marketing.
- A financial projection related to the program including documentation of the key assumptions underlying the projections and the support for those assumptions.

### **2.7 Ownership of Solid Waste**

Except as otherwise provided under Applicable Law, when Solid Waste is placed at the designated Collection location, ownership and the right to possession shall transfer directly from the Customer to Contractor by operation of this Agreement. Subject to Contractor's obligation to assist City in meeting the source reduction and Recycling goals that apply to City, and City's rights hereunder, Contractor has the right to retain, Recycle, Process, dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose. Subject to the provisions of this Agreement, Contractor has the right to retain any benefit resulting from its right to retain, Recycle, Process, dispose of, or reuse the Solid Waste that it Collects.



## **2.8 Contractor Status**

Contractor represents and warrants that it is duly organized, validly existing, and in good standing under the laws of Utah, that it is qualified to transact business in the State of California and has all necessary licenses, permits, and certifications to provide the services required by this Agreement.

## **2.9 Contractor Authorization**

Contractor represents and warrants that:

- A. Contractor is authorized to enter into and perform its obligations under this Agreement;
- B. The Board of Directors of Contractor has taken all actions required by law, the articles of incorporation, the bylaws, or otherwise, to authorize the execution of this Agreement; and
- C. The persons signing this Agreement on behalf of Contractor have authority to do so.

## **2.10 Annexations**

This Agreement shall extend to any territory annexed to City during its term, except to the extent that Collection by Contractor within that annexed territory would be controlled by the provisions of Public Resources Code Section 49520, et seq. In that event, this Agreement shall become effective as to that area at the earliest possible date authorized by law; and City shall cooperate with Contractor to fulfill any requirement necessary for Contractor to serve the annexed area consistent with this Section.

# **ARTICLE 3 DIRECT SERVICES**

## **3.1 Refuse Collection Services**

- A. The work to be performed by Contractor includes, but is not limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and other items necessary to perform the services required. The designation of, and specification of requirements for, particular items of labor or equipment does not relieve Contractor of the duty to furnish all others, as may be required, whether or not identified elsewhere in this Agreement.
- B. The work to be performed by Contractor shall be performed in a thorough and professional manner so that Customers within the City are provided with reliable, courteous, and high-quality Solid Waste Handling Services at all times during the term of this Agreement.

- C. Contractor shall provide all Customers at all Single-Family Premises Solid Waste Handling Services with three Cart Collection ("3-Cart Service"), and shall provide all Customers at Multi-Family and Commercial Premises with Solid Waste Handling Services using Carts, Bins, and/or Roll-off Boxes, which shall comply with all Applicable Laws; and, Contractor shall Collect all Refuse, Organic Waste and Recyclable Materials placed for Collection in the Containers provided in connection with such programs not less than once per week, all as more fully set forth herein.

### **3.1.1 Refuse Collection – Single-Family Premises**

- A. Contractor shall provide each Customer at Single-Family Premises at least one (1) 64-gallon Cart for the Collection of Refuse (a "Refuse Cart"), as part of its 3-Cart Service. Contractor shall Collect Refuse placed out for Collection by such Customers in Refuse Carts not less than once each calendar week at the Rates set forth in Exhibit 1. Upon a Customer's request, Contractor shall substitute a 96-gallon Refuse Cart or a 32-gallon Refuse Cart for the 64-gallon Cart at the Rates set forth in Exhibit 1. Additional Refuse Carts may be provided at the Rates set forth in Exhibit 1.
- B. Collection of Refuse Carts shall take place at the curbside. The designated Collection location of Carts, if disputed by the Customer or Contractor, shall be determined by the City Manager. Additionally, if the City Manager determines any Collection location is inappropriate, he/she may require that such Collection location be relocated to another, reasonable location.

### **3.1.2 Refuse Collection for Multi-Family Premises and Commercial Premises**

- A. Contractor shall provide Bins for the Collection of Refuse ("Refuse Bins") to Customers at Multi-Family Premises and Commercial Premises as set forth herein at the Rates set forth in Exhibit 1. Contractor shall Collect and remove all Refuse that is placed in Refuse Bins at Multi-Family Premises and Commercial Premises at least once each calendar week, or more frequently upon Customer request.
- B. Contractor shall provide other services as may be requested by Accounts receiving Solid Waste Handling Service by use of Bins including extra pickups, walk-in/push-out service where the Bin must be moved manually to the collection point, scout service, or use of Bins with castors, hasps, slots or locks, at the Rates set forth in Exhibit 1.
- C. The designated collection location of Bins, if disputed by the Customer or Contractor, shall be determined by the City Manager. Additionally, if the City Manager determines any Collection location is inappropriate, he/she may require that such Collection location be relocated to another, reasonable location.



### **3.1.3 Commercial Premises Cart Services for Small Business Generators**

Rather than using Refuse Bins as noted above, Commercial Premises that require no more than one (1) 64-gallon Refuse Cart Collection once per week ("Small Business Generator") may subscribe to Cart service at the Rates set forth in Exhibit 1 for Commercial Premises commencing January 1, 2024. Small Business Generators shall receive one (1) 64-gallon Refuse Cart, one (1) 96-gallon Cart designated for the Collection of Recyclable Materials (a "Recyclable Materials Cart") and one (1) 64-gallon Cart designated for the Collection of Organic Waste (an "Organic Waste Cart"), and all Solid Waste placed in such Carts shall be Collected by Contractor once per week. Small Business Generators may request an additional Recyclable Materials Cart(s) or Organic Waste Cart(s) and may be charged for such additional Carts, as well as additional Collection frequency thereof, at the Rates set forth in Exhibit 1 for Commercial Premises. Should a Commercial Premises require more than one (1) 64-gallon Refuse Cart Collection once per week, then such Customer shall not be deemed a Small Business Generator and shall be required to subscribe to Refuse Bin Collection Services as set forth in Section 3.1.2. Small Business Generators who receive Cart service shall not be deemed Single Family Premises.

### **3.1.4 Permanent Roll-Off Services**

- A. Contractor shall provide permanent Roll-Off Boxes for Collection of Refuse and Recyclable Materials ("Permanent Roll-Off Service") to Customers at Multi-Family Premises and Commercial Premises who request it at the Rates set forth in Exhibit 1 for Collection and applicable rental charges. Rates on Exhibit 1 for Roll-off Services apply to Temporary and Permanent Roll-off Services exclusive of processing and/or disposal charges, which shall be an additional charge to the Customer based on the per ton fees charged by the applicable processing and/or disposal facility to Contractor. Contractor shall collect and remove all Solid Waste that is placed in Roll-Off Boxes from every Customer receiving Permanent Roll-Off Service at least once every week, or more frequently if required to handle the waste stream of the Customer.
- B. Contractor shall provide extra services desired by Customers receiving Permanent Roll-Off Service, including extra pick-ups, relocation of Containers, and may charge for trip charges where the Customer refuses service or Collection cannot be completed because Contractor cannot access the Container, at the Rates set forth in Exhibit 1.
- C. Roll-Off Boxes placed in the public right-of-way shall not block the view of any traffic or regulatory signs, or otherwise create a hazard to public safety and shall be relocated upon the request of the City Manager if he/she determines such a hazard exists.

### **3.2 Recyclable Materials Collection Services**

Contractor shall provide programs to all Customers that comply with the Applicable Laws by which it provides Containers designed for the Collection of Recyclable Materials for delivery to appropriate facilities for Recycling. Contractor shall provide ongoing education to Customers regarding the types of Recyclable Materials which may be placed in Containers designed for their Collection. As of the Effective Date, the materials identified in Exhibit 7 shall be permitted to be placed in such Containers. City and Contractor agree to meet from time to time as may be needed to discuss additions or deletions to the materials listed in Exhibit 7 and the City Manager is authorized to agree to any such changes.

#### **3.2.1 Recyclable Materials Collection – Single-Family Premises**

- A. Contractor shall provide weekly Recyclable Materials Collection to all Single-Family Premises as part of its 3-Cart Service on the same day as Refuse Collection. Contractor shall provide each Single-Family Premises receiving weekly Refuse Collection Service with one (1) approximately 64-gallon Recyclable Materials Cart at no additional charge. Additional Recyclable Materials Carts beyond one (1) Cart shall be provided upon Customer's request at the Rates set forth in Exhibit 1.
- B. Collection of Recyclable Material Carts shall take place at the curbside. The designated Collection location of Carts, if disputed by the Customer or Contractor, shall be determined by the City Manager. Additionally, if the City Manager determines any Collection location is inappropriate, he/she may require that such Collection location be relocated to another, reasonable location.

#### **3.2.2 Recyclable Materials Collection – Multi-Family and Commercial Premises**

- A. For each Multi-Family Premises or Commercial Premises receiving Refuse Bin Collection Service, Contractor shall provide one (1) 96-gallon Recyclable Materials Cart, and shall Collect all Recyclable Material placed therein for Collection once per week at no additional charge. Multi-Family Premises and Commercial Premises may request additional Recyclable Materials Containers, either Bin(s) or Cart(s), and Contractor shall provide such additional Containers at the Rates set forth in Exhibit 1. Contractor shall Collect all Recyclable Materials from every Customer at least once every week or more frequently, if required to handle the Recyclable Materials generated by the Customer, at the Rates set forth in Exhibit 1.
- B. In accordance with the Applicable Laws, as of the Effective Date certain Multi-Family Premises and Commercial Premises are required to arrange for the Recycling of Recyclable Materials, through, among other means, Collection by Contractor. Contractor shall make diligent good faith efforts

to maximize participation in Recyclable Materials Collection at these premises and shall assist City as may reasonably be necessary to process requests for waivers to be relieved from requirements to participate in Contractor's Recyclable Materials Collection programs as may be permitted by the Applicable Laws.

- C. The designated Collection location of Containers used for the Collection of Recyclable Materials, if disputed by the Customer or Contractor, shall be determined by the City Manager. Additionally, if the City Manager determines any Collection location is inappropriate, he/she may require that such Collection location be relocated to another, reasonable location.

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

Contractor shall exercise commercially reasonable efforts to process Recyclable Materials to remove contaminants and, to the extent possible, market such Recyclable Materials for sale to an end user. Notwithstanding the foregoing, however, Contractor makes no representation, and specifically disclaims any and all warranties, either expressed or implied, as to the availability or adequacy of a market or markets for such processed materials, whether foreign or domestic. City acknowledges that Contractor lacks any ability to influence global recycling markets, and Contractor's performance obligations hereunder do not extend to ensuring the consistent availability of such markets for the Recyclable Materials it collects and processes.

Notwithstanding any other provision of this Agreement to the contrary, Contractor is unable to identify a market for one or more Recyclable Materials despite the exercise of commercially reasonable efforts to process and market such material, Contractor may dispose of such materials, which shall not constitute a failure to implement service, a failure to implement a program, or an Event of Default hereunder. Nothing in this provision shall relieve Contractor from its obligation to achieve a diversion rate of not less than 50% as determined by CalRecycle.

### **3.3 Organic Waste Collection Services**

Contractor shall provide programs to all Customers that comply with the Applicable Laws by which it provides Containers for the Collection of Organic Waste and delivers such Containers to appropriate facilities for Processing. Contractor shall provide ongoing education to Customers regarding its Organic Waste program, including the types of materials which may be placed in Containers designed for Collection of Organic Waste.

#### **3.3.1 Organic Waste Collection – Single-Family Customers**

- A. Contractor shall provide weekly Organic Waste Collection to all Single-Family Premises as part of its 3-Cart Service on the same day as Refuse Collection as set forth herein. Contractor shall provide each Single-Family Premises receiving weekly 64-gallon Refuse Cart Collection Service with one (1) 96-gallon Organic Waste Cart at no additional charge. Additional

Organic Waste Carts beyond one (1) Cart shall be provided upon a Customer's request at the Rates set forth in Exhibit 1.

- B. Collection of Organic Waste Carts shall take place at the curbside. The designated Collection location of Carts, if disputed by the Customer or Contractor, shall be determined by the City Manager. Additionally, if the City Manager determines any Collection location is inappropriate, he/she may require that such Collection location be relocated to another, reasonable location.

### **3.3.2 Organic Waste Collection – Multi-Family and Commercial Premises**

- A. For each Multi-Family Premises or Commercial Premises Customer receiving Refuse Bin Collection Service, Contractor shall provide one (1) 64-gallon Organic Waste Cart and shall Collect all Organic Waste placed therein for Collection once per week at no additional charge. Multi-Family Premises and Commercial Premises Customers may request Bin(s) for Collection of Organic Waste, or additional Organic Waste Cart(s), and Contractor shall provide such Bin(s) or additional Carts at the Rates set forth in Exhibit 1. Contractor shall Collect all Organic Waste from every Customer at least once every week or more frequently, if required to handle the Organic Waste generated by the Customer, at the Rates set forth in Exhibit 1.
- B. In accordance with the Applicable Laws, as of the Effective Date certain Multi-Family Premises and Commercial Premises are required to arrange for the Recycling of Organic Waste, through, among other means, Collection by Contractor. Contractor shall make diligent good faith efforts to maximize participation in Organic Waste Collection at these premises and shall assist City as may reasonably be necessary to process requests for waivers to be relieved from requirements to participate in Contractor's Organic Waste Collection programs as may be permitted by the Applicable Laws.
- C. The designated Collection location of Containers used for the Collection of Organic Waste, if disputed by the Customer or Contractor, shall be determined by the City Manager. Additionally, if the City Manager determines any Collection location is inappropriate, he/she may require that such Collection location be relocated to another, reasonable location.

### **3.3.3 Temporary Services**

- A. Contractor shall provide Temporary Services to any Customer requesting the service, at the Rates set forth in Exhibit 1 for such services including applicable rental charges. Rates on Exhibit 1 for Roll-off Services apply to Temporary and Permanent Roll-off Services exclusive of processing and/or disposal charges, which shall be an additional charge to the Customer



based on the per ton fees charged by the applicable processing and/or disposal facility to Contractor.

- B. Contractor shall provide extra services desired by Customers receiving Temporary Services, including extra pick-ups, relocation of Containers, and may charge for trip charges where the Customer refuses service or Collection cannot be completed because Contractor cannot access the Container, at the Rates set forth in Exhibit 1.
- C. Containers placed in the public right-of-way in connection with Temporary Services shall not block the view of any traffic or regulatory signs, or otherwise create a hazard to public safety and shall be relocated upon the request of the City Manager if he/she determines such a hazard exists.
- D. Contractor shall comply with all Applicable Laws in connection with temporary services it provides (including specifically any ordinance which may be in effect regulating Construction and Demolition Waste and the requirement of the California Green Building Standards Code). Contractor shall make all reasonable efforts to recycle all Construction and Demolition Waste it Collects, especially to the degree such loads contain clean inert materials. Towards this end, Contractor shall provide construction Customers Containers for Recyclable Materials and Organic Waste Collection, as needed. Contractor shall create educational and outreach materials targeting Temporary Services Customers, subject to City Approval, which City and or Contractor can provide to such Customers.

### **3.4 Assistance with Waivers.**

- 3.4.1** Contractor shall, upon request, assist Customers in assessing if they qualify for a waiver under the Applicable Laws from participation in Contractor's Recyclable Materials or Organic Waste Collection programs, and provide such assistance as may be necessary for the Customer and City to evaluate any application submitted for such a waiver. Such assistance shall include a review of the Customer's waiver application, and providing City with any information or data regarding the Customer's Premises, service levels or other factors which may be necessary to enable City to evaluate a waiver request.
- 3.4.2** City shall advise Contractor of any such waivers it grants, and no waiver granted after related services have commenced for a Customer shall be effective until the next service day provided Contractor has received 48 hours' notice of such waiver from the City, in order to allow sufficient time for Contractor to adjust services in effect for a Customer. Thereafter, at least once every five (5) years, or more often if requested by City, Contractor shall conduct such desk-top investigation and fact finding as may be necessary to enable City to determine if the criteria by which City granted the Waiver continues to exist.

**3.4.3** Contractor shall maintain a record of each waiver issued by the City, as well as any ongoing activity it undertakes in connection with Section 3.4.2 above to provide data related to ongoing eligibility. A summary of such information shall be provided by Contractor, in a form reasonably acceptable to City along with Contractor's monthly, quarterly and annual reports to City.

### **3.5 Additional Services to Customers**

#### **3.5.1 On-Call Bulky Waste Pick-up**

- A. Contractor shall provide Bulky Waste pick-up service to Single-Family Premises as set forth herein. To receive this service, Customers must provide Contractor with at least two (2) Business Days' prior notice, after which the items shall be Collected either on the Customer's next-regularly scheduled Collection day or on a scheduled appointment day. Single-Family Premises receiving weekly 3-Cart Service are entitled to two (2) Bulky Waste Collections per calendar year with up to four (4) Bulky Waste items Collected per Collection at no extra charge. Contractor shall provide additional Bulky Waste Collection services for Single-Family Premises receiving 3-Cart Service at the Rates set forth in Exhibit 1.
- B. Contractor shall provide Bulky Waste Collection service to Multi-Family Premises and Commercial Premises at the Rates set forth in Exhibit 1. To receive this service, Customers must provide Contractor with at least two (2) Business Days' prior notice, and the items shall be Collected either on the Customer's regular Collection day or on a scheduled appointment day.
- C. Contractor shall not be required to Collect any items that cannot be safely handled by one person using a mechanical lifting mechanism.
- D. Bulky Waste Collected by Contractor may not be landfilled or disposed of until the following hierarchy has been followed by Contractor:
  - (1) Reuse as is (if energy efficient).
  - (2) Disassemble for reuse or Recycling.
  - (3) Recycle (through participation of charitable organizations).
  - (4) Disposal.

#### **3.5.2 Move In/Move Out Service**

Contractor shall provide services above the normal Solid Waste Collection service to Customers at Single-Family Premises Receiving 3-Cart Service as they move in or move out of Residential Premises ("Move In/Move Out Service"). Move In/Move Out Service shall consist of allowing a Customer to place up to three (3) bags of Refuse out for Collection on the Customers regular 3-Cart Service

Collection day. If a Customer places Refuse for Collection that is excess of three (3) bags or requires Move In/Move Out Service more than once in any three-month period, Contractor may charge to Collect such Refuse at the Rates set forth in Exhibit 1. Contractor shall Collect all Refuse placed out for Collection as described in this Section and deliver it to a proper facility for disposal or Processing (as it deems appropriate). Such Customers shall be required to provide Contractor with at least three (3) Business Days prior notice to receive Move In/Move Out Service.

### **3.5.3 Back Yard Service**

Contractor shall provide back-yard service, at no additional cost, for disabled or physically challenged Single-Family Premises Customers who receive 3-Cart Service. This service shall require Contractor to bring a Customer's Carts from a Customer's backyard, side yard, or such other location at which the Customer's Containers are regularly stored to Contractor's Collection Vehicle; and, after disposal of the contents thereof, return said Carts to the location where they are regularly stored. To qualify to receive this service, a Customer must provide a doctor's statement certifying their disabled status and expected duration, along with a signed affidavit in a form provided by Contractor (and subject to City's reasonable approval) stating that no able-bodied person is available at the Single-Family Premises to bring Carts to the Collection location.

### **3.5.4 Holiday Tree Collection Program**

Contractor shall Collect, transport, and divert from landfill disposal holiday trees which are placed at the curbside at all Single-Family Premises on the two regularly-scheduled Collection days following December 25. Contractor is not required to divert artificial holiday trees, or trees containing decorations, ornaments, tinsel, debris, support stands or other foreign matter. Upon City's request, Contractor shall also provide two 40-cubic yard Roll-off Boxes for Collection of Holiday Trees during the two weeks following the next Business Day after December 25 at reasonable locations in the City to be determined by the Parties

### **3.5.5 Holiday Cleanup Service**

Contractor shall provide, sponsor, and promote, at no charge to City or Single-Family Premises Customers, an extra service program each year for the two regularly scheduled collection days following December 25, where Single-Family Premises receiving 3-Cart Service can place up to three (3) large bags of Refuse at the curb; and Contractor shall service this waste manually. A billing insert shall be produced by Contractor and approved by City outlining the program.

### **3.5.6 E-Waste Drop-off**

Contractor shall provide a location within the city limits of the City as designated by Contractor for receipt of E-Waste from all Commercial, Multi-Family and Single-Family accounts during normal business hours at no cost to Customers.

