

**SINGLE-FAMILY RESIDENTIAL COLLECTION SERVICE
AGREEMENT**

**Executed Between the City of Chico
and
USA Waste of California, Inc.**

This 28th day of September, 2017

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58 **CITY OF CHICO**

59 This Agreement made and entered into this ____ day of _____, 2017, by and between
60 the City of Chico, a municipal corporation under the laws of the State of California, hereinafter
61 referred to as "CITY" and USA Waste of California, Inc. dba Waste Management, a Delaware
62 corporation hereinafter referred to as "CONTRACTOR".

63 **RECITALS**

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

69 **WHEREAS**, the State of California has found and declared that the amount of garbage generated
70 in California, coupled with diminishing landfill space and potential adverse environmental impacts
71 from landfilling and the need to conserve natural resources, have created an urgent need for State
72 and local agencies to enact and implement an aggressive integrated waste management
73 program. The State has, through enactment of the Act, directed the responsible State agency,
74 and all local agencies, to promote disposal site diversion and to maximize the use of feasible
75 garbage reduction, re-use, recycling, and composting options in order to reduce the amount of
76 garbage that must be disposed of in disposal sites; and

77 **WHEREAS**, pursuant to California Public Resources Code Section 40059(a) as may be amended
78 from time to time, the CITY has determined that the public health, safety, and well-being require
79 that exclusive rights be awarded to qualified contractors to provide for the collection of garbage,
80 recyclable materials, and organic waste materials, except as may be excluded by the CITY'S
81 Municipal Code, or other services specifically excluded as set forth in this Agreement; and

82 **WHEREAS**, the CITY further declares its intent to regulate and set the maximum rates
83 CONTRACTOR will charge customers for the collection, transportation, processing, recycling,
84 composting, and/or disposal of garbage, recyclable materials, and organic waste materials; and

85 **WHEREAS**, the City Council has determined that CONTRACTOR, by demonstrated experience,
86 reputation and capacity, is qualified to provide for the collection of garbage, recyclable materials,
87 and organic waste materials within the corporate limits of the CITY, the transportation of such
88 material to appropriate places for processing, recycling, composting and/or disposal; and City
89 Council desires that CONTRACTOR be engaged to perform such services on the basis set forth
90 in this Agreement; and

91 **WHEREAS**, the CONTRACTOR has represented that it has the ability and capacity to provide for
92 the collection of garbage, recyclable materials, and organic waste materials within the corporate
93 limits of the CITY; the transportation of such material to appropriate places for processing,
94 recycling, composting and/or disposal; and the processing of materials; and

95 **WHEREAS**, this Agreement has been developed by and is satisfactory to the CITY and the
96 CONTRACTOR.

97 Now, therefore, in consideration of the mutual covenants, conditions and consideration contained
98 herein, the CITY and CONTRACTOR hereby agree as hereinafter set forth:

99 **ARTICLE 1. Definitions**

100 For the purpose of this Collection Service Agreement, hereinafter referred to as "Agreement", the
101 definitions contained in this Article shall apply unless otherwise specifically stated. If a word or
102 phrase is not defined in this Article, the definition of such word or phrase as contained in the CITY
103 Municipal Code shall control. When not inconsistent with the context, words used in the present
104 tense include the future, words in the plural include the singular, and words in the singular include
105 the plural. Use of the masculine gender shall include the feminine gender.

106 1.01 AB 939. The California Integrated Waste Management Act (California Public
107 Resources Code Sections 40000 et al.), as amended from time to time.

108 1.02 Agreement. This written document and all amendments thereto, between the CITY
109 and the CONTRACTOR, governing the provision of Collection Services as provided herein.

110 1.03 Agreement Year. Each twelve (12) month period from July 1st to June 30th during
111 the Term of this Agreement.

112 1.04 Alternative Daily Cover (ADC). Landfill cover material and at least six (6) inches of
113 earthen material, placed on the surface of the active face of the refuse fill area at the end of each
114 operating day to control vectors, fires, odor, blowing litter and scavenging, as defined in Title 27
115 of the California Code of Regulations (C.C.R) Section 20164).

116 1.05 Applicable Law. All local, state and federal laws that govern the parties' performance
117 under this Agreement.

118 1.06 Biohazardous or Biomedical Waste. Any waste which may cause disease or
119 reasonably be suspected of harboring pathogenic organisms; included are waste resulting from
120 the operation of medical clinics, hospitals, and other facilities processing wastes which may
121 consist of, but are not limited to, human and animal parts, contaminated bandages, pathological
122 specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

123 1.07 Brown Goods. Electronic equipment such as stereos, televisions, VCRs, Personal
124 Data Assistants (PDAs), telephones, and other similar items not containing cathode ray tubes
125 (CRTs).