### **3.5.7 Door to Door HHW Collection**

- A. Upon the request of City, Contractor shall undertake a program to Collect Household Hazardous Waste ("HHW") from Single-Family Premises receiving 3-Cart Service on an on-call basis, by-appointment basis. Contractor shall perform two (2) appointment based Collections under this Section at no additional cost to City or Customers as set forth herein. This service shall involve Contractor Collecting HHW from a Customer's premises, shall be known as the "Door to Door HHW Program," and shall include the following features:
- (1) An ongoing public education program to inform residents of the benefits and availability of the Door to Door HHW Program.
  - (2) A convenient means by which applicable Customers may make an appointment to have their HHW Collected.
  - (3) Instructions and materials (bags, labels, etc.) provided by Contractor, and subject to City's reasonable approval, that shall enable applicable Customers to safely and conveniently prepare their HHW for Collection.
  - (4) Specific written policies and procedures, subject to City's reasonable approval, for the Door to Door HHW Program such as acceptable Collection locations (doorstep, etc.), list of acceptable and non-acceptable materials, and quantity limits.
- B. City and Contractor agree that this service shall be provided to applicable Customers on a "first come first served" basis, and shall be provided until Contractors calendar year costs reach \$150,000, with this amount being adjusted according to the formula applicable to the Service Component set forth in Section 5.3.1.A.

### **3.5.8 Free Landfill Days**

Beginning on the Effective Date and each calendar year thereafter, Contractor shall provide, sponsor, and promote, to Single-Family Premises receiving 3-Cart Service four (4) Free Landfill Days per calendar year at the Simi Valley Landfill and Recycling Center. This program shall entitle Customers at Single-Family Premises receiving 3-Cart Service, whose accounts are in good-standing and current, to bring and dispose of Solid Waste generated at their Premises, including Construction and Demolition Waste, at no cost. Contractor and City shall mutually agree upon the dates each calendar year for the four (4) Free Landfill Days. Each Free Landfill Day shall allow free disposal by applicable Customers for a six-hour time period to be agreed upon in advance by City and Contractor. Customers eligible to participate in Free Landfill Days shall be required to provide reasonable evidence of City residency, and shall be limited to one-vehicle load per Customer



per Free Landfill Day. Contractor shall use commercially reasonable efforts to divert all Solid Waste delivered for disposal by Customers as part of this program.

Contractor shall provide reports to City within thirty (30) days after each Free Landfill Day or at the time of the next monthly report due to the City, whichever is later, indicating number of participants, types of materials received, tonnages of material received, and diversion statistics.

City acknowledges and agrees that, notwithstanding its Memorandum of Understanding with Waste Management of California, Inc., with respect to the Simi Valley Landfill and Recycling Center, the City shall be entitled to a maximum of four (4) Free Landfill Days per year for Single-Family Premises as provided in this Section 3.5.8.

### **3.5.9 Information for New Customers**

Contractor shall provide, at the time it begins Collection service to a new Customer, written instructions and rules to the Customer as to the procedures for Solid Waste, Recycling, and Organic Waste Collection. This service shall be at no cost to City or Customer.

### **3.5.10 Other Services**

Contractor may provide services to Customers for which a Rate is not provided in Exhibit 1 for a charge to be negotiated between Contractor and the Customer, with the such rate being subject to approval by the City Manager in the event of any dispute regarding the proposed charge for such services.

## **3.6 Additional Services to City**

### **3.6.1 Collection From City Facilities**

Contractor shall provide Solid Waste Handling Services (including Recyclable Material Collection and Organic Waste Collection) at all Premises owned and/or operated by the City, at no cost to City, and shall provide Containers for such Solid Waste Handling Service as City deems appropriate for each of its various Premises (i.e., Carts, Bins or Roll-off Boxes); provided however, Contractor shall not be required to provide such Solid Waste Handling Services at no cost in connection with construction or demolition projects at City facilities (with rates for such services being subject to the Rates set forth in Exhibit 1.) Such Solid Waste Handling Services shall be provided for all existing City facilities, as they may be expanded from time to time, as well as all new or additional facilities acquired/constructed during the Term hereof. Contractor shall carry out its obligations pursuant to this provision in a manner, and to a degree, approved by the City Manager. A list of existing City Facilities as of the Effective Date is attached hereto as Exhibit 2, for reference purposes only, and shall be updated on an ongoing basis.

### **3.6.2 Roll-off Containers for City Use**

Annually, at City's direction, Contractor shall provide up to ten (10) 40-cubic yard Roll-off Containers for Collection of Solid Waste at no cost to City for the community and special events which are sponsored or co-sponsored by City; or, alternatively for use in connection with Collection of Construction and Demolition Waste generated from work at City Facilities. Solid Waste collected pursuant to this Section 3.6.2 shall be diverted from disposal in the landfill to the extent commercially reasonable.

### **3.6.3 Abandoned Item Collection**

At no cost to City, Contractor shall Collect abandoned Solid Waste provided it can do so safely and consistent with Applicable Laws located on City public rights-of-way within two (2) Business Days from notification by City, except in emergency situations where immediate Collection is required in the interest of public health and safety. An emergency situation shall mean a determination by the City Manager that it is reasonably necessary to collect spilled or illegally dumped Solid Waste before the next Business Day in order to protect the environment from imminent and substantial harm. The foregoing does not require the Collection of Exempt Waste. Abandoned items Collected pursuant to this Section shall be disposed of or processed in accordance with Applicable Law.

### **3.6.4 Street Container Service**

Contractor shall provide Solid Waste Handling Services for street Refuse Containers placed by City along sidewalks, at a frequency to be agreed upon by City and Contractor, at no cost to City, with such Containers being those listed in Exhibit 2 as it may be amended from time to time. City agrees to consult with Contractor with respect to the locations of such street Containers, to avoid areas with insufficient space for Collection using a standard Collection vehicle, or in high traffic areas.

### **3.6.5 Composting Bin Distribution Program**

City shall purchase, promote, and sell Bins designed for Composting to Customers, and Contractor shall, at no additional cost or expense to City or Customers, store and distribute such Bins to Customers, at City's request within fourteen (14) calendar days of City's request.

## **3.7 Diversion**

### **3.7.1 State Diversion Requirements**

- A. Contractor shall use commercially reasonable efforts to assist City to comply with Public Resources Code Section 41780. In determining compliance with Section 41780 and Health and Safety Code Section 39730.6, City and Contractor agree to cooperate in good faith to

develop representative per capita disposal calculations, as appropriate. Contractor shall provide documentation to City within forty-five (45) days of the end of each calendar year stating and supporting that calendar year's diversion rate.

- B. If City fails to comply with Public Resources Code Section 41780 or Health and Safety Code Section 39730.6 due to Contractor's failure to implement the diversion and public education programs provided for in this Agreement, Contractor shall submit a plan to assist the City to comply with Section 41780 and Health and Safety Code Section 39730.6 through, among other things, implementation of applicable portions of City's Source Reduction and Recycling Element adopted in accordance with Public Resources Code Section 42649.3, within ninety (90) days of the end of the applicable calendar year. Contractor's plan is subject to approval by the City Manager, and to be approved shall constitute a good faith plan to implement applicable portions of City's Source Reduction and Recycling Element, and be reasonably likely to allow City to comply with Section 41780 and Health and Safety Code Section 39730.6 within the time stated in the plan. Implementation of the plan shall be at Contractor's sole cost and expense.
- C. If, following implementation of the plan, City still does not achieve compliance with Section 41780, Contractor shall implement additional programs required to assist City to comply with Section 41780 as directed by the City Manager, at its sole cost and expense.
- D. In the event that the State of California increases the mandated diversion percentage of 50% diversion (currently set forth in Public Resources Code Section 41780), requires new programs in addition to those already mandated by AB 341 (Public Resources Code Sections 42649, et seq.), AB 1826 (Public Resources Code Sections 42649.8, et seq.) and SB 1383 (Public Resources Code Sections 42652, et seq.), or changes the methods for obtaining or measuring compliance with existing requirements, City may impose new or additional recycling requirements in accordance with the City's Source Reduction and Recycling Element. Contractor shall be entitled to a reasonable adjustment to the Rates to address any increased costs associated with these new or additional recycling requirements, programs, or services in accordance with Section 5.3.2.
- E. In the event CalRecycle, or any federal, state, or local law or regulation imposes upon City or Contractor a requirement for the implementation of any program for the Collection, handling, transportation or processing of any waste material (or any attendant monitoring, outreach, or recordkeeping) not already covered by this Agreement, Contractor shall design and present a program to City to comply with such requirement, which shall be subject to the City Manager's written approval, which shall not be unreasonably withheld or delayed ("Proposed Program"). Within

thirty (30) days of the City Manager's approval of the Proposed Program, Contractor and City shall meet and confer in good faith to determine a reasonable adjustment to the Rates set forth in Exhibit 1 to compensate Contractor for any increased cost associated with implementing said Proposed Program, which shall be effective as of the commencement date for the Proposed Program, in accordance with Section 2.8 and Section 5.3.

### **3.7.2 Customer Outreach**

Contractor shall make diligent good faith efforts to implement the requirements of AB 341 (Mandatory Recyclable Material Collection), AB 1826 (Mandatory Organic Waste Collection) and of the SB 1383 Regulations, including the education, outreach, and monitoring requirements of those laws, as set forth in Exhibit 4 of this Agreement. Contractor shall (i) identify all Customers subject to the requirements of AB 341, AB 1826 and the SB 1383 regulations, (ii) prepare and distribute to all Customers a letter describing AB 341, AB 1826 and SB 1383 requirements, (iii) provide periodic (at least two/year) on-site visits to such premises to offer and promote Recyclable Materials or Organic Waste services until service is initiated (or until service is resumed, in the event of a service interruption of greater than 90 days), (iv) attempt to resolve any logistical detriments to providing these services, and (v) notify and request assistance from City for potential follow up action where there is a repeated refusal to implement these services. City agrees to provide reasonable assistance to Contractor, including occasional participation by City personnel in meetings with Customers who repeatedly refuse to implement Recyclable Materials or Organics Collection services.

## **3.8 Container Contamination and Monitoring and Route Reviews**

### **3.8.1 Contamination Monitoring**

- A. **Methodology.** Contractor shall provide on-going monitoring of the contents of Containers using a method that is approved by City and complies with all Applicable Laws, and may accomplish its obligations hereunder by physical inspection of the contents of Containers by Collection personnel at the time of Collection, or by conducting reviews of the Containers using WM Smart Truck<sup>SM</sup>, by which Contractor records and saves images of the contents of Containers, and thereafter reviews such records for purposes of contamination monitoring.
- B. **Contamination Fee Program Roll-Out.** During the period beginning on the Operative Date and ending December 31, 2024 (the "Roll-Out Period"), Contractor shall implement an education program designed to minimize and eliminate instances of contamination. During the Roll-Out Period, when Contractor documents that a Customer has placed a Contaminated Container out for Collection, Contractor shall collect the Container and shall notify the Customer as soon as feasible by a means reasonably calculated



to ensure the Customer receives the notice (which may be by phone, text, U.S. mail, e-mail, in person (which may be a container tag), or other means depending on Customer specific circumstances), setting forth the date of Collection, a description and photograph depicting the Container meets the definition of Contaminated Container hereunder, and a link to view educational materials online. However, Contractor shall not impose a Contamination Fee during the Roll-Out Period.

C. **First and Second Occurrences.** Beginning on January 1, 2025, for the first and second occurrences within a rolling twelve-month period, where Contractor documents that a particular Customer has placed a Contaminated Container out for Collection, Contractor shall service the subject Container. Contractor shall provide a notice to the Customer as soon as feasible by a means reasonably calculated to ensure the Customer receives the notice (which may be by phone, text, U.S. mail, e-mail, in person (which may be a container tag), or other means depending on Customer specific circumstances), setting forth:

- the date of Collection,
- a description of the Prohibited Container Contaminants and a photograph depicting the Container meets the definition of Contaminated Container hereunder;
- the fact the Container required special handling because it was a Contaminated Container due to the level of Prohibited Container Contaminants;
- the date and time the notice was left or issued;
- a description of the Materials that are appropriate for collection in the Container;
- an explanation that subsequent incidents of placing a Contaminated Container out for Collection may result in non-Collection, the imposition of a Contamination Fee, and where warranted, requiring additional or larger-sized Containers for those materials which are being placed for Collection in improper Containers;
- notification that any appeal of the determination that the Container in question meets the definition of a Contaminated Container must occur within sixty (60) days with information on how to do so; and
- Contractor's contact information to obtain additional information and/or receive responses to questions the Customer may have.

D. **Third and Subsequent Occurrences.** For the third and subsequent occurrences within a rolling twelve-month period, where Contractor

documents that a particular Customer has placed a Contaminated Container out for Collection, Contractor shall service the Container; Contractor shall provide the notice set forth in subsection C above (with the additional information noted below); Contractor may charge the Customer a fee (the "Contamination Fee") to compensate for additional costs incurred in handling Prohibited Container Contaminants, at the Rate set forth in Exhibit 1; and Contractor shall provide the notice set forth above in Section 3.8.1.D.

In the event a Customer repeatedly places Contaminated Containers out for Collection, upon request from Contractor the City Manager is authorized to require the Customer to increase Container volumes, add additional Containers, and/or increase service frequency.

Notwithstanding anything to the contrary herein, the Contamination Fee shall not be imposed more than two (2) times during any calendar month for any Single-Family Premises receiving 3-Cart Service.

- E. **Appeals of Contractor's Determination regarding a Contaminated Container.** Contractor shall establish a process for Customers to bring challenges to its determination that a Container is a Contaminated Container, which shall include an opportunity for Customers to receive the information required in subsection (C) and (D), and to present to Contractor any evidence it may have supporting the Customer's challenge. Contractor's process for dispute resolution shall be subject to the City Manager's approval. Contractor shall provide City with a summary of any such challenges including Contractor's decision in connection with any appeal, and the City Manager shall have the ability to overrule any such decision provided the City Manager's decision to do so must be based upon substantial evidence.

### **3.8.2 Contamination Fee Limitation for Single-Family Premises**

The intent of Contamination Fees is to reimburse Contractor for additional costs it incurs as a result of handling Contaminated Containers, to promote proper recycling and to discourage Customers from placing Prohibited Container Contaminants in Recyclable Materials and Organic Waste Container(s) in violation of Applicable Law. The Contamination Fee is not intended to be a source of revenue. Accordingly, Contractor agrees that Contamination Fees assessed against Single-Family Premises receiving 3-Cart Service shall not exceed two percent (2%) of Contractor's Gross Receipts in any calendar quarter.

### **3.8.3 Contamination Reporting**

Contractor shall provide information to City regarding Container contamination in the reports it submits to City that meet the reporting requirements of the Applicable Laws, and contain sufficient specificity to enable City to determine if enforcement

action against a Customer is warranted. Contractor shall maintain all records related to contamination monitoring and provide them to City upon request, and shall otherwise assist City with such contamination enforcement efforts as City may deem appropriate.

#### **3.8.4 Route Reviews**

Contractor shall perform route reviews of each route in City in a manner that meets the requirements of 14 CCR § 18984.5, and is reasonably approved by City. Contractor may use its Smart Truck<sup>SM</sup> system to conduct route reviews provided it complies with the Applicable Laws. Once such action is completed, Contractor shall provide any notification to Customers as may be required by the Applicable Laws. Contractor shall keep records of the reviews conducted pursuant to this provision, including specifically the records required by 14 CCR § 18984.6, and provide such records to City upon request. In addition, Contractor shall include a summary of such information in a form acceptable to City, in its monthly, quarterly and annual reports to City.

### **3.9 Operations**

#### **3.9.1 Schedule**

Collection shall take place between the hours of 6:30 a.m. and 7:00 p.m. on any day of the week, except that no pick-ups shall be made on Sunday unless specifically authorized in writing by the City Manager. Hours and days of Collection are subject to change by the City Council. If the regularly scheduled Collection day falls on a Holiday as defined herein, alternate Collection shall be performed on the following day, unless that day falls on Sunday, in which case alternative Collection shall be performed on the following Monday. All Collection days falling on other legal holidays shall remain as scheduled.

#### **3.9.2 School Zones**

Contractor shall make commercially reasonable efforts not make any Collections within two hundred (200) feet of a public or private elementary, junior high, or high school during the one-half (1/2) hour before the commencement of the regular school day and one-half (1/2) hour following the conclusion of the regular school day.

#### **3.9.3 Collection Routes and Schedules**

Contractor shall provide City a routing plan, showing its routing and Collection schedule (including dates for Collection of each route) as of the Effective Date. Contractor may revise its routing plan and Collection schedule by submitting a revised routing plan and Collection schedule to City, and may implement the revised routing plan and Collection Schedule upon approval by the City Manager, which approval shall not be unreasonably withheld. Following approval of a revised routing plan and Collection Schedule but prior to implementation,

Contractor shall provide notification to all affected accounts, through written notices, electronic notices, telephone messages or other means reasonably calculated to ensure the Customer receives it. In addition, for the first two (2) weeks following implementation of a revised routing plan which contains a change in the Collection schedule for impacted Customers, Contractor shall provide special Collection services to all accounts that set out Containers for Collection in accordance with the prior Collection schedule, at no additional cost.

#### **3.9.4 Right of Entry**

Contractor shall not have the right, until Contractor receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Solid Waste Handling Services pursuant to this Agreement.

#### **3.9.5 Vehicles**

- A. **General.** Contractor shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") sufficient in number and capacity to perform the work required by this Agreement in accordance with its terms. Any additional Collection Vehicles that may be required to meet the service standards during the term of this Agreement shall be provided by Contractor at its exclusive expense. Contractor shall have available on Collection days sufficient back-up and auxiliary vehicles for each type of Collection Vehicle used in City to respond to Complaints, continue Collection as scheduled in the event of malfunctions, and respond to emergencies as required by this Agreement.
- B. **Specifications.** Contractor shall only use Collection Vehicles that:
- (1) comply with all Applicable Laws, including the rules and regulations of the Ventura County Air Pollution Control District, the California Air Resources Board, and any other air-quality regulatory body that may have regulatory authority during the term of this Agreement;
  - (2) are registered with the California Department of Motor Vehicles; and
  - (3) are continuously maintained so as to both: (a) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible ensure each Collection Vehicle is "watertight" and "leak-proof" and, (b) at all times comply with the provisions of all Applicable Laws, including, without limitation, the Vehicle Code and any applicable NPDES permit, with regard to materials leaking from Collection Vehicles.
- C. **Vehicle Identification.** Contractor's name, local telephone number, and a unique vehicle identification number shall be prominently displayed on all Collection Vehicles, in letters and numbers no less than three inches high.



Contractor shall not place City's name, City logos, or advertisements (including political advertisements) on Collection Vehicles.

**D. Cleaning and Maintenance.**

- (1) Contractor shall maintain its properties, vehicles, facilities, and equipment used or located in City in a good, safe, neat, and clean condition at all times.
- (2) Collection Vehicles shall be painted and thoroughly washed on a regular basis so as to present a clean appearance. City may inspect Collection Vehicles at any reasonable time to determine compliance with this Agreement. Contractor shall make vehicles available to the Ventura County Environmental Health Department for inspection, at any frequency it requests. Contractor agrees to replace or repair, to City's reasonable satisfaction, any Collection Vehicle that City determines in its reasonable judgment to be of unsightly appearance, leaking oil, hydraulic, or other applicable fluids, or is in unsatisfactory operating condition.
- (3) Contractor shall repaint any Collection Vehicle, Bin, or Roll-Off Box used in the Collection of Solid Waste within sixty (60) days following written notice from City, if City determines in its reasonable judgment that its appearance warrants repainting. Notwithstanding the foregoing, and provided a Collection Vehicle is painted to industry standards, City may not require a Collection Vehicle to be painted more often than once every three years.
- (4) Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles that are not operating properly, or are in such a condition as to be unsafe or noisier than is industry standard, shall be removed from service until repaired and operating properly.
- (5) Contractor shall repair, or arrange for the repair of, all of its Collection Vehicles and equipment for which repairs are needed because of accidents, breakdown, or any other cause, so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of Collection Vehicle repairs, which shall include the date and mileage (or hours of operation), nature of repair, and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- (6) Upon request by City, Contractor shall furnish to City not later than 30 days after the end of each calendar year, a written inventory of all equipment, including Collection Vehicles, used in providing service.

The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, capacity, and age.

**E. Vehicle Operation.**

- (1) Collection Vehicles shall be operated in compliance with the California Vehicle Code and all applicable local ordinances. Contractor shall not load vehicles in excess of limitations on vehicles imposed by state or local weight restrictions. Solid Waste within Collection Vehicles shall be covered or otherwise contained at all times so as to prevent any Solid Waste from falling, being blown from or otherwise dislodged from the Collection Vehicle.
- (2) Collection Vehicles shall comply with EPA noise emission regulations, currently codified at 40 CFR Part 205, and other applicable noise control regulations set forth in the Municipal Code, and shall incorporate noise control features throughout the Collection Vehicle. Contractor shall store all equipment located in City in safe and secure locations in accordance with City's zoning regulations.
- (3) Contractor shall provide immediate notification to City in the event of oil, hydraulic or other fluid spills from Collection Vehicles that occur within City limits; and, further shall be responsible to clean up any such spills in a manner that complies with all Applicable Laws.
- (4) All Collection Vehicles shall be equipped with GPS tracking devices. Upon request of City, Contractor shall furnish to City at no additional cost or expense information necessary for City to track the location of Collection Vehicles in real time and to generate reports as it deems necessary.

**F. City Inspection per Code.** The California Highway Patrol may cause any vehicle used in the performance of this Agreement to be inspected and tested as provided by the Applicable Laws. Contractor shall not use any Collection Vehicle in City if it is found by the California Highway Patrol to be in nonconformance with Applicable Laws, and no Collection Vehicle so removed from service may be returned to service within City until its return to service has been approved by the California Highway Patrol.

**G. Brake Inspections.** The brake system of each Collection Vehicle used in the performance of this Agreement shall be inspected and certified by a trained mechanic who is either a certified mechanic or who is under the supervision of a certified mechanic. Contractor's facility, used to store and maintain Collection Vehicles used in the performance of this Agreement, shall comply with all Applicable Laws, including any certification requirements.

- H. **Correction of Defects.** Following any inspection, the City Manager may require Contractor, at its sole cost and expense, to remove any Collection Vehicle from service in the City found to be unsafe or unsanitary until such condition is corrected.

### 3.9.6 Containers

- A. **Cart Replacement.** All Carts used in City shall comply with all Applicable Laws. Contractor shall replace all Carts currently in service with new Carts on or before January 1, 2028. Contractor shall provide City with a schedule for Cart replacements within geographic sections of the City. New Carts placed into service shall meet the color and labeling requirements of all Applicable Laws, including 14 CCR Section 18984.7 and 14 CCR Section 18984.8.
- B. **Cart Design Requirements.** The Carts shall be designed and manufactured in accordance with standard industry specifications approved by City before being placed in service by Contractor. Cart sizes vary depending on the manufacturer, and any reference to Cart sizes herein is approximate.
- C. **Cart Ownership and Maintenance Responsibilities.** Contractor is responsible for Cart repair and maintenance, graffiti removal, and replacing lost, stolen, or damaged Carts within five Business Days of a request therefor at no additional charge to the Customer or to City. Contractor may, however, charge the Customer for repairing or replacing a Cart if the damage is due to the Customer's negligence, willful misconduct, or abuse. In no event may this charge be greater than Contractor's actual cost for replacement parts or \$75.00 (as adjusted each July 1 commencing July 1, 2025, in accordance with the formula applicable to the Service Component set forth in Section 5.3.1(A)), whichever is less. All Carts provided under this Agreement shall remain the property of Contractor at all times; and City retains the right to direct Contractor to remove the Carts at the end of this Agreement at no charge, should City so desire.
- D. **Free Annual Cleaning of Carts.** Contractor shall, at a Customer's request, clean or replace each Cart used by such Customer at no cost to Customer or City one (1) time per calendar year. Contractor shall provide subsequent cleanings within such calendar year at the Rates set forth in Exhibit 1.
- E. **Bins.**
  - (1) Contractor shall maintain its Bins in a clean and sound condition, free from putrescible residue when not in use by a Customer. Containers shall be equipped with reflectors to enhance visibility. Containers shall be constructed of heavy metal, or other durable material, and shall be designed to minimize leakage, spillage, or overflow and well

painted. Wheels, forklift slots, and other appurtenances, which are designed for movement, loading, or unloading shall be maintained in good repair. Upon request, Contractor shall clean or replace each Bin used by a Customer once each year at no charge to Customer or City. Customers may request additional cleanings at the Rates set forth in Exhibit 1. Contractor shall remove graffiti from any container within five Business Days of request by City or Customers. All Bins provided by Contractor under this Agreement shall remain the property of Contractor at all times.

- (2) Each Bin placed within the City by Contractor shall have the name of Contractor high on the exterior of the Bin so as to be visible when the Bin is placed for use. Each Bin shall be labeled with a conspicuous warning: "Not to be used for the disposal of hazardous, electronic, or universal waste."
- F. **Roll-off Boxes.** Upon request for or initiation of services utilizing Roll-off Boxes, Contractor shall provide clean Roll-off Boxes, free from graffiti and equipped with reflectors. Contractor shall cover all open Roll-off Boxes during transport to and from the disposal or processing site to prevent the release of Solid Waste. All Roll-off Boxes provided under this Agreement by Contractor shall remain the property of Contractor at all times.

### 3.9.7 Container Overages

- A. **Program Roll-Out.** During the Roll-Out Period, as defined in Section 3.8.1, Contractor shall implement an education program designed to minimize and eliminate instances of Overages. During the Roll-Out Period, when Contractor documents that a Customer has placed Solid Waste for Collection in or around a Container so as to create an Overage, Contractor shall collect the Overage and the Container and shall notify the Customer as soon as feasible by a means reasonably calculated to ensure the Customer receives the notice (which may be by phone, text, U.S. mail, e-mail, in person (which may be a container tag), or other means depending on Customer specific circumstances), setting forth the date, description and photograph of the Overage, and a link to view educational materials online.
- B. Beginning on January 1, 2025, where Contractor documents with video or photographs that a particular Customer has placed Solid Waste for Collection in or around a Container so as to create an Overage, Contractor shall service the subject Container, and may charge an "overage fee" at the Rates set forth in Exhibit 1 to compensate it for the extra costs it incurs in connection with handling the Overage.
- C. In the event a Customer repeatedly places Solid Waste in or around a Container so as to create an Overage, upon request from Contractor the



City Manager is authorized to require the Customer to increase Container volumes, add additional Containers, and/or increase service frequency.

### **3.9.8 Litter Abatement**

- A. **Minimization of Spills.** Contractor shall use due care to prevent Solid Waste or fluids from leaking or being spilled or scattered during the Collection or transportation process. If any Solid Waste or fluids leak, or are spilled during Collection, Contractor shall promptly clean up those materials in a manner that complies with all Applicable Laws. Each Collection vehicle shall carry absorbent material, a broom, and a shovel at all times for this purpose. Contractor may not, without City's prior written consent, transfer loads from one Collection Vehicle to another on any public street, unless it is necessary to do so because of mechanical failure or accidental damage to a Collection Vehicle.
- B. **Traffic Control in Public Right-of-Way:** If the Contractor requests City traffic control services in conjunction with performance of this Agreement (including without limitation due to its obligation to cleanup a spill), or if City, in its sole discretion, determines that City traffic control services are required due to unique circumstances occurring in Contractor's performance (such as in the event of the cleanup of a spill) for public safety purposes, City shall provide such traffic control services. Contractor shall reimburse City for the costs of providing such services at rates contained in the City's Staff Billing Rates adopted by the City Council in effect at the time the City's costs were incurred.

### **3.9.9 Personnel**

- A. Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, management, and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical, and efficient manner. All personnel shall meet the requirements of the Applicable Laws as they may apply to their respective positions.
- B. Contractor shall train its employees in customer courtesy, prohibit the use of loud or profane language, and instruct Collection crews to perform all work reasonably quietly. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline, or termination. If City has notified Contractor of a Complaint related to discourteous or improper behavior, Contractor shall consider reassigning the employee to duties not involving contact with the public in City while Contractor is pursuing its investigation and corrective actions.

- C. Contractor shall provide operating and safety training that meets minimum OSHA standards for all personnel, and shall comply with all Applicable Laws related to its employees and personnel. Contractor shall establish and vigorously enforce an education program designed to train Contractor's employees in the identification of Hazardous Wastes, and shall provide employees with appropriate literature to leave behind at Premises which improperly place out Hazardous Wastes for Collection.
- D. Contractor shall designate one staff member to serve as the "Local Recycling Manager" in the City. The duties of the Local Recycling Manager shall be focused on public education and outreach regarding: (i) the importance of Recycling, Food Recovery, resource recovery, landfill disposal reduction; (ii) the recycling and diversion mandates under Applicable Law; (iii) Commercial and Multi-Family Premises visits; and (iv) providing technical assistance to Customers to implement services, increase participation in applicable programs, and reduce contamination.

#### **3.9.10 Identification Required**

- A. Contractor shall provide identification badges, cards or similar devices, for all of its employees, and all authorized subcontractors, who may make personal contact with Customers in the City. City may require Contractor to notify Customers yearly, or more frequently if determined necessary by City, of the form of said identification. Each of Contractor's Collection employees shall wear a clean uniform bearing Contractor's name. Contractor shall provide a list of current employees and subcontractors performing Solid Waste Handling Services under this Agreement to the City Manager upon request.
- B. City reserves the right to conduct through law enforcement agencies a security and identification check of Contractor, and its present and future employees, in accordance with accepted procedures established by City.

#### **3.9.11 Fees and Gratuities**

Contractor may not, nor may it permit any agent, employee, or subcontractor employed by it, to request, solicit, or demand, either directly or indirectly, any compensation or gratuity for the collection, transportation, processing, or disposal of Solid Waste other than Contractor compensation that is normally paid.

#### **3.9.12 Non-Discrimination**

Contractor may not discriminate in the provision of service or the employment of persons engaged in the performance of this Agreement on account of gender, gender identity or expression, genetic characteristics or information, race, color, national origin, ancestry, religion, creed, sex, physical or mental disability, medical condition, marital status, military or veteran status, sexual orientation, or age in violation of any applicable federal or state law.

### **3.9.13 Report of Accumulation of Solid Waste; Unauthorized Dumping**

Contractor shall direct its drivers to note the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection, as well as the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within five (5) Business Days of such observation. Contractor shall cooperate with City in the investigation and prosecution of any violations of the Municipal Code.

### **3.10 Disaster and Emergency Service**

#### **3.10.1 Preparedness**

Upon request, Contractor shall provide its management expertise and contribute to City's emergency preparedness planning efforts.

#### **3.10.2 Disaster and Emergency Service**

- A. In the event of an emergency or natural disaster, and when requested by the City Manager, Contractor shall provide City with the equipment and labor required to Collect, cleanup, and remove debris resulting from the emergency or natural disaster. Contractor shall use commercially reasonable efforts to dispatch the requested equipment and labor to City as promptly as practicable following the written request by the City Manager. City shall be given equal priority and access to resources as with other Contractor franchise jurisdictions.
- B. Notwithstanding any other provision of this Agreement or the Municipal Code, Contractor agrees that, in the event Contractor is unable to respond within the time period requested by City for Collection, cleanup and removal of debris resulting from an emergency or natural disaster, City shall have the right to engage other persons, firms, and entities to Collect, cleanup and remove debris resulting from such emergency or natural disaster for a period ending on the earlier of the date such Collection, cleanup and removal is complete or thirty (30) days following the original request from City.
- C. At the time when Contractor's performance of its obligations under this Agreement is able to continue following a natural disaster, Contractor shall cooperate with City to prepare and implement a disaster recovery plan. This plan shall identify Contractor's plans for maximizing the amount of Recyclable Materials and Organic Waste diverted from the Solid Waste created by the disaster and to identify and secure disposal and processing sites and capacity for such Solid Waste.
- D. City shall pay Contractor for use of its labor and equipment in connection with the services provided in subsection A above, at the rate of \$120/hour

(with that rate subject to an annual adjustment each July 1 commencing July 1, 2025, in accordance with the formula applicable to the Service Component set forth in Section 5.3.1(A)); and, Contractor shall be entitled to reimbursement for actual costs it incurs related to overtime labor costs, disposal, recycling, processing, equipment rentals (provided Contractor shall obtain prior authorization for equipment rentals from City). Contractor's requests for payment for these services shall be accompanied by an invoice setting forth the labor hours, vehicle usage, disposal costs, and any other costs incurred by Contractor for which Contractor is seeking payment. City reserves the right to audit Contractor's records to ascertain the accuracy of Contractor's invoice and costs.

### **3.10.3 City-Wide Effort to Manage Disaster Debris**

In the event that City decides to oversee a coordinated effort to manage the Collection and Recycling of disaster related Solid Waste on a city-wide basis, Contractor shall provide City with its management expertise, including a dedicated full-time Recycling coordinator with the background, knowledge, and capability to assist in such an effort. Contractor shall provide this individual at no additional cost to City.

### **3.11 Capacity Guaranty**

Contractor guarantees sufficient capacity shall be available at the applicable facilities designated herein to Process, Recycle or Dispose of all Refuse, Organic Waste, and Recyclable Materials Collected by Contractor under this Agreement throughout the Term.

### **3.12 Disposal and Processing Facilities**

#### **3.12.1 Designated Disposal Site**

Contractor has designated the Simi Valley Landfill and Recycling Center ("SVLRC") as the Designated Disposal Site. Contractor covenants that SVLRC is properly permitted, is classified as a Class 3 landfill (permitted to receive only nonhazardous Solid Waste), is not on or being considered for inclusion on a state or federal Superfund list, or CalRecycle's list of Refuse facilities failing to meet state minimum standards, and is in substantial compliance with all required permits. Contractor shall deliver all Refuse Collected in City to the Designated Disposal Site for disposal in accordance with Applicable Law. Contractor shall not deliver Solid Waste Collected under this Agreement to any other facility or location for Disposal without City's prior written consent, which shall not be unreasonably withheld. To the extent the Designated Disposal Site is unavailable due to reasons beyond Contractor's control, Contractor and City shall meet and confer in good faith to adjust the rates to account for cost increases or decreases related to use of the alternative facility.



### **3.12.2 Designated Recycling Facilities**

Contractor has designated the Azusa Transfer Station & MRF, the Sun Valley Recycling Park, owned by Affiliates of Contractor, and the Gold Coast Materials Recovery Facility, as the Designated Recycling Facilities. Contractor covenants that the Designated Recycling Facilities are properly permitted and in substantial compliance with Applicable Law. Contractor shall deliver all source separated Recyclable Materials Collected in City to the Designated Recycling Facilities for processing in a manner that complies with all Applicable Laws. Contractor shall not deliver source separated Recyclable Material Collected under this Agreement to any other facility(ies) for processing without City's prior written consent, which shall not be unreasonably withheld. To the extent the Designated Recycling Facilities are unavailable due to reasons beyond Contractor's control, Contractor and City shall meet and confer in good faith to adjust the rates to account for cost increases or decreases related to use of the alternative facility.

### **3.12.3 Designated Organic Waste Facilities**

Contractor has designated Agromin ("Agromin") located at SVLRC and the Sun Valley Recycling Park, owned by an affiliate of Contractor, as the Designated Organic Waste Facilities. Contractor covenants that the Designated Organic Waste Facilities are properly permitted to receive Organic Waste, and are in substantial compliance with Applicable Laws. Contractor shall deliver all source separated Organic Waste Collected in City to the Designated Organic Waste Facilities for processing in a manner that complies with all Applicable Laws. Contractor shall not deliver source separated Organic Waste Collected under this Agreement to any other facilities for processing without City's prior written consent, which shall not be unreasonably withheld. To the extent the Designated Waste Facilities are unavailable due to reasons beyond Contractor's control, Contractor and City shall meet and confer in good faith to adjust the rates to account for cost increases or decreases related to use of the alternative facility.

### **3.12.4 Facility Requirements**

To the extent such facility is owned or operated by Contractor or an Affiliate of Contractor, Contractor shall confirm that the Designated Disposal Site, Designated Recycling Facility, and Designated Organic Waste Facility are properly permitted and in substantial compliance with Applicable Law at all times during the term of this Agreement. Contractor shall inform the City Manager in writing in the event of any substantial non-compliance at such Facilities lasting longer than 48 hours, and City, in its reasonable judgment, shall have the right to require the use of a different disposal or processing facility, to be selected by Contractor. The City Council may also, in its sole discretion, require the use of a different site at any time during the term of this Agreement if the Designated Disposal Site, Designated Recycling Facility, or Designated Organic Waste Facility (as the case may be) is found not to be in compliance with Applicable Laws including those related to facility operations and processing. To the extent a different site is required pursuant to this

paragraph, Contractor and City shall meet and confer in good faith to adjust the rates to account for cost increases or decreases related to use of the alternative facility.

### **3.12.5 Annual Route Audit**

At least once annually and at no cost to City, Contractor shall conduct an audit of its Collection routes in the City. The annual route audit shall be prepared in form and content reasonably acceptable to the City Manager and shall include the truck identity, number of accounts serviced, number and size of containers, and the weight of the Solid Waste delivered to the Designated Disposal Site, Designated Recycling Facility, and Designated Organic Waste Facility. Results of the annual route audit shall be provided to the City within forty-five (45) days after conclusion of the annual route audit.

### **3.12.6 Service Exceptions for Exempt Waste; Notifications**

Contractor shall not be required to Collect any Container which contains Exempt Waste. When a Container is not Collected from any Account due to the presence of Exempt Waste, Contractor shall notify the Customer in writing at the time Collection is not made, through the use of a "tag" or via electronic means, including e-mail or text message, that Collection was not made because of the presence of Exempt Waste, which notice shall provide information regarding the proper handling by Customer of such Exempt Waste. In addition, when Contractor discovers Exempt Waste has been placed out for Collection, it shall notify all agencies having jurisdiction in connection therewith, as may be required by Applicable Law. In addition to other required notifications, if any substances are observed by Contractor's employees that they reasonably believe or suspect contain Exempt Waste, and that have been unlawfully disposed of or released on any City property, including storm drains, streets, or other public rights-of-way, Contractor shall immediately notify the City Manager in writing.

## **ARTICLE 4 OTHER SERVICES**

### **4.1 Services and Customer Billing**

#### **4.1.1 Service Description**

Contractor shall, no later than 15 days prior to the effective date of a change to the Rates authorized hereunder, or no later than 15 days prior to July 1 of any year in which no rate change to authorized Rates shall occur, prepare and distribute a notice to each Account setting forth the Rates for the services such Account receives, the annual Holiday schedule, a description of Contractor's programs related to Organic Waste and Recyclable Material diversion, including a description of the types of materials appropriate for each Collection Container, and a general summary of services required to be provided under this Agreement and optional services that may be furnished by Contractor. This notice shall be

approved by the City Manager prior to its distribution. The service description notice contemplated by this Section 4.1.1 may be included with billings. The notice may also be included as part of Contractor's public education plan described in Section 4.3.1.

#### **4.1.2 Residential Senior Citizen Discount**

The Rates Contractor may charge for services to senior citizens set forth in Exhibit 1 includes a ten percent (10%) "Senior Citizen Discount" from the standard Rate for qualifying Customers at Single-Family Premises that receive 3-Cart Service. To qualify for this discount to the otherwise applicable Rates for 3-Cart Service, a Customer must be 62 years of age or older. Contractor may require reasonable proof of age and that the person requesting the Senior Citizen Discount actually resides at the Premises at which services are provided.

#### **4.1.3 Billings to Accounts**

- A. **Single-Family Premises.** Contractor shall directly bill all Single-Family Premises for monthly 3-Cart Service (including any charges for additional services where the charges can be determined in advance) on a bi-monthly basis in advance. Bills shall be itemized by type of service. All bills shall include a specific due date, which shall be not less than 30 days from the date of the invoice, and not state "due upon receipt." Customers shall be billed the Rates set forth in Exhibit 1. Contractor shall accept payment from Customers by cash, check, ACH transfer or credit card; provided payments made by credit card may be subject to a credit card convenience fee at the Rate set forth in Exhibit 1.
- B. **Multi-Family and Commercial Premises.** Contractor shall directly bill Multi-Family Premises and Commercial Premises for monthly Solid Waste Handling Services, whether provided by Carts, Bins or Roll-off Containers, (including any charges for additional services where the charges can be determined in advance) on a monthly basis, 30 days in advance. When a new Customer commences service, Contractor may require that such Customers pay a pro-rated amount for the first month's service in advance. Customers shall be billed for services at the Rates set forth in Exhibit 1. Bills shall be itemized by type of service. All bills shall include a specific due date, which shall be not less than 30 days from the date of the invoice, and not state "due upon receipt." Contractor shall accept payment from Customers by cash, check, ACH transfer or credit card; provided payments made by credit card may be subject to a credit card convenience fee at the Rates set forth in Exhibit 1.
- C. **Temporary Services.** Billing for Temporary Services, and any other services where the amount due cannot be determined in advance of providing such services, Contractor shall bill Accounts monthly in arrears. Customers shall be billed for such services at the Rates set forth in

Exhibit 1. Bills shall be itemized by type of service. All bills shall include a specific due date, which shall be not less than 30 days from the date of the invoice, and not state "due upon receipt." Contractor shall accept payment from Customers by cash, check, ACH transfer or credit card; provided payments made by credit card may be subject to a credit card convenience fee that does not exceed the Rates set forth in Exhibit 1.