126 1.08 Bulky Waste. Includes Large Items; Large Green Waste; discarded furniture; carpets;
127 mattresses; household appliances including refrigerators, ranges, washers, dryers, water heaters,
128 and dishwashers and other similar items; large household goods including lawn and garden
129 equipment (drained of fluids), bicycles and other similar large personal items. Bulky Waste does
130 not include Exempt Waste, and must be able to be safely lifted by two people into a collection
131 vehicle.

132 1.09 Change in Law. Any change in (or any new) laws, ordinances, rules, regulations,
133 orders, judgments, decrees, interpretations, decisions or permit requirements, of or by any
134 federal, state or local governmental entity, after the date hereof.

135 1.10 CITY. The City of Chico, California.

136 1.11 City Representative. The City Manager, or his/her designee, authorized to administer
137 and monitor the provisions of this Agreement.

138 1.12 Collection. The process whereby Garbage, Recyclable Materials, and Organic Waste
139 are removed and transported to a Disposal Facility, an Organic Waste Processing Facility, or a
140 Materials Recovery Facility, as appropriate.

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- 141 1.13 Collection Services. Single-Family Collection Service (SFD).
- 142 1.14 Composting. The controlled biological decomposition of Organic Waste into a
143 specific mixture of decayed organic matter used for fertilizing or soil conditioning.
- 144 1.15 Construction and Demolition Debris (C&D). Commonly used or discarded materials
145 removed from construction, remodeling, repair, demolition, or renovation operations on any
146 pavement, house, commercial building, or other structure, or from landscaping. Such materials
147 include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard,
148 aluminum, glass, asphalt material, plastics, roofing material, cardboard, carpeting, cinder blocks,
149 concrete, copper, electrical wire, fiberglass, formica, granite, iron, lead, linoleum, marble, plaster
150 plant debris, pressboard, porcelain, steel, stucco, tile, vinyl, wood, masonry, rocks, trees,
151 remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal,
152 building materials, packaging and rubble resulting from construction, remodeling, renovation,
153 repair and demolition operations on pavements, houses, commercial buildings and other
154 structures. Construction and Demolition Debris does not include Exempt Waste.
- 155 1.16 Consumer Price Index (CPI). The index published by the U.S. Department of Labor,
156 Bureau of Labor Statistics, Series Id: U.S. Department of Labor, Bureau of Labor Statistics, Series
157 Id: CUUR0000SA0, Not Seasonally Adjusted, All Items, All Urban Consumers U.S. Cities Average
158 (CPI-U).
- 159 1.17 CONTRACTOR. USA Waste of California, Inc. dba Waste Management, a Delaware
160 corporation.
- 161 1.18 County. Butte County, California.
- 162 1.19 Customer. Means a Service Recipient that receives Collection Services under the
163 terms of this Collection Service Agreement.
- 164 1.20 Disposal Facility. Any facility selected by CONTRACTOR that is operated and legally
165 permitted for the purpose of accepting materials for disposal. The initial Disposal Facility is listed
166 in **Exhibit 2** of this Agreement.
- 167 1.21 Dwelling Unit. Any individual living unit in a single-family dwelling (SFD) structure or
168 building intended for, or capable of being utilized for, residential living other than a Hotel or Motel.
- 169 1.22 E-Waste. Discarded electronics equipment such as cell phones, PDAs, computers,
170 monitors, televisions, and other items containing cathode ray tubes (CRTs), LCD or plasma
171 screens and monitors.
- 172 1.23 Exempt Waste. Biohazardous or Biomedical Waste (including Sharps), Hazardous
173 Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal
174 combustion engines, and those wastes under the control of the Nuclear Regulatory Commission.
- 175 1.24 Food Waste. Food scraps and trimmings and other putrescible waste that results
176 from food production, preparation, storage, consumption or handling, and that has been
177 separated at the source of generation from other types of Solid Waste including Garbage,
178 Recyclable Materials and Green Waste. Food Waste includes but is not limited to: meat, fish and
179 dairy waste, fruit and vegetable waste, and grain waste. Compostable paper products may be
180 included as appropriate if processing facilities capable of processing such materials are used in
181 the future and are commercially viable. Food Waste does not include Exempt Waste.
- 182 1.25 Garbage. All putrescible and non-putrescible solid, semi-solid and associated liquid
183 waste, as defined in California Public Resources Code Section 40191. Garbage does not include

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184 those items defined herein as Recyclable Materials, Organic Waste, or Bulky Waste that have
185 been source-separated for purposes of diversion, or Exempt Waste.

186 1.26 Garbage Bin. A metal or plastic container, with a capacity of one (1) cubic yard up
187 to, and including, four (4) cubic yards, designed or intended to be mechanically dumped into a
188 loader packer type garbage truck that is approved for such purpose by the CITY.

189 1.27 Garbage Cart. A heavy plastic receptacle with wheels and a rated capacity of at
190 least thirty-two (32) gallons and not more than ninety-six (96) gallons, having a hinged tight-fitting
191 lid and wheels, that is approved by the City Representative (if different from those currently in use
192 by CONTRACTOR) for use by Service Recipients for Collection Services under this Agreement.

193 1.28 Green Waste. Any vegetative matter resulting from normal yard and landscaping
194 maintenance that is not more than three (3) feet in its longest dimension or two (2) inches in
195 diameter and fits in the Organic Waste Cart utilized by the Service Recipient, and that has been
196 separated at the source of generation from other types of Solid Waste including Garbage,
197 Recyclable Materials and Food Waste. Green Waste includes plant debris, such as, ivy, grass
198 clippings, leaves, pruning, weeds, branches, brush, non-flocked Christmas trees, and other forms
199 of vegetative waste and must be generated by and at the Service Unit wherein the Green Waste
200 is collected. Green Waste does not include items herein defined as Exempt Waste or Yucca or
201 Cactus.

202 1.29 Gross Revenue. All revenue amounts collected by CONTRACTOR for the provision
203 of Collection Services pursuant to this Agreement, calculated in accordance with Generally
204 Accepted Accounting Procedures (GAAP). The term Gross Revenue, for purposes of this
205 Agreement, does not include any revenues generated from the sale of Recyclable Material,
206 compost product or energy, or other receipts from state and local government accounts (e.g.
207 grants, cash awards and rebates) resulting from the performance of this Agreement.

208 1.30 Hazardous Waste. Any material which is defined, regulated or listed as "hazardous",
209 "toxic", a "pollutant", or words of similar import waste under California or United States law or any
210 regulations promulgated pursuant to such law, as such as state or federal law or regulations may
211 be amended from time to time; and "designated waste" as defined in California Water Code
212 Section 13173.

213 1.31 Household Hazardous Waste (HHW). HHW includes dry cell household batteries,
214 cell phones and PDAs; used motor oil; used oil filters when contained in a sealed plastic bag;
215 cooking oil; compact fluorescent light bulbs contained in a sealed plastic bag; cleaning products,
216 pesticides, herbicides, insecticides, painting supplies, automotive products, solvents, strippers,
217 and adhesives, auto batteries, and Universal Waste. Items will be added or removed from this list
218 pursuant to changes in state or federal law.

219 1.32 Large Items. Those materials including furniture, carpets, mattresses, White Goods,
220 Brown Goods, E-Waste, clothing, tires (maximum of four per collection), Green Waste, and Large
221 Green Waste which are attributed to the normal activities of a SFD Service Unit. Large Items must
222 be generated by and at the Service Unit wherein the Large Items are collected. Large Items do
223 not include items herein defined as Exempt Waste.

224 1.33 Large Green Waste. Oversized Green Waste such as tree trunks and branches with
225 a diameter of not more than two (2) feet and a length of not more than six (6) feet in its longest
226 dimension, and not weighing more than fifty (50) pounds, which are attributed to the normal
227 activities of a MFD, or City Service Unit. Large Green Waste must be generated by and at the
228 Service Unit wherein the Large Green Waste is collected.

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229 1.34 Materials Recovery Facility (MRF). Any facility selected by the CONTRACTOR
230 designed, operated, and legally permitted for the purpose of receiving, sorting, processing,
231 storing, or preparing Recyclable Materials for sale. The initial MRF is listed in **Exhibit 2** of this
232 Agreement.

233 1.35 Non-Collection Notice. A form developed and used by the CONTRACTOR, as
234 approved by the CITY (if different from the form commonly used by CONTRACTOR), to notify
235 Service Recipients of the reason for non-collection of materials set out by the Service Recipient
236 for Collection by CONTRACTOR pursuant to this Agreement.

237 1.36 Organic Waste or Organic Materials. Refers to Food Waste, or Green Waste, or
238 both Food Waste and Green Waste, together, separately and not commingled with each other,
239 that has been separated at the source of generation from Garbage and Recyclable Materials.

240 1.37 Organic Waste Bin. A metal or plastic container, with a capacity of one (1) cubic yard
241 up to and including three (3) cubic yards, designed or intended to be mechanically dumped into
242 a loader packer type truck that is approved for such purpose by the CITY.