- D. **Billing Format and Message Space.** Contractor's billing statement shall have space sufficient for messages from City to Customers to be included, and such messages shall be included in both paper and electronic versions of bills. This City message space shall be available for any City purpose, limited to four lines and 320 characters of text. Contractor shall include, at no cost to City, messages that City requests in the message space required by this Agreement up to six (6) times per calendar year.
- E. **Billing Insert.** Contractor's billing statement and envelope shall be able to accommodate inserted paper messages of not larger than 8-1/2 inches by 11 inches, full color, double sided. Up to six times per calendar year, and at no cost to City, Contractor shall include any message insert provided by City into all bills sent to Customers. City will provide one digital camera-ready master copy of the insert. Contractor shall print City message inserts at its own expense on 100% recycled content paper. Contractor shall include the message insert with bills provided electronically to Customers.

#### **4.1.4 Account Delinquency**

Contractor shall provide an Account with a notice of delinquency in the event of non-payment after 60 days from the date of the invoice. Contractor may charge a Late Fee at the Rates set forth in Exhibit 1. Contractor shall provide City a list of delinquent accounts upon written request.

Accounts that have not remitted required payment within 60 days from the date of the invoice shall be notified that Collection services may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. If payment is not made by the expiration of that 15-day period, Contractor may discontinue Collection services two Business Days thereafter and may remove its Containers from the Account. Contractor shall immediately notify the City Manager in writing of any such discontinuance of service.

Contractor shall resume Collection services on the next regularly scheduled Collection day for any Account whose Collection service was discontinued upon receipt of payment of all outstanding charges, including Late Fees, and payment of a "restart fee" at the Rate set forth in Exhibit 1. Contractor may not charge for Collection services not actually provided during any period in which Collection service was suspended.



Contractor shall provide City with two (2) Business Days' advance written notice prior to suspending 3-Cart Service to any Single-Family Premises. City may require Contractor to continue to provide 3-Cart Service to any Single-Family Premises if City deems it necessary to avoid negatively impacting public health or safety. When requested by Contractor, City agrees to provide reasonable assistance in addressing account delinquencies.

## **4.2 Customer Service**

### **4.2.1 Office Hours**

- A. Contractor shall establish and maintain a local business office within Ventura County. Office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays (the "Regular Business Hours"). A responsible and qualified representative of Contractor shall be available at the office during the Regular Business Hours for communication with the public in person or by phone. A local telephone number (i.e., not an "800" number) shall be available for Customers to use to contact Contractor during the Regular Business Hours. Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Contractor shall also maintain a local telephone number for Customer use during the Regular Business Hours, and shall have a customer service representative or a message service available at the telephone number used for non-Regular Business Hours. Calls received after the Regular Business Hours shall be responded to during the next Business Day.
- B. Contractor shall provide City with the phone number of a Contractor representative who may be reached 24 hours a day, seven days a week.

### **4.2.2 Website**

Contractor shall maintain a website which shall contain current relevant service information, an on-line payment option allowing Customers to directly pay Contractor, and current bill inserts.

### **4.2.3 Missed Pick-ups**

- A. **Cart Service.** When notified of a missed pick-up prior to 12:00 noon on a Business Day, Contractor shall Collect all Solid Waste placed out for Collection by any Customer in a Refuse Cart, Recyclable Materials Cart, and/or Organic Waste Cart that same day. If notified after 12:00 noon, Contractor shall make the Collection no later than the next Business Day unless otherwise agreed upon with the Customer.
- B. **Bin and Roll-off Service.** When notified of a missed pick-up prior to 12:00 noon on a Business Day, Contractor shall Collect the Refuse, Recyclable Materials, and/or Organic Waste placed out for Collection in a Bin or Roll-

off Box that same day, except in cases where access to Containers is blocked on the Customer's property. Otherwise, Contractor shall make the Collection no later than the next Business Day unless otherwise agreed upon with the Customer.

#### **4.2.4 Complaint Documentation**

- A. City shall direct all Complaints it receives to Contractor. Daily logs of Complaints received by Contractor shall be retained by Contractor for a minimum of 24 months and shall be available to City at all times upon request.
- B. Contractor shall keep a log of all Complaints received, which shall include (to the extent Contractor is able to receive such information from the person making the Complaint) the date and time the Complaint was received; the name, address, telephone number and email address of the person making the complaint; a description of the Complaint; the employee receiving the Complaint; and the action taken by Contractor to respond to and remedy the Complaint. All Complaints shall be initially responded to within one Business Day of receipt.

#### **4.2.5 Resolution of Customer Complaints**

- A. Disputes between Contractor and its Customers regarding the services provided under this Agreement, including billing disputes for those services, may be resolved by the City Manager, whose decision on such matters shall be final except that Contractor may seek all remedies for all past due accounts as set forth in this Agreement.
- B. Intervention by City is not a condition precedent to any rights or remedies third-parties might otherwise have in any dispute with Contractor. Nothing in this Section is intended to affect the remedies of third parties against Contractor. In addition, nothing in this Section is intended to affect the remedies of Contractor against any third-parties.

#### **4.2.6 Government Liaison**

Contractor shall designate in writing a "Government Liaison" who shall be responsible for working with the City Manager to resolve Customer Complaints. City has the right to approve Contractor's choice of Government Liaison.

### **4.3 Public Education and Outreach**

#### **4.3.1 General**

Contractor acknowledges that education and public awareness are essential elements of efforts to achieve the diversion goals and requirements set forth in the Applicable Laws. Accordingly, Contractor shall implement a public education

program to expand public and Customer awareness concerning the necessity for methods of reducing, reusing, and Recycling Solid Waste. The public education program shall include information regarding City's diversion goals, Bulky Waste pick-ups, and Recyclable Material and Organic Waste diversion programs. Contractor shall provide and make available the "Annual Guide to Solid Waste and Recycling", as required by Section 4.3.2, to be posted on Contractor and City websites. Contractor may also participate in community events and activities, such as school assemblies, Chamber of Commerce events, or other local activities and events, to achieve the goals of the public education program. Contractor shall submit a written public education program, that complies with any associated provisions of the Applicable Laws, for approval by the City Manager no later than 15 days following the Operative Date. All materials which are part of the public education program and subject to public distribution shall be subject to review and approval by City prior to release. Any change to the public education program shall be approved in writing by the City Manager.

#### **4.3.2 Annual Guide to Solid Waste and Recycling**

Within 45 days of the Operative Date of this Agreement, and thereafter in the first billing cycle of each calendar year, Contractor shall prepare and print, in color, a double-sided, letter-size "Annual Guide to Solid Waste and Recycling" that is approved by the City, and include it as an insert in the billing to all Customers. Contractor shall also include the "Annual Guide to Solid Waste and Recycling" electronically to all Customers who receive their billing statements electronically.

#### **4.3.3 Community Events**

Contractor shall participate in and promote Recycling and other diversion techniques at up to two (2) community events per year at such time and place as the Parties may mutually agree. Single-Family Premises Customers receiving 3-Cart Service may drop off HHW, E-Waste and up to one item of Bulky Waste at each such event (and Contractor may require reasonable proof of eligibility to do so).

#### **4.3.4 Mulch Giveaway**

Contractor shall offer up to thirty (30) cubic yards of mulch, as defined in 14 CCR Section 18993.1(f)(4), to residents of the City twice annually. Contractor may request proof of residency from the participant of such giveaway. Contractor shall conduct mulch giveaways twice annually on a date and at a location mutually agreed by City and Contractor. Contractor shall use reasonable efforts to procure Mulch to assist the City to comply with its recovered organic waste product procurement target under 14 CCR Section 18993.1.

### **4.4 Waste Generation/Characterization Studies**

Contractor acknowledges that City may be required periodically to perform Solid Waste generation and disposal characterization studies to comply with the Applicable Laws.

Contractor agrees to perform such studies as may be required of City on its behalf, in a manner that complies with all Applicable Laws, at no additional cost to City.

## **ARTICLE 5 CONTRACTOR COMPENSATION, RATES, AND FEES; CITY FEES**

### **5.1 General**

The compensation provided for in this Article 5 shall be the full compensation due to Contractor under this Agreement for all labor, equipment, materials, supplies, taxes, insurance, overhead, disposal, transfer, profit, and all other things necessary to perform all services required by this Agreement.

### **5.2 Compensation to Contractor**

- A. The Rates are the initial rates set by Contractor for services provided pursuant to this Agreement, and are set forth in Exhibit 1. Such Rates (as adjusted from time to time hereunder) comprise the total compensation to be paid to Contractor for all services rendered pursuant to this Agreement, unless otherwise provided for herein.
- B. The Parties agree that the Rates to be charged by Contractor to Customers have been set by Contractor as a private contractor in the marketplace. City's sole role with respect to establishing the Rates has been to establish rate ceilings for the protection of Customers given the exclusive status afforded Contractor by this Agreement and given the nature of the services it is to provide. Accordingly, the Parties agree that this Agreement shall be construed such that the Rates set forth in Exhibit 1 are the amounts Contractor chooses to charge its Customers, and agreed upon between them as part of their private agreement for Solid Waste Handling Services, and are not property-related fees within the scope of Article XIII D of the California Constitution or taxes within the scope of Articles XIII A and XIII C and XIII C Section 1 sub. e of the California Constitution.

### **5.3 Future Adjustments**

#### **5.3.1 Annual Rate Adjustment**

- A. The Rates set forth in Exhibit 1 shall be adjusted annually on each July 1 during the term hereof, commencing July 1, 2025, based upon percentage changes in the Service Component and the Diversion and Disposal Component as set forth below, with initial weighting of each being, respectively, 60% for the Service Component and 40% for the Diversion and Disposal Component, subject to re-weighting as set forth below. For illustrative purposes only, a sample annual rate adjustment is set forth in Exhibit 5.



- (1) **Service Component Adjustment.** The Service Component shall be adjusted annually by the percentage change in the CPI, calculated as follows: The CPI adjustment shall be calculated using the average of the monthly percentage changes in the CPI between the Current Measurement Period (defined as the 12 months ending the last day of March of the current year preceding the adjustment date) and the Prior Measurement Period (defined as the 12 months ending the last day of March of the prior year).
- (2) **Diversion and Disposal Component.** The Diversion and Disposal Component shall consist of the percentage change in the average Diversion and Disposal cost per ton for the Current Measurement Period compared to the average Diversion and Disposal cost per ton for the Prior Measurement Period. The Diversion and Disposal cost per ton for each measurement period shall be the sum of the Recycling Processing Factor, the Organic Waste Processing Factor and the Refuse Factor for the measurement period divided by the total tons for that period. Each of the factors comprising the Diversion and Disposal Component are defined as follows:
  - (a) Recycling Processing Factor. The Current Recycling Processing Factor equals the total tons of Recyclable Material delivered to the Designated Recycling Facility(ies) for the Current Measurement Period multiplied by the average of the monthly processing fees charged at the Designated Recycling Facility(ies) during the Current Measurement Period. The Prior Recycling Processing Factor equals the total tons of Recyclable Material delivered to the Designated Recycling Facility(ies) for the Prior Measurement Period multiplied by the average of the monthly processing fees charged at the Designated Recycling Facility(ies) during the Prior Measurement Period. Should the Recycling Material be delivered to a Material Recovery Facility owned and operated by Contractor, or an Affiliate, then the adjustment to the Recycling Processing Component shall be calculated using the average of the monthly percentage changes in the CPI between the Current Measurement Period (defined as the 12 months ending the last day of March of the current year preceding the adjustment date) and the Prior Measurement Period (defined as the 12 months ending the last day of March of the prior year).
  - (b) Organic Waste Processing Factor. The Current Organic Waste Processing Factor equals the total tons delivered to the Designated Organic Waste Processing Facility(ies) for processing or transfer during the Current Measurement Period multiplied by the average of the monthly per ton

organic waste processing or transfer fees charged at the Designated Organics Waste Processing Facility(ies) for the Current Measurement Period. The Prior Organic Waste Processing Factor equals the total tons delivered to the Designated Organics Waste Processing Facility(ies) for processing during the Prior Measurement Period multiplied by the average of the monthly per ton organic waste processing or Transfer fees charged at the Designated Organics Waste Processing Facility(ies) for the Prior Measurement period.

(c) **Refuse Factor.** The Current Refuse Factor equals the total tons delivered to the Designated Landfill Facility(ies) for disposal during the Current Measurement Period multiplied by the new calculated per ton disposal fee for the new rate period. The Prior Refuse Factor equals the total tons delivered to the Designated Landfill Facility(ies) for disposal during the Prior Measurement Period multiplied by the prior calculated per ton disposal fees for the prior rate period. The Refuse Factor per ton rate shall be adjusted by the same percentage used for the Service Component.

(3) **Weighting.** The initial weighting of the Diversion and Disposal Component shall be 40% and of the Service Component shall be 60% and shall apply to the July 1, 2025 rate adjustment, and then, after each current year rate adjustment is calculated, the Service and Diversion and Disposal Components shall be re-weighted to reflect their new relative percentages of the rates based on each of the component adjustments made pursuant to this Section, and those new weightings shall be used for the following year's rate adjustment.

(4) **Roll-off Box Services Adjustment.** The annual adjustment to the Rates applicable to Roll-off Box Services shall be an adjustment to the "haul rate" set forth in Exhibit 1 using the same formula applicable to the Service Component noted above, plus the actual processing/disposal cost per ton incurred by Contractor at the Designated Disposal Facility, Designated Recycling Facilities, or Designated Organic Waste Facility, as applicable.

(5) **Ancillary or Other Services.** The Rates set forth in Exhibit 1 for Ancillary services (or other services for which no annual adjustment calculation is set forth above) shall be adjusted using the same formula as used to adjust the Service Component.

B. **Annual Adjustment Limitations.** The annual adjustment to the Service Component shall not exceed five percent (5%) nor be less than zero percent (0%) in any given year. In the event the Service Component formula results in a greater than five (5%) percent CPI increase, or in a negative CPI, in

any given year, the unused percentage increase or decrease shall be deferred and carried over and applied to the following annual adjustment until such time as it may be applied without violating the provisions of this subsection. However, if the deferred percentage cannot be fully carried over as part of the next adjustment due to the five (5%) percent maximum increase or zero percent maximum decrease, any unused increment shall carry over to the subsequent annual adjustment until fully utilized. Should there be an overage in the final year of the Term or the extended Term, then Contractor may request a rate adjustment in the final year of the Term or extended Term, as applicable, that exceeds the five (5%) limitation to account for any unused overage that City Council may approve in its sole discretion. Therefore, by way of example only, if the CPI formula for the Service Component in Section 5.3.1.A.1 would provide for an increase of six percent (6%) in one year, the Service Component may only be increased by 5 percent (5%) for such year due to the limitations in this Section 5.3.1.B. If, in the next year, the CPI formula for the Service Component in Section 5.3.1.A.1 would provide for an increase of two percent (2%), the unapplied one percent (1%) increase from the prior year may be applied to the CPI formula for the Service Component for such next year, and the Service Component would provide for a three percent (3%) increase.

- C. **City Manager Approval of Rate Adjustments.** At least sixty (60) days prior to charging any Rate in accordance with the above, Contractor shall submit a request for the City Manager's approval to do so, which shall include all information necessary for City to evaluate the above noted formulas. The City Manager shall approve any such timely made request unless he/she determines, based upon substantial evidence, that the requested adjustment does not meet the requirements as set forth herein.

### **5.3.2 Extraordinary Adjustment**

- A. In addition to the annual adjustment provided for in Section 5.3.1, commencing on July 1, 2025, but not more often than one time annually, Contractor may apply for an increase in the Rates set forth in Exhibit 1 if Contractor can demonstrate that Contractor's costs have increased in an amount greater than the adjustment made pursuant to Section 5.3.1. Costs incurred by Contractor that may warrant an extraordinary adjustment under this Section may include, but are not limited to: new or increased taxes, fees and charges imposed by a governmental entity (excluding income taxes); fuel and transportation costs; insurance; Contractor's personnel costs (salaries and benefits); equipment repair or replacement costs; equipment purchases; and Recyclable Materials market conditions, including commodity values.
- B. When applying for an increase under this Section, Contractor shall submit to City information, in writing, in support of the adjustment. Additional

factors to be taken into consideration in connection with the adjustment request may include, but are not limited to:

- Overall Customer satisfaction with Contractor.
- Contractor's satisfactory compliance with its obligations under this Agreement.
- City's compliance with Solid Waste diversion requirements set forth in Public Resources Code Section 41780.

Contractor shall submit data requested in the format prescribed by the City Manager. The City Council shall review the information submitted by Contractor, and in its sole discretion make the final determination as to whether an adjustment to the Rates shall be made, and, if an adjustment is permitted, confirm Contractor's calculation of the adjustment.

- C. An adjustment requested under this Section may not be denied by City in the case of: changed or additional services requested by City, additional reporting required by City, changes in Applicable Law by any federal, state, or local governmental entity or agency applicable to the services provided under this Agreement, changes in federal, state, or local government taxes, fees, charges or surcharges of any kind or nature applicable to the Solid Waste industry and specific to the services provided under this Agreement (but excluding taxes imposed on businesses in general, including minimum corporate income taxes).
- D. Any extraordinary rate adjustment approved by the City Council shall become effective at a time designated by the City Council.

### **5.3.3 Impact of Legal Challenges to Adjustments to Rates**

If a rate adjustment under this Section 5.3 has been approved by the City Council, but is prevented from implementation due to a successful legal challenge, City and Contractor agree to negotiate in good faith to enable Contractor to be in the same financial position, as it was prior to such challenge, through the Term, as extended, including changes in service requirements, changes in free services, or changes to franchise fees or other fees payable to the City. If negotiations are not concluded successfully within twelve (12) months, Contractor is permitted to terminate this Agreement upon twelve (12) months' written notice to City.

### **5.3.4 Comparable Rates**

Contractor agrees that, should it provide comparable integrated waste management services in a neighboring city during the term of this Agreement, for rates (net of franchise fees or other fees) lower than those charged by Contractor in the City for Single-Family Premises, the rates charged to Customers in the City of Simi Valley for Single-Family Premises shall be reduced to an amount not greater than the average amount charged to customers in those neighboring cities. For purposes of this Section 5.4, "neighboring cities" shall mean municipalities



adjacent to City that are serviced by Contractor. Further, "comparable integrated waste management services" shall mean Single-Family Premises service for Refuse, Recyclable Materials, and Organic Waste not less than once per calendar week, at generally similar frequencies, and using generally similar equipment and facilities.

## **5.4 Franchise Fee**

### **5.4.1 Franchise Fee Amount**

- A. Commencing on the Operative Date, Contractor shall pay to City, a franchise fee equal to ten (10%) percent of Contractor's annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement (the "Franchise Fee"). The Franchise Fees shall be payable by Contractor to City on a quarterly basis, no later than the 15th day of the month following the last month of each calendar quarter. Should the 15th day fall on a Saturday, Sunday, or holiday, payment shall be due on the next Business Day upon which City's offices are open. The amount of each payment shall be equal to ten percent (10%) of Contractor's Gross Receipts received in the calendar quarter preceding the date payment is due. The Franchise Fee due hereunder shall apply to Gross Receipts of Contractor collected after the expiration of the Term hereof relating to Contractor's performance during the Term. Franchise Fees shall be accompanied by a statement certified by a representative of Contractor attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City. Contractor acknowledges that it, and not Customers, is to pay the Franchise Fee to City. Accordingly, Contractor's Bills shall not include separate itemization of a "Franchise Fee" or other similar designation relating to fees which Contractor is required to pay to City hereunder. Franchise Fees not received by City by the date due shall be subject to a late fee of \$500.00 and a penalty in an amount equal to two (2%) percent of the total amount due.
- B. In the event this Agreement is terminated, the balance due of any unpaid Franchise Fees shall be paid within sixty (60) days after the date services are terminated.

### **5.4.2 Disputes Regarding Franchise Fee Remittances**

No acceptance of any payment by City of the Franchise Fee shall be construed as an accord that the amount is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against Contractor for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recomputation by City. If, after audit, such recomputation indicates an underpayment, Contractor shall pay to City the amount of the underpayment within ten days of receipt of written notice from City that such is the case. In addition, Contractor shall pay interest on any

underpayment as provided in Section 5.5.1.A. Such interest shall commence accruing on the date the underpayment would have originally been due. Further, if, after audit, such recomputation indicates a Franchise Fee underpayment of more than two and one-half percent, Contractor shall reimburse City for all reasonable costs and expenses incurred in connection with the audit and recomputation within ten (10) Business Days of receipt of written notice from City that such is the case. If, after audit, such recomputation indicates a Franchise Fee overpayment, City shall notify Contractor in writing of the amount of the overpayment. Contractor may offset the payment or payments (as appropriate) next due following receipt of such notice by the amount specified therein. In case of dispute between City and Contractor regarding any amounts due, Contractor shall pay the undisputed amount and notify City in writing .at the time of payment as to any disputed amount, specifying the basis for the dispute.

## **5.5 Reimbursement of City Costs**

### **5.5.1 Agreement Negotiation Costs**

Within thirty (30) days of the Effective Date, Contractor shall make a one-time payment of \$Ten Thousand Dollars (\$10,000.00) to reimburse City for expenses incurred in connection with negotiating and entering into this Agreement.

### **5.5.2 Annual Administrative Cost Reimbursement**

Within thirty (30) days following the Operative Date, and each January 1 thereafter, Contractor shall make a payment to City in the amount more fully set forth in this paragraph intended to defray its administrative costs related to this Agreement, including specifically, without limitation its staff costs related to implementation of SB 1383 and other requirements of the Applicable Laws (the "Administrative Cost Reimbursement"). The amount of the annual Administrative Cost Reimbursement shall be One Hundred Fifty Thousand Dollars (\$150,000.00), adjusted annually commencing on January 1, 2026, using the same formula applicable to adjustments to the Service Component set forth in Section 5.3.1. If any Administrative Cost Reimbursement is not paid by Contractor within thirty (30) days after the above stated due date, and in addition to any other remedy provided by law, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) per month, or portion thereof, of the amount owing until paid.

## **5.6 Grants**

From time to time, federal, state, or local agencies including the City may provide grants to Contractor to assist in financing qualified programs provided by Contractor (including, without limitation, grants for diversion programs and related equipment, alternative fuel vehicles and equipment, and Household Hazardous Waste Collection/disposal). Contractor and City shall coordinate grant application and administration efforts as they may arise.

**ARTICLE 6  
RECORDS, REPORTS AND INFORMATION REQUIREMENTS;  
PERFORMANCE REVIEW**

**6.1 General**

Contractor shall maintain such accounting, statistical, and other records related to its performance under this Agreement as may be necessary to develop the financial schedules and other reports required by this Agreement. Contractor shall also conduct data collection, information and record keeping, and reporting activities necessary to comply with Applicable Law and regulations and to meet the reporting and Solid Waste program management needs of City, in particular the reporting obligations imposed by the Act. Contractor shall provide additional reports or adjust the number, format, or frequency of reports, as may be reasonably requested by City to demonstrate Contractor's compliance with its obligations under this Agreement as set forth in Section 6.5 below.

**6.2 Records**

**6.2.1 Solid Waste Service Records**

Contractor shall maintain all records relating to the Solid Waste Handling Services provided hereunder, including but not limited to Customer lists, billing records, accounts payable records, maps, records demonstrating compliance with Applicable Laws, records reflecting the number of Refuse, Recycling and Organic Waste routes and route hours by service category (i.e., Single-Family Premises Customers, Multi-Family Premises Customers, Commercial Premises Customers, Roll-off, and Temporary Services), records demonstrating facilities used to perform Solid Waste Handling Services, records reflecting the number of Refuse, Recycling and Organic Waste Containers in service by frequency of Collection for each customer category, records reflecting the number of Roll-off pulls, and such other documents and materials which reasonably relate to Contractor's compliance with the provisions of this Agreement (the "Records"), for the full Term of this Agreement, and an additional period thereafter of not less than seven (7) years, or any longer period required by law. Such Records shall be made available to City at Contractor's regular place of business, and in no event outside the County of Ventura.

**6.2.2 CERCLA Defense Records**

City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal and Processing, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not

landfilled) for not less than seven (7) years following the termination of this Agreement. At any time, including seven (7) years after the expiration of the Term hereof, Contractor shall provide copies of such records to City upon request. The requirements of this Section shall survive the expiration of the Term of this Agreement.

### **6.3 Reports**

Contractor agrees to provide all information in its control necessary for City to meet its monthly, quarterly, and annual reporting obligations under the Applicable Laws, and to do so in a format reasonably acceptable to City. The express requirements set forth herein are not intended as a limitation, but rather set forth minimums which Contractor shall comply with in order to meet its obligation to provide information and reports. Contractor shall provide any additional information or reports related to its performance under this Agreement requested by City to enable City to meet its obligations under the Applicable Laws not set forth herein. All reports shall be prepared in a manner that shall enable the City to meet its reporting requirements to CalRecycle under the Applicable Laws.

#### **6.3.1 Report Formats and Schedule**

- A. City shall provide sample report formats, but Contractor may propose report formats that are responsive to the objectives of each report. The format of each report requires approval by City. Contractor shall submit all reports by electronic means in a format that is compatible with City's software and computers at no additional charge, if requested by City.
- B. Monthly and quarterly reports shall be submitted within 20 calendar days after the end of a month or quarter, as applicable. Should the 20th day fall on a Saturday, Sunday, or holiday, the report shall be due on the next Business Day following. If requested, Contractor's Complaint summary, described in Section 6.3.3.1, shall be sent to the City Manager within five Business Days of request. Annual reports shall be submitted on or before March 31 following the reporting year. All reports shall be submitted to:

Director of Public Works  
City of Simi Valley  
2929 Tapo Canyon Road  
Simi Valley, California 93063

#### **6.3.2 Monthly Reports**

The following information related to Contractor's performance of services under this Agreement is the minimum required to be reported monthly: Tons of Solid Waste collected by Contractor for the previous month sorted by type of Account (e.g., Residential, Commercial, Multi-Family, Roll-Offs) and the facilities where the tonnage was processed or disposed.



### **6.3.3 Quarterly Reports**

The following information related to Contractor's performance of services under this Agreement is the minimum required to be reported quarterly:

- A. Number of Accounts receiving service using Carts (whether at Commercial or Residential Premises) billed by Contractor, including the number of Accounts at each service level and the percentage of Accounts participating in the Recycling program and the Organic Waste program.
- B. Number of Multi-Family Bin or Roll-off Service Accounts billed by Contractor, including the percentage of Accounts participating in the Recycling program and the Organic Waste program.
- C. Number of Commercial Accounts billed by Contractor, including the percentage of Commercial Accounts participating in the Recycling program and the Organic Waste program.
- D. Statement showing kinds of Recyclable Materials collected and the quantity sold (in tons) and/or disposed of.
- E. Number of Bulky Waste pick-ups completed.
- F. Number of missed collections reported to Contractor.
- G. A summary of promotional and public education materials sent during the preceding quarter.
- H. Copies of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently collected, but diverted from landfilling.
- I. Complaint summary for the quarter, identifying the nature of Complaints.
- J. Other information or reports regarding Contractor's performance under this Agreement that City may reasonably request.

### **6.3.4 Annual Report**

The annual report shall combine the information contained in the monthly and quarterly reports and shall also include, with respect to Contractor's performance of services under this Agreement:

- A. A complete inventory of equipment used to provide all services (such as Collection Vehicles and whether they comply with Ventura County Air Pollution Control District and California Air Resources Board requirements, Containers by size, and the waste stream from each type of Container).

- B. Subject to federal and state privacy laws, list of all Accounts billed by Contractor, including service address, billing address, and service levels, i.e., number of Carts in service by type of service (Refuse, Recyclable Materials, Organic Waste), size (32-, 64-, or 96-gallon), and additional Cart charges; and for Bins and Roll-off Service, the number and size of containers, and type and frequency of service.
- C. Disposal records required under subsection 6.2.3.
- D. General information about Contractor, including a list of officers and directors, and the most recent annual report and other periodic public financial reports of Contractor or Contractor's parent.

The annual Report can be submitted in electronic format and shall be due 45 days after the start of the calendar year. Should the 45th day fall on a Saturday, Sunday, or holiday, the report shall be due on the next Business Day following.

### 6.3.5 SB 1383 Reporting

Commencing on the Operative Date, Contractor shall provide the following:

- A. **Monthly Reports.** Contractor shall on a monthly basis report the following to the City, with each monthly report including a year-to-date summary page as well as the data submitted from the monthly report(s) submitted in the previous calendar year:
  - (1) total quantities in tons of Diversion in a manner that complies with the Applicable Laws and is acceptable to CalRecycle;
  - (2) number of Containers, broken down by Container type utilized and Container capacity;
  - (3) total number of waivers granted by City related to Organic Waste and/or Recyclable Material and the total number of related verifications performed by Contractor;
  - (4) total number of waivers requested of City related to Organic Waste and/or Recyclable Material and a summary of status of each;
  - (5) a report of contamination monitoring activities including:
    - the number of route reviews conducted and a summary thereof;
    - a description of the process used for determining the level of contamination;
    - a summary of actions taken in cases where contamination was identified; and
    - a summary of contamination fees assessed, broken down by Customer type and amounts.

- (6) a report listing all complaints asserting lack of compliance with SB 1383 and its implementing regulations and a summary of action taken in connection with each; and
- (7) a report of activities related to Edible Food Generators including:
  - the total number of known Tier One and Tier Two Commercial Edible Food Generators located within the City;
  - the number of known Food Recovery Services and Food Recovery Organizations located and operating within the City that contract or have written agreements with Commercial Edible Food Generators for Food Recovery;
  - the number of Tier One and Tier Two Commercial Edible Food Generators participating in an Edible Food Recovery program; and
  - A list of Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services in the City.

B. **Quarterly and Annual Reports.** Contractor shall on a quarterly basis, and an annual basis (within sixty (60) days after the end of each calendar) provide a summary of the information required in the monthly reports, in a format reasonably acceptable to City, and such other information and/or back up data as may be reasonably requested by City to enable it to comply with its obligations under the Applicable Laws.

#### 6.4 Adverse Information

- A. **Reporting Adverse Information.** Contractor shall provide to City copies of all reports, pleadings, applications, notifications, notices of violation, or other communications that materially and adversely affect Contractor's performance of services under this Agreement, that are submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission, or any other federal, state, or local agency having jurisdiction over the services performed by Contractor under this Agreement, including any federal or state court. Copies shall be submitted to City within five (5) Business days of Contractor's filing or submission of such matters to those agencies. Contractor's routine correspondence to those agencies need not be submitted to City, but shall be made available to City promptly upon City's written request.
- B. **Failure to Report.** The refusal or failure of Contractor to file any required reports, or to provide required information, or the inclusion of any materially false or misleading statement or representation by Contractor in any required report, shall, subject to any opportunity to cure as provided herein, be deemed a material breach of this Agreement, as described in

Section 8.1.4, and shall subject Contractor to all remedies that are available to City.

### **6.5 Right to Inspect Records**

City has the right to inspect or review specific documents or records that are required under this Agreement, and that City, in its reasonable judgment, deems necessary to evaluate annual reports, monthly reports, compensation adjustment applications, and Contractor's performance. Records shall be made available in a reasonable time which shall not be more than five (5) Business Days from the date requested, absent extraordinary circumstances, or as the Parties otherwise agree.

### **6.6 Periodic Review**

The City manager may periodically review Contractor's performance based on Customer Complaints, timely payment of sums due, statistical reporting, program progress, etc.. This review shall be conveyed to the City Council, and Contractor may review the report and submit its own statement.

### **6.7 Performance Review**

- A. City, at its sole discretion, may require up to three times during the term of this Agreement, a Performance Review of Contractor's performance of this Agreement, subject to the terms and conditions of this Section 6.7. A qualified firm under contract to City shall perform the Performance Review. City, in its sole discretion, shall select the qualified firm to conduct the Performance Review, provided the qualified professional service provider agrees to a reasonable non-disclosure agreement with Contractor to protect Contractor's proprietary, confidential, and trade secret information and subject to California privacy rights as required under Applicable Law.
- B. The costs of the Performance Review shall be equally shared by Contractor and City, except that Contractor shall not be obligated to pay more than \$2,500.00 for any one Performance Review. Notwithstanding the preceding sentence, if the Performance Review finds a material breach or default in Contractor's performance, Contractor shall in a timely manner reimburse City the total cost of the Performance Review within ten days of written demand from City not to exceed \$50,000.
- C. The Performance Review shall address all appropriate areas regarding Contractor's performance under this Agreement, including, but not limited to, the following areas, and shall provide specific recommendations, as appropriate, for improvement in each area:
  - (1) Compliance with the terms of this Agreement and Applicable Law.
  - (2) Efficiency of Collection operations, including an analysis of routes, schedules, and the impact to Agreement requirements.



- (3) Staffing.
  - (4) Contractor's billing and collection system and its policies with regard to uncollected Accounts.
  - (5) Employee job and safety training and management of Exempt Waste.
  - (6) Procedures for receiving and resolving Customer Complaints and concerns.
  - (7) Procedures for the acquisition, maintenance, safety check, and replacement of equipment.
- D. Contractor shall cooperate fully with the Performance Review, and provide within 30 days of request or other such time as the parties may agree, all operational and other information reasonably necessary for purposes of conducting the Performance Review provided confidential, proprietary and trade secret information or information protected by privacy laws shall be subject to protections afforded by Applicable Law and the Non-disclosure Agreement entered with the professional services firm as set forth in Section 6.7. Contractor's failure to cooperate or provide all requested information shall be considered an event of default.

## **ARTICLE 7 INDEMNIFICATION AND INSURANCE**

### **7.1 Indemnification**

- A. Contractor shall indemnify and hold harmless City, its elected and appointed boards, officials, commissions, officers, employees, volunteers, contractors, and agents (collectively, "Indemnitees"), from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or in equity of every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, subsidiaries, or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, subsidiaries, or subcontractors to comply in all respects with the provisions of this Agreement, Applicable Law (including, without limitation, Environmental Laws), ordinances and regulations, or applicable permits and licenses with respect to its performance under this Agreement; or (3) the acts of Contractor, its officers, employees, agents, subsidiaries, or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, Environmental Laws). The foregoing indemnity applies regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury,

death, or damage is also caused in part by any of the Indemnitees' negligence, but does not extend to matters resulting from the Indemnitees' sole negligence or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys reasonably acceptable to City) the Indemnitees against any claims, actions, suits in law or in equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the events referenced above.

- B. Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear and defend the Indemnitees in any claims or actions by third parties, whether judicial, administrative, or otherwise, including, but not limited to, disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," or the limits of City's authority with respect to the grant of licenses or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or state laws to provide Solid Waste services in City. This provision shall survive the expiration of the term during which Collection services are to be provided under this Agreement.
- C. Contractor's duty to indemnify and defend against- the above-referenced events arising during the term of this Agreement, and as it may be extended, shall survive the expiration or earlier termination of this Agreement.

## **7.2 Hazardous Substances Indemnification**

Contractor shall defend with counsel reasonably acceptable to City, indemnify, protect, and hold harmless the Indemnitees from and against all claims, including, but not limited to damages (including but not limited to special, consequential, natural resources, and punitive damages), injuries, costs, (including without limitation all response, remediation, and removal costs), losses, demands, claims, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorneys' fees for the adverse party, and expenses (including without limitation attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of Contractor, its officers, directors, employees, subsidiaries, or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup, or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, or other waste that has been generated, collected, stored, transported, or disposed of in the City. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(e); Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.

§§ 6901 et seq.; and California Health and Safety Code Section 25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of Contractor under this Section 7.2 is not limited to the limits of the policies of insurance provided for under Section 7.5. Notwithstanding the above, the foregoing indemnification shall not apply to the extent arising from the delivery of Hazardous Waste or Hazardous Substances by City to Contractor, nor shall it apply with respect to any facility owned or operated by third-parties or to facilities designated by City under this Agreement (except for facilities owned and operated by Contractor or its Affiliate).

### **7.3 Reduction of CERCLA and Other Liabilities**

City and Contractor agree to meet annually, at the request of City, to discuss ways to reduce potential CERCLA and other liabilities to third parties.

### **7.4 Indemnification for Failure to Meet Diversion Requirements**

Subject to and the requirements of Public Resources Code Section 40059.1 (which shall control in the event of any conflict with the provisions of this Section), Contractor shall indemnify and hold harmless City from and against all Claims for fines and penalties imposed by CalRecycle if the source reduction and recycling goals set forth in Public Resources Code Section 41780 are not met by City. In the event CalRecycle provides an administrative process to challenge the imposition of a compliance order or a fine or fines, Contractor shall be responsible for engaging consultants and/or attorneys to represent City in any challenge. Contractor shall also be responsible for the retention of and payment to any consultants engaged to perform waste generation studies (diversion and disposal). All consultants and/or attorneys engaged hereunder are subject to the mutual agreement of City and Contractor.

Contractor's indemnification of City is subject to all of the following restrictions:

- A. Contractor's obligation to indemnify City shall not be enforceable if the state-imposed penalty is based solely upon the failure of City to establish and maintain a source reduction and recycling element pursuant to the Act.
- B. No payment required under Contractor's obligation to indemnify City may exceed that portion of any penalty assessed by the state against City that was attributable to Contractor's breach of or noncompliance with an express obligation or requirement of this Agreement.
- C. City shall provide to Contractor reasonable notice of any claim, or any facts that could give rise to a claim, for which City seeks indemnification by Contractor under this Section 7.4, that could arise under this Agreement. Any such notice of a claim shall specify in reasonable detail the nature of and basis for such claim, together with the amount of the loss arising from such claim.

## 7.5 Insurance

Contractor shall maintain in force for the term of this Agreement the policies of insurance specified in this Section. City does not waive any rights against Contractor that it may have under the above-referenced hold harmless agreements because of acceptance by City of the insurance policies, or the deposit with City by Contractor, of the insurance certificates or endorsements described below.

- A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:
- (1) The most recent editions of Insurance Services Office Commercial General Liability coverage ("Occurrence" form CG 0001).
  - (2) The most recent editions of Insurance Services Office form number CA 0020 covering Automobile Liability, Code 1 "any auto".
  - (3) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
- B. **Minimum Limits of Insurance.** Contractor shall maintain in force for the term of this Agreement limits no less than:
- (1) General Liability: Ten Million Dollar (\$10,000,000.00) limit per occurrence, for bodily injury, personal injury, and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.
  - (2) Automobile Liability: Five Million Dollars (\$5,000,000.00) per accident for bodily injury and property damage.
  - (3) Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000.00) per incident.
  - (4) Pollution Liability: Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to Agency providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$5,000,000 dollars per claim and in the aggregate.
- C. **Deductibles and Self-Insured Retentions.** Deductibles and self-insured retentions are for the account of Contractor, and Contractor is solely responsible for their payment. In the event that City believes that Contractor is unable or unwilling to pay any deductibles or self-insured retentions,



Contractor shall procure a bond guaranteeing payment of all losses and expenses of related investigations, claims administration, and defense in the amount of those deductibles or self-insured retentions.

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

(1) General Liability and Automobile Liability Coverages.

- (a) City and its officers and employees are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers. Contractor may comply with this Section by including blanket additional insured endorsements in its insurance policies.
- (b) The automobile liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90) and/or other endorsements required by federal or state authorities.
- (c) Contractor's insurance coverage shall be primary insurance with respect to the Indemnitees. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute to it.
- (d) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
- (e) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by Contractor for City pursuant to this Agreement.

(3) All Coverages. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be canceled except after

30 days' prior written notice has been given to City. Further, in addition to the requirements of Section 7.5.H below, Contractor shall provide- prompt notice to City upon receipt of a notice of suspension, a reduction in coverage or non-renewal.

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

F. **Verification of Coverage.** Contractor shall furnish City with certificates of insurance and with original endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or reasonably acceptable to City and are to be received and approved by City before work commences. Renewal certificates shall be furnished periodically to City to demonstrate maintenance of the required coverage throughout the term of this Agreement.

G. **Companies and Subcontractors.** Contractor shall furnish separate certificates and endorsements for each other Contractor and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated in this Section.

H. **Required Endorsements.**

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

"Thirty (30) days' prior written notice shall be given to City in the event of cancellation of this policy. Such notice shall be sent to:

Risk Manager  
City of Simi Valley  
2929 Tapo Canyon Road  
Simi Valley, California 93063"

(2) The General Liability policy shall contain endorsements in substantially the following form:

"Thirty (30) days' prior written notice shall be given to City in the event of cancellation of this policy. Such notice shall be sent to:

Risk Manager  
City of Simi Valley  
2929 Tapo Canyon Road

Simi Valley, California 93063"

"City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

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

**I. Other Insurance Requirements**

- (1) Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against Contractor, or any Contractor or subcontractor, on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to City.
- (2) If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct its cost from any moneys due Contractor.

**7.6 Property Damage**

Any physical damage caused by the negligent or willful acts or omissions of employees of Contractor to public or private property shall be promptly repaired or replaced by Contractor at Contractor's sole expense, excluding normal wear and tear.

**7.7 Pavement Damage**

Contractor is responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear, caused by Contractor's Collection Vehicles. Contractor understands that performance under this Agreement may involve the operation of its Collection Vehicles over private roads and streets. Disputes between Contractor and its Customers as to damage to private pavement are civil matters, and Complaints of damage received by City shall be referred to Contractor as a matter within the scope of Section 4.2.4. Contractor. Contractor shall obtain permission to enter upon private streets within the City. Contractor may provide special services to Accounts that are adjacent to Private Streets, such as scout service, at the Rates set forth in Exhibit 1.

## **7.8 Corporate Guaranty**

Within thirty (30) days after the Effective Date, Contractor shall provide to City a corporate guaranty (the "Guaranty") executed by Waste Management, Inc., substantially in the form set forth in Exhibit 3, and acceptable to the City Attorney.

## **ARTICLE 8 DEFAULT, REMEDIES AND LIQUIDATED DAMAGES**

### **8.1 Administrative Remedies; Imposition of Damages; Termination**

#### **8.1.1 Notice of Deficiencies; Response; Appeal**

- A. **Notice of Deficiencies; Response.** If the City Manager determines that Contractor's performance is not in compliance with the provisions of this Agreement, the Act (including, but not limited to, requirements for diversion, source reduction, and Recycling as to the waste stream subject to this Agreement) or any other applicable federal, state, or local law or regulation, including, but not limited to, the laws governing transfer, storage, or disposal of Solid and Hazardous Waste, the City Manager may advise Contractor in writing of the deficiencies, specifying the deficiencies in reasonable detail. The City Manager, in any written notification of deficiencies, shall set a reasonable time within which Contractor shall respond. Unless the circumstances necessitate correction and response within a shorter period of time, Contractor shall respond to the written notification of deficiencies within thirty (30) days from its receipt of that written notice. Unless the circumstances necessitate correction and response within a shorter period of time, Contractor may request additional time to correct deficiencies. City shall approve reasonable requests for additional time in its reasonable judgment.
- B. **Review by the City Manager: Notice of Appeal.** The City Manager shall review any written response from Contractor and decide the matter. If the City Manager's decision is adverse to Contractor, the City Manager shall order remedial actions to cure any deficiencies. Contractor shall cure any such deficiency within ten (10) days, unless the Parties agree to a different time. In the event that Contractor fails to cure such deficiency within the designated time, the City Manager may invoke any other remedy in accordance with this Agreement. If the City Manager determines that there has been a material breach and that termination is the appropriate remedy, then the City Manager may recommend to the City Council that this Agreement be terminated. The City Manager shall promptly inform Contractor of the City Manager's decision. If the decision is adverse to Contractor, the City Manager shall inform Contractor, in writing, of the specific facts found and evidence relied upon, the legal basis for the City Manager's decision, and any remedial action taken or ordered. An adverse decision by the City Manager shall be final and binding on Contractor unless



Contractor files a "Notice of Appeal" with the City Clerk (with copies to the City Manager and the City Attorney) within 30 days of receipt of the City Manager's notification of the adverse decision. In any "Notice of Appeal, Contractor shall state its factual contentions and include any relevant affidavits, documents, photographs, or videotapes that Contractor may choose to submit. In addition, Contractor shall include its legal contentions, citing provisions of this Agreement or Applicable Law to support those contentions.

### **8.1.2 City Council Hearing**

If a matter is referred by the City Manager to the City Council, or an adverse decision of the City Manager is appealed to the City Council by Contractor, the City Council shall set the matter for a hearing and act on the matter. The City Clerk shall give Contractor thirty (30) days' written notice of the time and place of the hearing. At the hearing, the City Council shall consider any information and statements submitted by Contractor and information contained in the administrative record, consisting of the following:

- A. A staff report from the City Manager, summarizing the proceedings to date and outlining the City Council's options.
- B. The City Manager's written notification of deficiencies.
- C. Contractor's response to the notification of deficiencies.
- D. The City Manager's written notification to Contractor of adverse decision.
- E. Contractor's "Notice of Appeal".
- F. The City Manager's written notification to Contractor of adverse decision.
- G. Contractor's "Notice of Appeal to the City Council".

### **8.1.3 City Council Determination**

Based on the administrative record, the City Council shall determine by resolution whether the decision or order of the City Manager should be upheld, including any recommended termination of this Agreement. If, based upon the administrative record, the City Council determines that Contractor's performance is in breach of any term of this Agreement, or violates any provision of any applicable federal, state, or local statute or regulation, the City Council, in the exercise of its reasonable discretion, may order Contractor to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement. The City Council may not terminate this Agreement unless it determines that Contractor is in breach of a material term of this Agreement, including but not limited to a violation of a material provision of any applicable federal, state, or local statute or regulation. Contractor's performance under this Agreement is not excused during

the period of time prior to a final determination of issues referred or appealed to the City Council. Contractor may then pursue any and all legal remedies available under Applicable Law, including filing an action with a court of competent jurisdiction.

#### **8.1.4 Reservation of Rights by City**

A. City may terminate this Agreement without a right to cure, and without application of the provisions of Section 8.1.1 in the event of any of the following:

- (1) Fraud or Deceit or Misrepresentation. If Contractor engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation to City regarding material information.
- (2) Insolvency or Bankruptcy. If Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition, or takes steps to liquidate its assets.
- (3) Violation of Regulations. If Contractor violates any orders of any regulatory body having jurisdiction over Contractor or City that have a material impact on Contractor's performance under this Agreement and which is not corrected or remedied within the time specified in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor fails to commence to correct or remedy such violation within the time specified in such notice and to thereafter diligently effect such correction or remedy; provided that Contractor may contest any such orders by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to Contractor is entered.
- (4) Failure to Perform. If Contractor ceases to provide all Collection, processing, and Recycling services as required under this Agreement over all or a substantial portion of its franchise area for a period of five (5) consecutive days or more, for any reason within the control of Contractor, but subject to Section 8.3.
- (5) Failure to Pay or Provide Information. If Contractor fails to make any payments required under this Agreement or refuses to provide to City, within ten (10) days of the demand or other such time as the Parties mutually agree, required information, reports, or records in a timely manner.
- (6) Acts or Omissions. Any other act or omission by Contractor that has a material effect on Contractor's performance under this Agreement that violates its terms, conditions, or requirements, the Act,

Applicable Law (including any Environmental Law), or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time specified in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor fails to commence to correct or remedy such violation within the time specified in such notice and to thereafter diligently effect such correction or remedy.

- (7) False or Misleading Statements. Any representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, that proves to be false or misleading in any material respect as of the time such representation or disclosure is made.
- (8) Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of Contractor, including without limitation its equipment, maintenance, or office facilities, or any part thereof.
- (9) Failure to Provide Assurance of Performance. If Contractor fails to provide reasonable assurances of performance as required under Section 8.4.
- (10) Felonious Conduct. If Contractor, or any of its officers or directors, is found guilty of felonious conduct related to the performance of this Agreement, or of felonious conduct related to antitrust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials related to the performance of this Agreement.

#### **8.1.5 Cumulative Rights**

- A. City's rights to terminate this Agreement are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. These rights are in addition to all other legal and equitable rights and remedies that City may have.
- B. Because of the necessity for timely, continuous, and high-quality service, the time required to effect alternative service, and the exclusive rights granted by City to Contractor, the remedy of monetary damages for a material breach of this Agreement by Contractor is inadequate, and City may be entitled to obtain injunctive relief.

#### **8.2 Liquidated Damages**

- A. **General.** The Parties agree that, as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages that would be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to

the impracticability of ascertaining damages include, but are not limited to, the fact that: (1) substantial damage results to members of the public who are denied service or are denied quality or reliable service; (2) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of this Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity that are incapable of measurement in precise monetary terms; (3) the services provided under this Agreement might be available at substantially lower costs than alternative service, and the monetary loss resulting from denial of service or from denial of quality or reliable service is impossible to calculate in precise monetary terms; and (4) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies that make the public whole for past breaches.

**B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the franchise. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it will be impractical and extremely difficult to determine the exact amount of damages that City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article 8, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated, and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and to obtain an explanation of these liquidated damage provisions prior to the execution of this Agreement.

Contractor  
Initial Here

MH

City  
Initial Here

DDC KJM



C. Contractor agrees to pay as liquidated damages, and not as a penalty, the amounts set forth below:

(1) Collection Reliability

- (a) For each failure to commence service to a new Account within seven (7) days after the anticipated start date of such services or as otherwise agreed upon with the Customer, which exceeds three (3) such failures in any one calendar year: \$50.00 for each occurrence.
- (b) For each failure to collect Refuse, Recyclable Material, or Organic Waste which has been properly set out for Collection, from an established Account or Accounts, on the scheduled Collection day and not collected within the period described in Section 4.2.3, which exceeds five (5) such failures in any one calendar year: \$100.00 for each occurrence.

(2) Collection Quality

- (a) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments, or to place Containers upright, which exceeds five such occurrences in any one calendar year: \$10.00 per occurrence.
- (b) For each failure to clean up Refuse, Recyclable Material, or Organic Waste spilled from Containers (except where caused by overloading by the Customer) that exceeds five (5) such failures in any one calendar year: \$100.00 per occurrence.
- (c) For each instance on which Refuse, Recyclable Material, or Organic Waste is collected during unauthorized hours: \$10.00 per occurrence.
- (d) For each failure to clean or replace Containers in accordance with Section 3.9.6 of this Agreement, which exceeds five (5) such failures in any one calendar year: \$10.00 per occurrence.

(3) Customer Responsiveness

- (a) For each failure to initially respond to (as compared with resolving) a Customer Complaint within one Business Day: \$50.00.

- (b) For each failure to remove graffiti from containers or to replace with Containers bearing no graffiti, within five (5) Business Days of request from City or Customers: \$100.00
- (4) Timeliness of Submissions to City

For each calendar day a report is late, the daily liquidated damage amount shall be:

  - (a) Monthly Reports: \$50.00 per day
  - (b) Quarterly Reports: \$50.00 per day
  - (c) Annual Reports: \$100.00 per day
- (5) Accuracy of Billing
  - (a) Each invoice billing run that is not prepared in accordance with the Rates , and not rectified on or before the next billing cycle: \$100.00
  - (b) Each occurrence in which a service address is "double billed" with multiple invoices sent to different billing addresses (for example, both a tenant and an off-site property owner are billed for service at the same location): \$150.00

**D. Imposition of Liquidated Damages**

- (1) City may determine the occurrence of events giving rise to liquidated damages through the observations of its own employees or representatives or through the investigation of Customer Complaints. It is the desire of the parties to work together to avoid the imposition of liquidated damages and accordingly City shall timely communicate to Contractor any information that it receives which might give rise the imposition of liquidated damages in order to facilitate Contractor's ability to correct any deficiency, or prevent the recurrence of any conduct for which liquidated damages might eventually be imposed.
- (2) Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice shall include a brief description of the incident or the event of non-performance. Contractor may review (and make copies at its own expense) all non-confidential information in City's possession relating to the incident or the event of non-performance. Contractor may, within ten days after receiving the notice, request a meeting with the City Manager. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident or the event of non-

performance. The City Manager shall provide Contractor with a written explanation of the determination on each incident or event of non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager shall be final, unless appealed to the City Council in accordance with Section 8.1.1. B (and any such appeal shall be subject to the provisions of Sections 8.1.2 and 8.1.3).

- E. **Timing of Payment.** Contractor shall pay any liquidated damages assessed by City pursuant to this Agreement within ten (10) days after they are assessed or as otherwise agreed upon by the Parties. If assessed damages are not timely paid as required by this Agreement, City may order the termination of the franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

### **8.3 Excuse from Performance**

#### **8.3.1 Force Majeure**

The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, pandemic, epidemic, or threat of pandemic or epidemic, civil insurrection, riots, acts of any government, and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder.

#### **8.3.2 Labor Unrest**

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor shall be considered an excuse from performance to the extent that Contractor meets the terms of this Section 8.3. Notwithstanding other remedies to which City shall be entitled under this Agreement in event of failure to perform, in the event of Contractor's failure to perform, or anticipated failure to perform, due to labor unrest, Contractor shall:

- A. Have provided a contingency plan to City within 90 days of the execution of this Agreement demonstrating how services shall be provided during the period of labor unrest. The contingency plan is subject to City approval; and Contractor shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to City's satisfaction. The plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.

- B. Notwithstanding the foregoing, with respect to labor unrest, Contractor shall, to the best of its ability, provide a reasonably satisfactory level of performance as determined by the City Manager, during the pendency thereof, and shall request a waiver from the City Manager, to deviate from specific requirements of this Agreement regarding routes, Collection times, or similar matters.
- C. Meet the requirements agreed to in the contingency plan and any waiver granted by the City Manager in accordance with this Section.
- D. Meet requirements of Section 8.3.3 below.

### **8.3.3 Procedures in Event of Labor Unrest.**

The Party claiming excuse from performance under Section 8.3.2 shall, promptly after such party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this section. Throughout service disruption, Contractor shall:

- A. Provide City with a minimum of daily service updates or any a schedule as Contractor and City may otherwise agree.
- B. Notify Customers as to alternative Collection procedures as set forth herein. At a minimum, Contractor shall update its website and shall provide ongoing updates to City for use on its website, and a "reverse 911" contact method to reach all possible Customers. Should enhanced contact technologies become available, Contractor shall use such methods upon approval from City.

Notwithstanding any provision herein to the contrary, if Contractor is unable to perform its obligations under this Agreement due to Labor Unrest for a period of fourteen (14) consecutive Business Days or more, City shall have the right, in its sole discretion, to terminate this Agreement by the City Manager giving five (5) Business Days' written notice to cure its failure to perform. If Contractor fails to resume substantial performance of its obligations prior to the expiration of the five-day notice period, this Agreement shall be deemed terminated, absent any agreement in writing by the parties to the contrary. In contrast, should Contractor timely resume substantial performance, the notice shall be of no further force or effect and termination shall not occur.

## **8.4 Assurance of Performance**

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



**ARTICLE 9  
OTHER AGREEMENTS OF THE PARTIES**

**9.1 Relationship of Parties**

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

**9.2 Compliance with Law**

In providing the services required under this Agreement, Contractor shall at all times, and at its sole cost, comply with all Applicable Laws.

**9.3 Governing Law**

This Agreement is governed by, and shall be construed and enforced in accordance with, the laws of the State of California without reference to its conflicts of laws principles.

**9.4 Jurisdiction**

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and shall be performed in Ventura County.

**9.5 Assignment**

- A. Neither Party may assign its rights, nor delegate, subcontract, or otherwise transfer its obligations under this Agreement, to any other person without the prior written consent of the other Party. Any such assignment made without the consent of the other Party is void, and the attempted assignment shall constitute a material breach of this Agreement.
- B. For purposes of this Section and when used in reference to Contractor, "assignment" includes, but is not limited to: (1) a sale, exchange, or other transfer to a third party of substantially all of Contractor's assets dedicated to service under this Agreement; (2) a sale, exchange, or other transfer of outstanding common stock of Contractor to a third party, provided such

sale, exchange or transfer may result in a change of control of Contractor; (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction that results in a change of ownership or control of Contractor; (4) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (5) any combination of the foregoing (whether or not in related or contemporaneous transactions) that has the effect of a transfer or change of ownership, or change of control, of Contractor. Notwithstanding the foregoing, an assignment by Contractor to an Affiliate shall not be considered as an "Assignment" for purposes of this Section 9.5, except for transactions that would result in a change in control of Contractor.

- C. Contractor acknowledges that this Agreement involves rendering a vital service to Accounts within the City, and that City has selected Contractor to perform the specified services based on (1) Contractor's experience, skill, and reputation for conducting its operations in a safe, effective, and responsible fashion, at all times in compliance with applicable Environmental Laws, regulations, and the best Solid Waste management practices; and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered under this Agreement.
- D. Except for an assignment to an Affiliate of Contractor, consent to which the City shall not unreasonably withhold, if Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its sole discretion. A request by Contractor for consent to an assignment shall require compliance with the following requirements:
  - (1) Any application for a change of ownership or a transfer shall be made in a manner prescribed by the City Manager and shall include any information reasonably required by the City Manager. The written application shall include a transfer application fee in the amount of \$35,000.00, to cover the reasonable costs of all direct and indirect administrative expenses of City, including, without limitation, consultants and attorneys necessary to analyze the application. The applicant shall pay such transfer fee prior to any authorized change of ownership or franchise transfer becoming effective. Notwithstanding the above, payment of a transfer fee shall not be required in the event of an assignment to an Affiliate of Contractor.

- (2) Except for an assignment to an Affiliate of Contractor, in addition to the transfer application fee described in Section 9.5.D.1, Contractor shall pay a transfer fee to City of seven percent of Gross Receipts from the last twelve (12) months, upon approved transfer of this Agreement.
- (3) Except for an assignment to an Affiliate of Contractor, the proposed assignee shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three operating years.
- (4) Except for an assignment to an Affiliate of Contractor, the proposed assignee shall furnish City with satisfactory proof: (a) that the proposed assignee has at least ten years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (b) that in the last five years, the proposed assignee has not received any significant citations from any federal, state, or local agency having jurisdiction over its Solid Waste management operations due to any material failure to comply with state, federal, or local Environmental Laws and that the assignee has provided City with a complete list of such citations; (c) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (d) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state, and local laws regulating the Collection and disposal of Solid Waste, including Hazardous Substances; and (e) any other information required by City to ensure that the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.
- (5) Under no circumstances shall City be obligated to consider any proposed assignment if Contractor is in default at any time during the period of consideration.

## **9.6 Contracting or Subcontracting**

Contractor shall not engage any subcontractors for the Collection of Solid Waste from Accounts without the prior written consent of City.

## **9.7 Binding on Assigns**

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

## **9.8 Transition to the Next Contractor**

If the transition of services to another Contractor occurs by reason of the expiration of the term, default, termination, or otherwise, Contractor shall cooperate with City and any subsequent Solid Waste enterprise to assist in an orderly transition that will include, but not be limited to, Contractor providing route lists and billing information. Notwithstanding the foregoing, Contractor shall not be required to provide any intellectual property of Contractor, including, without limitation, any confidential information, copyrighted material, proprietary information, trade secrets or trademark/service mark, including any and all such documents or reports containing such information ("Intellectual Property") under any circumstances to any subsequent contractor.

Contractor shall use good faith efforts to provide a new service provider with all keys, security codes, and remote controls used to access garages and bin enclosures, acknowledging that these are the property of the Customer. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pick-ups, so as not to disrupt service. Subject to Applicable Law, Contractor shall provide City with detailed route sheets containing service names and addresses, billing names and addresses, monthly service levels (number and size of containers and pick-up days) at least 90 days prior to the transition date, and provide an updated list two weeks before the transition and a final list of changes the day before the transition.

## **9.9 Parties in Interest**

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

## **9.10 Non-Waiver Provision**

The waiver by either Party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement. Failure of either Party to exercise any of the remedies set forth in this Agreement within the time periods specified shall not constitute a waiver of any rights of that Party with regard to an event of nonperformance, whether determined to be a breach, excused performance, or unexcused default by the other Party.

## **9.11 Notice**

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



If to City: City Manager  
City of Simi Valley  
2929 Tapo Canyon Road  
Simi Valley, California 93063

With copy to: City Attorney  
City of Simi Valley  
2929 Tapo Canyon Road  
Simi Valley, California 93063

If to Contractor: Director of Operations  
G.I. Industries  
195 West Los Angeles Avenue  
Simi Valley, California 93094

With copy to: Attn: Assistant General Counsel  
G.I. Industries  
9081 Tujunga Avenue  
Sun Valley, California 91352

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section. Each Party shall deliver all notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only: 1) upon receipt by the receiving party and 2) if the party giving the notice has complied with the requirements of this Section.

#### **9.12 Representatives of the Parties**

As set forth in Section 2.6, the administration of this Agreement by City shall be under the supervision and direction of the City Manager. Contractor shall, by the Operative Date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to this Agreement. Contractor shall inform City in writing of that designation and of any limitations upon that officer's authority to bind Contractor. City may rely upon actions taken by that designated representative as actions of Contractor unless they are outside the scope of the authority delegated by Contractor as communicated in writing to City.

#### **9.13 City Free to Negotiate with Third Parties**

Notwithstanding the exclusive nature of this Agreement, City may investigate all options for the Collection, transporting, Recycling, processing, and disposal of Solid Waste at any time prior to the expiration of the term of this Agreement. Without limiting the generality of the foregoing, but subject to the requirements of Section 2.8, City may solicit proposals from Contractor and from third parties for the provision of Collection services, disposal services, Recycling services, Organic Waste services and processing, and any

combination thereof, and may negotiate and execute agreements for those services that shall take effect upon the expiration or earlier termination of this Agreement in accordance with Article 8.

#### **9.14 Privacy**

Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the contents of a Customer's waste stream shall not be revealed to any person, governmental unit, or private entity unless directed by a court of law, by statute, or upon authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by the Act. This provision does not apply to reports or records provided to City under this Agreement so long as City maintains reports or records with customer identification as confidential information in accordance with this Section and Applicable Law.

#### **9.15 Proprietary Information; Public Records**

All confidential and proprietary information of Contractor held by Contractor and not submitted to City is and shall be under the sole ownership and control of Contractor. City acknowledges that certain records and reports of Contractor are proprietary and confidential. Where required by this Agreement, Contractor shall permit City to inspect its records at Contractor's offices upon City's reasonable request. City shall endeavor to maintain the confidentiality of all proprietary information provided by Contractor.

Contractor acknowledges that City is legally obligated to comply with the California Public Records Act ("CPRA"), lawfully issued subpoenas, and other legal obligations. City acknowledges that Contractor may consider certain records, reports, or information contained therein, which Contractor is required to provide to City under this Agreement, to be of a proprietary or confidential nature. If City receives a request for records under the CPRA, pursuant to a subpoena, or other lawful request or order, for which documents Contractor has expressly marked as trade secret and/or confidential would be responsive, City shall endeavor to timely notify Contractor of the request, subpoena or other such lawful request and of City's obligation and intent to provide a response (excepting in any instance for which such action by City would itself be unlawful, such as might occur in the case of a Grand Jury subpoena). Contractor may, at Contractor's sole cost and expense, seek an order of a court of competent jurisdiction staying or enjoining the disclosure of any records. If City withholds records from disclosure at Contractor's request, and a challenge to such action occurs, Contractor shall defend City (with counsel of City's choosing), and shall indemnify City from and against any damages, penalties, or legal fees imposed as a result of such action.

#### **9.16 Attorneys' Fees**

In any action or proceeding to enforce or interpret any of the terms of this Agreement, each party is to bear its own costs.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

### **10.1 Entire Agreement**

This Agreement, including the exhibits, constitutes the entire agreement between the Parties with respect to the matters covered; and no verbal agreement or understanding with any officer, agent, or employee of City, either before, during, or after the execution of this Agreement, shall affect or modify any of the obligations herein contained, nor shall any such verbal agreement or understanding entitle Contractor to any additional payment under the terms of this Agreement.

### **10.2 Article and Section Headings**

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

### **10.3 References to Laws and Regulations**

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

### **10.4 Interpretation**

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

### **10.5 Amendments**

This Agreement may not be amended in any respect except by a written amendment signed by the Parties; and, no verbal agreement or understanding with any officer, agent, or employee of City, either before, during, or after the execution of this Agreement, shall affect or modify any of the obligations herein contained, nor shall any such verbal agreement or understanding entitle Contractor to any additional payment under the terms of this Agreement.

### **10.6 Severability**

If any provision of this Agreement is for any reason determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, including but not limited to a change in applicable federal, state, or local law, the invalidity or unenforceability of that provision shall not affect any of the remaining provisions of this Agreement, which provisions shall be enforced as if such invalid or unenforceable provision had not been included.

## **10.7 Exhibits**

Each of the exhibits identified in this Agreement is attached hereto and is incorporated by this reference.

## **10.8 Authority**

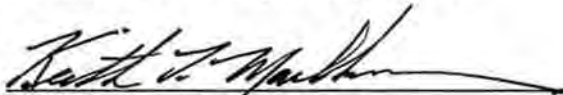
The persons signing below represent that they have the requisite authority to bind the entities on whose behalf they are signing.

***[signature page follows]***

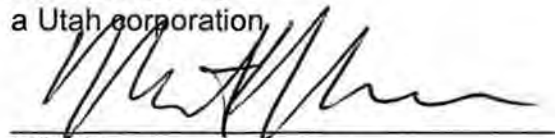


**TO EFFECTUATE THIS AGREEMENT**, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth below the authorized signature.

**CITY OF SIMI VALLEY,**  
a California municipal corporation

  
Keith L. Mashburn, Mayor

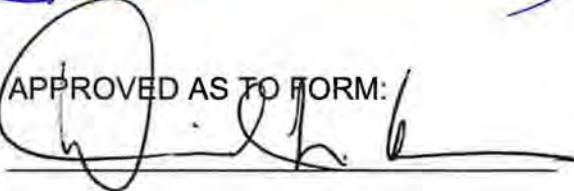
**G.I. Industries,**  
a Utah corporation

  
Mike Hammer, President

ATTEST:

  
City Clerk

APPROVED AS TO FORM:



City Attorney

**EXHIBIT 1**  
**RATE SCHEDULE**

**EXHIBIT 1-A**  
**RATES FROM OPERATIVE**  
**DATE THROUGH**  
**DECEMBER 31, 2023**

City of Simi Valley Rate Sheet		Rates Effective Date through December 31, 2023
<b>Residential Rates</b>		
64G Standard	\$	34.82
64G Senior (10% discount)	\$	29.01
<b>Additional Cart</b>		
MSW (Same size as Standard Service)	\$	9.53
ORG (Same size as Standard Service)	\$	6.12
REC (Same size as Standard Service) (after 2nd RCY Cart)	\$	5.13
<b>Ancillary Rates</b>		
Restart Fee for non-payment	\$	30.03
Extra Large Item Pick-up (per cart)	\$	5.53
Extra Collection any cart (all carts non-svc day)	\$	27.68
Lost or Damaged Cart (> 1 per 10 years)	\$	33.01
Cart Replacement due to cust damage		N/A
Recyclable Contamination (3 or more/year)		N/A
Organics Contamination (3 or more/year)		N/A
Overage Fee (habitual)		N/A
Dead-run / 'Go-Back'	\$	27.68
Cart Exchange > 1 per year	\$	30.03
Account Cancel for non-payment	\$	30.03
Move In/Move Out (excess of 1 in 3 months)		N/A
Late Fee / Cust Svc assisted payment	\$	5.50
Returned Check Fee	\$	16.52
Freon Service		N/A
Set up Fee	\$	20.88
<b>Commercial Rates (Includes (1) 96G RCY and (1) 64G ORG)</b>		
64G 1 time per week		N/A
64G 2 times per week		N/A
64G 3 times per week		N/A
64G 4 times per week		N/A
64G 5 times per week		N/A
64G 6 times per week		N/A
96G 1 time per week		N/A
96G 2 times per week		N/A
96G 3 times per week		N/A
96G 4 times per week		N/A
96G 5 times per week		N/A
96G 6 times per week		N/A
1.5CY 1 time per week	\$	150.06

EXHIBIT 1-A



City of Simi Valley Rate Sheet	Rates Effective Date through December 31, 2023
1.5CY 2 times per week	\$ 253.89
1.5CY 3 times per week	\$ 357.71
1.5CY 4 times per week	\$ 461.47
1.5CY 5 times per week	\$ 565.29
1.5CY 6 times per week	\$ 669.06
3CY 1 time per week	\$ 167.38
3CY 2 times per week	\$ 288.49
3CY 3 times per week	\$ 411.11
3CY 4 times per week	\$ 530.67
3CY 5 times per week	\$ 651.80
3CY 6 times per week	\$ 772.90
4CY 1 time per week	\$ 184.66
4CY 2 times per week	\$ 323.02
4CY 3 times per week	\$ 461.50
4CY 4 times per week	\$ 599.91
4CY 5 times per week	\$ 738.32
4CY 6 times per week	\$ 876.79
<b>Commercial Compactor Rates</b>	
1.5CY 1 time per week	\$ 300.12
1.5CY 2 times per week	\$ 507.78
1.5CY 3 times per week	\$ 715.42
1.5CY 4 times per week	\$ 922.94
1.5CY 5 times per week	\$ 1,130.58
1.5CY 6 times per week	\$ 1,338.12
3CY 1 time per week	\$ 334.76
3CY 2 times per week	\$ 576.98
3CY 3 times per week	\$ 822.22
3CY 4 times per week	\$ 1,061.34
3CY 5 times per week	\$ 1,303.60
3CY 6 times per week	\$ 1,545.80
4CY 1 time per week	\$ 369.32
4CY 2 times per week	\$ 646.04
4CY 3 times per week	\$ 923.00
4CY 4 times per week	\$ 1,199.82
4CY 5 times per week	\$ 1,476.64
4CY 6 times per week	\$ 1,753.58
<b>Additional Recycling</b>	
64G 1 time per week	N/A
64G 2 times per week	N/A
64G 3 times per week	N/A
64G 4 times per week	N/A
64G 5 times per week	N/A

City of Simi Valley Rate Sheet	Rates Effective Date through December 31, 2023	
64G 6 times per week		N/A
96G 1 time per week		N/A
96G 2 times per week		N/A
96G 3 times per week		N/A
96G 4 times per week		N/A
96G 5 times per week		N/A
96G 6 times per week		N/A
1.5CY 1 time per week	\$	79.25
1.5CY 2 times per week	\$	158.58
1.5CY 3 times per week	\$	237.80
1.5CY 4 times per week	\$	317.07
1.5CY 5 times per week	\$	396.33
1.5CY 6 times per week	\$	475.63
3CY 1 time per week	\$	109.16
3CY 2 times per week	\$	218.21
3CY 3 times per week	\$	327.46
3CY 4 times per week	\$	436.48
3CY 5 times per week	\$	545.74
3CY 6 times per week	\$	654.86
4CY 1 time per week	\$	134.52
4CY 2 times per week	\$	269.10
4CY 3 times per week	\$	403.63
4CY 4 times per week	\$	538.23
4CY 5 times per week	\$	672.75
4CY 6 times per week	\$	807.34

**Commercial Recycling Compactor Rates**

1.5CY 1 time per week		N/A
1.5CY 2 times per week		N/A
1.5CY 3 times per week		N/A
1.5CY 4 times per week		N/A
1.5CY 5 times per week		N/A
1.5CY 6 times per week		N/A
3CY 1 time per week		N/A
3CY 2 times per week		N/A
3CY 3 times per week		N/A
3CY 4 times per week		N/A
3CY 5 times per week		N/A
3CY 6 times per week		N/A
4CY 1 time per week		N/A
4CY 2 times per week		N/A
4CY 3 times per week		N/A
4CY 4 times per week		N/A
4CY 5 times per week		N/A

City of Simi Valley Rate Sheet	Rates Effective Date through December 31, 2023
4CY 6 times per week	N/A
<b><u>Additional Organics</u></b>	
64 Gal Cart 1 x per week	\$ 62.05
64 Gal Cart 2 x per week	\$ 124.08
64 Gal Cart 3 x per week	\$ 186.15
64 Gal Cart 4 x per week	\$ 248.19
64 Gal Cart 5 x per week	\$ 310.22
64 Gal Cart 6 x per week	N/A
1.5CY 1 time per week	\$ 82.37
1.5CY 2 times per week	\$ 164.81
1.5CY 3 times per week	\$ 247.14
1.5CY 4 times per week	\$ 329.52
1.5CY 5 times per week	\$ 411.89
1.5CY 6 times per week	\$ 494.31
3CY 1 time per week	\$ 114.05
3CY 2 times per week	\$ 227.99
3CY 3 times per week	\$ 342.14
3CY 4 times per week	\$ 456.04
3CY 5 times per week	\$ 570.20
3CY 6 times per week	\$ 684.21
4CY 1 time per week	\$ 140.75
4CY 2 times per week	\$ 281.55
4CY 3 times per week	\$ 422.63
4CY 4 times per week	\$ 563.14
4CY 5 times per week	\$ 703.89
4CY 6 times per week	\$ 844.72
<b><u>Ancillary Rates</u></b>	
Extra Large Items Pick-up (3CY MSW)	\$ 72.24
Move In/Move Out (excess of 1 in 3 months)	N/A
Extra Collection - per cart	N/A
Extra Collection - per bin (3CY MSW)	\$ 72.24
Locking Bin Fee / Gate / Enclosure	\$ 7.71
Locking Bin Set-up (one time fee)	\$ 33.01
Replacement Lock / Key Fee	N/A
Restart Fee for non-payment	\$ 30.03
Cart Cleaning in excess of 1 free per year	\$ 33.01
Bin Cleaning in excess of 1 free per year	\$ 33.01
Cart Exchange in excess of 1 free per year	\$ 33.01
Bin Exchange in excess of 1 free per year	\$ 33.01
Bin Lid Exchange with metal lid	N/A
Temporary Bin: Bin Delivery	N/A
Temporary Bin: Dead Run	\$ 30.03

EXHIBIT 1-A

City of Simi Valley Rate Sheet	Rates Effective Date through December 31, 2023	
Temporary Bin: Usage per day after 7 days	\$	11.08
Temporary Bin: Pick up Fee		
Temporary Bin: Extra Dump	\$	132.79
Cart Replacement due to cust damage	\$	33.01
Bin Replacement due to cust damage	\$	33.01
Bin Replacement due to fire damage		N/A
Cart Recycle contamination fee (3 or more/year)		N/A
Bin Recycle contamination fee (3 or more/year)		N/A
Cart Organics contamination fee (3 or more/year)		N/A
Bin Organics contamination fee (3 or more/year)		N/A
Late Fee / Cust Svc assisted payment		\$5.50
Account Cancel for non-pay		N/A
Returned Check		\$16.52
Bulky Item collection (after 4 items twice / year)	\$	30.74
Bin Enclosure Cleanup - per bin		N/A
Freon Service Fee		N/A
Overage Fee		N/A
Bin Push Out Fee - for each 15 feet (per coll day)		N/A
Delivery / Trip Fee	\$	30.03
Trip Charge / Dry Run	\$	30.03

**Rolloff Services**

Rolloff repair due to customer damage		N/A
Overweight Fee - per ton		N/A
Return fee for blocked Rolloff	\$	30.03
Standby time - billed in 15 minute increments		N/A
Rolloff Rocket Launcher Service - per hour		N/A
Rolloff Dead-Run, Go-Back, Relocate	\$	30.03
Rolloff Compactor Rental		N/A
Rolloff Compactor Wash out Fee		N/A
Rolloff Compactor Repair (labor only) per hour		N/A
Rolloff Roll Top Rental - per month		N/A
Rolloff Perm Box rental - per month (two haul min)		N/A
Rolloff Box daily rental after no haul in 7 days	\$	10.76
Rolloff Overweight Penalty + actual disposal cost		N/A
Rolloff Box Impound Fee for non-permitted haulers		N/A
Rolloff Haul Rate	\$	221.92
Rolloff Compactor Haul Rate	\$	443.84



**EXHIBIT 1-B**  
**RATES FROM JANUARY 1, 2024**  
**THROUGH JUNE 30, 2025**

City of Simi Valley Rate Sheet		Rates from January 1, 2024 through June 30, 2025
<b>Residential Rates</b>		
32G MSW Standard (incl. 64G RCY and 64G ORG)	\$	25.79
64G MSW Standard (incl. 64G RCY and 96G ORG)	\$	28.29
96G MSW Standard (incl. 64G RCY and 96G ORG)	\$	31.29
32G MSW Senior (10% discount) (incl. 64G RCY and 64G ORG)	\$	23.21
64G MSW Senior (10% discount) (incl. 64G RCY and 96G ORG)	\$	25.46
96G MSW Senior (10% discount) (incl. 64G RCY and 96G ORG)	\$	28.16
<b>Additional Cart</b>		
MSW (Same size as Standard Service)	\$	13.00
ORG (Same size as Standard Service)	\$	9.50
REC (Same size as Standard Service) (after 2nd RCY Cart)	\$	7.50
<b>Ancillary Rates</b>		
Restart Fee for non-payment	\$	35.00
Extra Large Item Pick-up (per cart)	\$	15.00
Extra Collection any cart (all carts non-svc day)	\$	28.00
Lost or Damaged Cart (> 1 per 10 years)	\$	97.50
Cart Replacement due to customer damage	\$	97.50
Recyclable Contamination	\$	40.00
Organics Contamination	\$	40.00
Overage Fee	\$	20.00
Dead-run / 'Go-Back'	\$	28.00
Cart Exchange > 1 per year	\$	35.00
Account Cancel for non-payment	\$	35.00
Move In/Move Out	\$	50.00
Late Fee / Cust Svc Assisted Payment	\$	6.00
Returned Check Fee	\$	20.00
Freon Service	\$	50.00
Set up Fee	\$	25.00
<b>Commercial Rates (Includes (1) 96G RCY cart and (1) 64G ORG)</b>		
64G 1 time per week	\$	48.00
64G 2 times per week	\$	91.00
64G 3 times per week	\$	131.43
64G 4 times per week	\$	185.40
64G 5 times per week	\$	228.40
64G 6 times per week	\$	286.08
96G 1 time per week	\$	67.00
96G 2 times per week	\$	109.70
96G 3 times per week	\$	145.75

EXHIBIT 1-B

City of Simi Valley Rate Sheet	Rates from January 1, 2024 through June 30, 2025	
96G 4 times per week	\$	196.14
96G 5 times per week	\$	244.15
96G 6 times per week	\$	298.08
1.5CY 1 time per week	\$	150.06
1.5CY 2 times per week	\$	253.89
1.5CY 3 times per week	\$	357.71
1.5CY 4 times per week	\$	461.47
1.5CY 5 times per week	\$	565.29
1.5CY 6 times per week	\$	669.06
3CY 1 time per week	\$	167.38
3CY 2 times per week	\$	288.49
3CY 3 times per week	\$	411.11
3CY 4 times per week	\$	530.67
3CY 5 times per week	\$	651.80
3CY 6 times per week	\$	772.90
4CY 1 time per week	\$	184.66
4CY 2 times per week	\$	323.02
4CY 3 times per week	\$	461.50
4CY 4 times per week	\$	599.91
4CY 5 times per week	\$	738.32
4CY 6 times per week	\$	876.79
<b>Commercial Compactor Rates</b>		
1.5CY 1 time per week	\$	300.12
1.5CY 2 times per week	\$	507.78
1.5CY 3 times per week	\$	715.42
1.5CY 4 times per week	\$	922.94
1.5CY 5 times per week	\$	1,130.58
1.5CY 6 times per week	\$	1,338.12
3CY 1 time per week	\$	334.76
3CY 2 times per week	\$	576.98
3CY 3 times per week	\$	822.22
3CY 4 times per week	\$	1,061.34
3CY 5 times per week	\$	1,303.60
3CY 6 times per week	\$	1,545.80
4CY 1 time per week	\$	369.32
4CY 2 times per week	\$	646.04
4CY 3 times per week	\$	923.00
4CY 4 times per week	\$	1,199.82
4CY 5 times per week	\$	1,476.64
4CY 6 times per week	\$	1,753.58
<b>Additional Recycling</b>		

City of Simi Valley Rate Sheet	Rates from January 1, 2024 through June 30, 2025	
64G 1 time per week	\$	22.50
64G 2 times per week	\$	40.50
64G 3 times per week	\$	62.75
64G 4 times per week	\$	84.70
64G 5 times per week	\$	106.70
64G 6 times per week	\$	128.04
96G 1 time per week	\$	24.71
96G 2 times per week	\$	43.17
96G 3 times per week	\$	67.88
96G 4 times per week	\$	92.57
96G 5 times per week	\$	117.28
96G 6 times per week	\$	141.98
1.5CY 1 time per week	\$	79.25
1.5CY 2 times per week	\$	158.58
1.5CY 3 times per week	\$	237.80
1.5CY 4 times per week	\$	317.07
1.5CY 5 times per week	\$	396.33
1.5CY 6 times per week	\$	475.63
3CY 1 time per week	\$	109.16
3CY 2 times per week	\$	218.21
3CY 3 times per week	\$	327.46
3CY 4 times per week	\$	436.48
3CY 5 times per week	\$	545.74
3CY 6 times per week	\$	654.86
4CY 1 time per week	\$	134.52
4CY 2 times per week	\$	269.10
4CY 3 times per week	\$	403.63
4CY 4 times per week	\$	538.23
4CY 5 times per week	\$	672.75
4CY 6 times per week	\$	807.34
<b>Commercial Recycling Compactor Rates</b>		
1.5CY 1 time per week	\$	158.50
1.5CY 2 times per week	\$	317.16
1.5CY 3 times per week	\$	475.60
1.5CY 4 times per week	\$	634.14
1.5CY 5 times per week	\$	792.66
1.5CY 6 times per week	\$	951.26
3CY 1 time per week	\$	218.32
3CY 2 times per week	\$	436.42
3CY 3 times per week	\$	654.92
3CY 4 times per week	\$	872.96
3CY 5 times per week	\$	1,091.48



City of Simi Valley Rate Sheet	Rates from January 1, 2024 through June 30, 2025	
3CY 6 times per week	\$	1,309.72
4CY 1 time per week	\$	269.04
4CY 2 times per week	\$	538.20
4CY 3 times per week	\$	807.26
4CY 4 times per week	\$	1,076.46
4CY 5 times per week	\$	1,345.50
4CY 6 times per week	\$	1,614.68
<b>Additional Organics</b>		
64 Gal Cart 1 x per week	\$	62.05
64 Gal Cart 2 x per week	\$	124.08
64 Gal Cart 3 x per week	\$	186.15
64 Gal Cart 4 x per week	\$	248.19
64 Gal Cart 5 x per week	\$	310.22
64 Gal Cart 6 x per week	\$	372.00
1.5CY 1 time per week	\$	82.37
1.5CY 2 times per week	\$	164.81
1.5CY 3 times per week	\$	247.14
1.5CY 4 times per week	\$	329.52
1.5CY 5 times per week	\$	411.89
1.5CY 6 times per week	\$	494.31
3CY 1 time per week	\$	114.05
3CY 2 times per week	\$	227.99
3CY 3 times per week	\$	342.14
3CY 4 times per week	\$	456.04
3CY 5 times per week	\$	570.20
3CY 6 times per week	\$	684.21
4CY 1 time per week		N/A
4CY 2 times per week		N/A
4CY 3 times per week		N/A
4CY 4 times per week		N/A
4CY 5 times per week		N/A
4CY 6 times per week		N/A
<b>Ancillary Rates</b>		
Extra Large Items Pick-up (3CY MSW)	\$	25.00
Move In/Move Out (excess of 1 in 3 months)	\$	50.00
Extra Collection - per cart	\$	15.00
Extra Collection - per bin (3CY MSW)	\$	50.00
Locking Bin Fee / Gate / Enclosure	\$	20.00
Locking Bin Set-up (one time fee)	\$	45.00
Replacement Lock / Key Fee	\$	37.50
Restart Fee for non-payment	\$	35.00

EXHIBIT 1-B

<b>City of Simi Valley Rate Sheet</b>	<b>Rates from January 1, 2024 through June 30, 2025</b>	
Cart Cleaning in excess of 1 free per year	\$	30.00
Bin Cleaning in excess of 1 free per year	\$	75.00
Cart Exchange in excess of 1 free per year	\$	30.00
Bin Exchange in excess of 1 free per year	\$	75.00
Bin Lid Exchange with metal lid	\$	185.00
Temporary Bin: Bin Delivery	\$	180.00
Temporary Bin: Dead Run	\$	50.00
Temporary Bin: Usage per day after 7 days	\$	11.08
Temporary Bin: Pick up Fee	\$	132.79
Temporary Bin: Extra Dump	\$	132.79
Cart Replacement due to cust damage	\$	97.50
Bin Replacement due to cust damage	\$	200.00
Bin Replacement due to fire damage	\$	500.00
Cart Recycle contamination fee (3 or more/year)	\$	40.00
Bin Recycle contamination fee (3 or more/year)	\$	80.00
Cart Organics contamination fee (3 or more/year)	\$	50.00
Bin Organics contamination fee (3 or more/year)	\$	125.00
Late Fee / Cust Svc assisted payment	\$	6.00
Account Cancel for non-pay	\$	37.50
Returned Check	\$	20.00
Bulky Item collection (after 4 items twice / year)	\$	35.00
Bin Enclosure Cleanup - per bin	\$	37.50
Freon Service Fee	\$	50.00
Overage Fee	\$	40.00
Bin Push Out Fee - for each 15 feet (per coll day)	\$	5.50
Delivery / Trip Fee	\$	95.00
Trip Charge / Dry Run	\$	180.00
<b><u>Rolloff Services</u></b>		
Rolloff repair due to customer damage	\$	500.00
Overweight Fee - per ton	\$	100.00
Return fee for blocked Rolloff	\$	95.00
Standby time - billed in 15 minute increments	\$	37.50
Rolloff Rocket Launcher Service - per hour	\$	180.00
Rolloff Dead-Run, Go-Back, Relocate	\$	95.00
Rolloff Compactor Rental		Negotiated
Rolloff Compactor Wash out Fee	\$	325.00
Rolloff Compactor Repair (labor only) per hour	\$	97.50
Rolloff Roll Top Rental - per month	\$	60.00
Rolloff Perm Box rental - per month (two haul min)	\$	180.00
Rolloff Box daily rental after no haul in 7 days	\$	10.76
Rolloff Overweight Penalty + actual disposal cost	\$	250.00
Rolloff Box Impound Fee for non-permitted haulers	\$	900.00

City of Simi Valley Rate Sheet	Rates from January 1, 2024 through June 30, 2025	
Rolloff Haul Rate	\$	221.92
Rolloff Compactor Haul Rate	\$	443.84

**EXHIBIT 2**  
**CITY FACILITIES AND FREE SERVICES**

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EXHIBIT 2



NAME	ADDRESS	QNTY	DESCRIPTION
CITY STREET REFUSE CONTAINERS	VARIOUS ALONG CITY SIDEWALKS	19	COLLECTION OF CITY PROVIDED CONTAINERS AT A FREQUENCY AGREED UPON BY CITY AND CONTRACTOR
SIMI VALLEY TRANSIT	500 W LOS ANGELES AVE	6	3 YD FEL RECYCLING
		1	25 YD ROLLOFF ON CALL
		1	10 YD ROLLOFF RECYCLE ON CALL
CITY OF SIMI CULTURAL ARTS	3050 LOS ANGELES AV	1	1 - 3 YARD FEL 1X WK TRASH
SIMI VALLEY SAMARITAN CENTER	280 ROYAL AVE	1	1 - 3 YARD FEL 3X WK TRASH LOCKING
		1	3 YD FEL RECYCLING LOCKING
CITY OF SIMI VALLEY - SANITATION	500 LOS ANGELES AVE W	1	1 - 3 YARD FEL 1X WK TRASH
		1	3 YD FEL RECYCLING
		1	10 YD ROLLOFF ON CALL
		1	40 YD ROLLOFF ON CALL
CITY OF SIMI VALLEY - DMV AREA	3855 ALAMO ST-D	1	1 - 3 YARD FEL 3X WK TRASH
		1	1.5 YD FEL RECYCLING
CITY OF SIMI VALLEY-CITY HALL	2929 TAPO CANYON RD	2	3 YD FEL RECYCLING
		1	1 - 3 YARD FEL 2X WK TRASH
CITY OF SIMI VALLEY - CITY YARD	1625 STEARNS ST	1	1 - 3 YARD FEL 1X WK TRASH
		1	3 YD FEL RECYCLING
CITY OF SIMI VALLEY-POLICE DEP	3901 ALAMO ST	2	3 YD FEL RECYCLING
		1	3 YD FEL TRASH
CITY OF SIMI VALLEY-LIBRARY	2969 ALAMO ST	1	3 YD FEL RECYCLING
		1	1 - 3 YARD FEL 2X WK TRASH
CITY OF SIMI VALLEY - LIGHTNING RIDGE	3799 WALNUT	1	4 YD ON CALL TRASH
CITY OF SIMI VALLEY - SENIOR CENTER	3900 AVENIDA SIMI	1	1 - 3 YARD FEL 6X WK TRASH
		1	3 YD FEL RECYCLING
BOTTLE VILLAGE	4595 COCHRAN ST	1	64 GAL TOTE S/L TRASH
		2	64 GAL TOTE S/L RECYCLING
		1	64 GAL TOTE ORGANICS

*All locations to include 1 64 GAL Organics Toter, to be implemented upon commencement with City Approval*

Exhibit 2 – Page 1

**EXHIBIT 3**  
**CORPORATE GUARANTY**

## CORPORATE GUARANTY

THIS GUARANTY (the "Guaranty") is given as of October 10, 2022, and is made with reference to the following facts and circumstances:

A. G.I. Industries, a Utah corporation ("Contractor") is an indirect subsidiary of Waste Management, Inc., a Delaware corporation ("Guarantor").

B. Contractor desires to enter into a franchise agreement with the City of Simi Valley ("City") with an Effective Date of October 10, 2022, entitled "Amended and Restated Franchise Agreement for Providing Exclusive Solid Waste Handling Services Agreement Between City of Simi Valley, a California Municipal Corporation, and G.I. Industries, a Utah Corporation" (the "Agreement").

C. It is a requirement of the Agreement that Guarantor guarantee Contractor's performance of the Agreement, including any ongoing obligations in the "Prior Agreements" (as that term is defined in the Agreement).

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guarantee of the Franchise.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely payment, performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to pay, perform, satisfy or observe. In the event that Contractor fails to pay, perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully pay, perform, satisfy or observe them in the place of Contractor (including by causing the services required of Contractor to be performed by a Solid Waste Enterprise acceptable to City). Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Contractor due to its breach of the Agreement. Included in the forgoing Guaranty, is a guaranty by Guarantor of any ongoing obligations of Contractor under the Prior Agreements. Guarantor further agrees to indemnify City against any losses City may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by City of any of its rights and remedies under the Agreement, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by City of any of its rights against Guarantor hereunder.

2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and, with respect to any payment obligation of Contractor under the Agreement, shall constitute a guaranty of payment and not of collection. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to Contractor in an action to enforce, or for damages for breach of the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. **Waivers.** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for

any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of Contractor; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against Contractor; or (4) any merger or consolidation of Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of Contractor. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code sections 2845, 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder as long as there is any claim by the City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.



6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees, in the event of Contractor's breach of its obligations, to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in, and pursuant to the laws of, the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts, with venue resting in Orange County, California.

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guaranty on its behalf has the authority to do so.

11. **Prohibition Against Assignment.** Guarantor may not assign its obligations herein without the City's prior written consent.

12. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

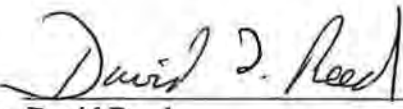
To the City:                   City Manager  
                                      City of Simi Valley  
                                      2929 Tapo Canyon Road  
                                      Simi Valley, California 93063

To the Guarantor:       Waste Management, Inc.  
                                      Attn: General Counsel  
                                      800 Capitol Street  
                                      Houston, TX 77002

This Guaranty has been approved by adopted Resolution or Order of the Board of Directors of Waste Management, Inc.

Guarantor:

WASTE MANAGEMENT, INC.

By:   
Name: David Reed  
Title: Vice President & Treasurer

By:   
Name: Jeff Bennett  
Title: Assistant Treasurer

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EXHIBIT 3

**EXHIBIT 4**  
**CUSTOMER OUTREACH PLAN**

384/016475-0002  
18358687.1 a10/10/22

**EXHIBIT 4**

**City of Simi Valley  
Customer Outreach Plan**

Outreach Description	Details	WM/City	Target Date	Completed Date
Annual Guide to Solid Waste & Recycling Residential Welcome Letter/Important Changes	Full color, double-sided letter sized "annual guide to solid waste and recycling" highlighting available services, programs, discounts, payment options and regulatory changes initially upon commencement and ongoing in the first billing cycle annually	WM	Upon Commencement, Within 45 days of the Operative Date and in the First Billing Cycle Annually	
Non-Compliant Residential Accounts	Contractor shall assist the City in identifying Customers that are not in compliance with their Recycling obligations under the Applicable Laws	WM	Upon Approval	
Mulch Giveaway	Contractor shall conduct mulch giveaways twice annually on a mutually agreed date and location	WM	Twice Annually	
Social Media Outreach	WM to provide a calendar of social media content covering available services, diversion programs, cart colors and transition milestones and other important service information	WM/City	Upon Commencement	
Websites	Update WM Residential & Commercial Pages dedicated to City detailing enhanced services and programs	WM	Websites in place, updates to be made within one month of approval	
Community Events	WM Staff to attend community events and host booths to promote recycling education and awareness as requested and mutually agreed upon with City Staff	WM	As Needed	

Exhibit 4 – Page 1



EXHIBIT 4

-1-



Commercial Implementation & Outreach				
Commercial Welcome Letter	Notify commercial businesses of updates to the franchise, available services, regulatory changes, and new bundled rates	WM	Upon Approval	
Initial Commercial Outreach – Individual Customers	Individual technical assistance with commercial customers to add recycling/organics and adjust disposal services as needed ("right size" customers)	WM	Immediately Upon Approval	
Commercial Organics Implementation	Contractor shall deliver at least one Container for the Collection of Organic Waste to each applicable Customer excepting such Customers for whom City issues an Organics Recycling Waiver	WM	Upon Approval or as Mutually Agreed Upon with the City	
Assistance with Organics Recycling Waivers	Contractor to assist customers in assessing eligibility for an Organics Recycling Waiver, provide support to City in evaluating submitted waivers, and maintain records of issued waivers and follow up	WM	In Progress	
Edible Food Recovery	Identify and Report Tier 1 and Tier 2 Edible Food Recovery Generators	WM	Prior to Approval and Quarterly with Contractual Reports	
Commercial Non-Compliant Notices	Contractor to mail notices of non-compliance to commercial customers without recycling and/or organics services on a quarterly basis	WM	Beginning Q1 2023	
Contamination monitoring & route reviews	Contractor to conduct route monitoring using WM's Smart Truck <sup>SM</sup> system on a percentage of all routes within the City on an annual basis, customers will be promptly notified of contamination unless otherwise instructed by the City	WM	In Progress, Summary Reported Quarterly with Contractual Reports	

Exhibit 4 – Page 2



EXHIBIT 4

**EXHIBIT 5**  
**EXAMPLE RATE ADJUSTMENT METHODOLOGY**

### Annual Rate Adjustment Illustration

(Residential 64-gallon trash, 64-gallon recycling and 96-gallon organic waste)

	1/1/24 - 6/30/25			7/1/2025 - 6/30/2025
	Contract Rate	Inflation Adjustment (% change)	\$ increase	Adjusted Contract Rate
Service Component <sup>1</sup>	\$ 16.97	5.00%	\$ 0.85	\$ 17.82
<i>Diversion and Disposal Component</i>				
Recycling Waste Processing Factor <sup>2</sup>	\$ 3.07	5.00%	\$ 0.15	\$ 3.22
Organic Waste Processing Factor <sup>3</sup>	\$ 4.86	3.65%	\$ 0.18	\$ 5.04
Refuse Factor <sup>4</sup>	\$ 3.39	4.30%	\$ 0.15	\$ 3.54
<b>Total Rate Adjustment</b>	<b>\$ 28.29</b>	<b>4.70%</b>	<b>\$ 1.33</b>	<b>\$ 29.62</b>

#### ANNUAL RATE ADJUSTMENT CALCULATION STEPS

1. Service Component based on 100% of the 12-month average change to CPI for the 12 month period ending March 31st immediately prior to the rate application. For illustration, assume 5% in first increase year.
2. Recycling processing factor equals average tip fee if third party owned facility is used or if public agency sets the rate. Otherwise based on change to CPI. 100% is taken to a WM-owned facility.

	A Prior Average Tip Fee	B CPI	A * B = C \$ Increase	A + C = D Adjusted Rate
WM owned and operated facility example WM - Sun Valley Recycle Park	\$ 67.00	5.00%	\$ 3.35	\$ 70.35

	A Current Year Tons	B Current Average Tip Fee	C Prior Year Tons	D Prior Average Tip Fee	E = A * B Current Total	F = C * D Prior Total	Recycling Processing Factor
Third party owned and operated facility example Third party recycling facility	1,218	\$ 70.35	1,200	\$ 67.00	\$ 85,686	\$ 80,400	6.57%

3. Organics waste processing factor equals average tip fee multiplied by tons received.

	A Current Year Tons	B Current Average Tip Fee	C Prior Year Tons	D Prior Average Tip Fee	E = A * B Current Total	F = C * D Prior Total	Organics Processing Factor
Facility Simi Valley Landfill / Agromin	2,190	\$ 87.90	2,175	\$ 85.39	\$ 192,501	\$ 185,723	3.65%

4. Refuse factor equals average tip fee multiplied by tons received.

	A Current Year Tons	B Current Tip Fee	C Prior Year Tons	D Prior Tip Fee	E = A * B Current Total	F = C * D Prior Total	Price Variance
Facility Simi Valley Landfill	2,560	\$ 79.40	2,585	\$ 75.39	\$ 203,264	\$ 194,883	4.30%

Re-weighting Calculation Example:

Reweighting Example	A Weighting	B Factor Chg	C = A * (1+B) (1 + Factor Chg)	Reweight back to 100% ( 'C' line / 'C' Total)
Service Component	60.0%	5.0%	63.0%	60.2%
Recycling Waste Processing Factor	10.9%	5.0%	11.4%	10.9%
Organic Waste Processing Factor	17.2%	3.6%	17.8%	17.0%
Refuse Factor	12.0%	4.3%	12.5%	11.9%
<b>Totals</b>	<b>100.0%</b>		<b>104.7%</b>	<b>100.0%</b>

**EXHIBIT 6**  
**RECYCLABLE MATERIALS**



### SINGLE STREAM SPECIFICATIONS

**RECYCLABLE MATERIALS** must be dry, loose (not bagged), unshredded, empty, and include **ONLY** the following:

Aluminum cans	Newspaper
PET bottles with the symbol #1 – with screw tops only	Mail
HDPE plastic bottles and containers with the symbol #2 (milk jugs, detergent containers, and shampoo bottles, etc.)	Uncoated paperboard (ex. cereal boxes; food and snack boxes)
PP plastic bottles and containers with symbol # 5 (ex. yogurt containers, syrup bottles)	Uncoated printing, writing and office paper
Steel and tin cans	Old corrugated containers/cardboard (uncoated) (ex. moving boxes, pizza boxes)
Glass food and beverage containers – any color	Magazines, glossy inserts and pamphlets

**NON-RECYCLABLES** include, but are not limited to the following:

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
Porcelain and ceramics	Mirrors, window or auto glass
Light bulbs	Coated cardboard
Soiled paper, including paper plates and cups	Plastics not listed above including but not limited to those with symbols #3, #4, #6, #7 and unnumbered plastics, including utensils
Expanded polystyrene	Coat hangers
Glass and metal cookware/bakeware	Household appliances and electronics
Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Excluded Materials or containers which contained Excluded Materials	Napkins, paper towels, tissue, paper plates, and paper cups
Any Recyclables less than 4" in size in any dimension	Propane tanks, fuel canisters
Batteries	

**DELIVERY SPECIFICATIONS:**

Recyclable Materials may not contain Exempt Materials, Organic Waste or Refuse.