243 1.38 Organic Waste Cart. A heavy plastic receptacle with wheels and a rated capacity
244 not exceeding ninety-six (96) gallons, having a hinged tight-fitting lid, and wheels, that is approved
245 for such purpose by the CITY.

246 1.39 Organic Waste Processing Facility. Any facility selected by the CONTRACTOR
247 operated and legally permitted for the purpose of receiving and processing or digesting Food
248 Waste, Green, Organic Waste and/or Large Green Waste. The initial Organic Waste Processing
249 Facility is listed in **Exhibit 2** of this Agreement.

250 1.40 Overage (Garbage). Excess Garbage in or around a Garbage Container that results
251 in some manual collection of Garbage by CONTRACTOR's personnel.

252 1.41 "Party" or "Parties" means the CITY and/or CONTRACTOR.

253 1.42 Recyclable Materials. Those discarded materials which are capable of being
254 recycled by CONTRACTOR and are part of the CITY-approved recycling program and which have
255 been separated at the source of generation from other types of Solid Waste including Garbage,
256 Green Waste and Food Waste. Recyclable Materials included in the CITY-approved recycling
257 program include: newsprint (including inserts); mixed paper (including magazines, catalogs,
258 envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg
259 cartons, office ledger paper, aseptic containers, gable-top cartons, and telephone books); glass
260 containers; aluminum beverage containers; small scrap and cast aluminum (up to 20 pounds);
261 steel including "tin" cans, empty aerosol cans (empty, non-toxic products) and small scrap (up to
262 20 pounds); bimetal containers; plastic food containers, #1-7 plastics that have commercial value
263 regardless of form or mold (including but not limited to plastic containers, bottles, and wide mouth
264 tubs, except #6), aluminum foil and pans. Recyclable Materials do not include Exempt Waste.

265 1.43 Recycling Bin. A plastic or metal container, with a capacity of one (1) cubic yard up
266 to and including four (4) cubic yards, designed or intended to be mechanically dumped into a
267 loader packer type recycling truck that is approved for such purpose by the CITY and is
268 appropriately labeled as a Recycling Bin.

269 1.44 Recycling Cart. A heavy plastic receptacle with wheels and a rated capacity of at
270 least thirty-two (32) gallons and not more than ninety-six (96) gallons, having a hinged tight-fitting
271 lid, and wheels that is approved for such purpose by the CITY and is appropriately labeled as a
272 Recycling Cart.

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273 1.45 Service Commencement Date. October 1, 2017. the date upon which
274 CONTRACTOR becomes responsible for providing the services described in this Agreement to
275 Service Recipients and the CITY, within CITY's boundaries.

276 1.46 Service Recipient. An individual or entity receiving Collection Service under this
277 Agreement.

278 1.47 Service Unit. SFD Service Units.

279 1.48 SFD Bulky Waste Collection Service. The periodic on-call Collection of a
280 combination of Large Items collected by the CONTRACTOR, from SFD Service Units in the
281 Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recovery
282 Facility, Organic Waste Processing Facility or such other facility as may be appropriate under the
283 terms of this Agreement. SFD Bulky Waste Collection Service does not include the collection of
284 Large Items through the use of Debris Box Containers.

285 1.49 SFD Collection Service. SFD Garbage Collection Service, SFD Recycling Collection
286 Service, SFD Organic Waste Collection Service, SFD Insta-Bin Collection service, and SFD Bulky
287 Waste Collection Service.

288 1.50 SFD Garbage Collection Service. The Collection of Garbage, by the
289 CONTRACTOR, from SFD Service Units in the Service Area and the delivery of that Garbage to
290 a Disposal Facility.

291 1.51 SFD Insta-Bin Collection Service. The Collection of Garbage, Recyclable Materials,
292 and/or Organic Waste from SFD Service Units in the SFD Service Area in Bins up to six (6) cubic
293 yards provided by CONTRACTOR for the temporary accumulation of Garbage, Recyclable
294 Materials, and/or Organic Waste

295 1.52 SFD Organic Waste. Green Waste and Food Waste separated at the source of
296 generation for inclusion in the SFD Organic Waste Collection Service program.

297 1.53 SFD Organic Waste Collection Service. The Collection of SFD Organic Waste by
298 the CONTRACTOR from SFD Service Units in the Service Area, the delivery of that SFD Organic
299 Waste to an Organic Waste Processing Facility.

300 1.54 SFD Recycling Collection Service. The Collection of Recyclable Materials by the
301 CONTRACTOR from SFD Service Units in the Service Area, the delivery of those Recyclable
302 Materials to a Materials Recovery Facility, and the processing and marketing of those Recyclable
303 Materials.

304 1.55 SFD Service Area. The entire area within the corporate limits of the City of Chico,
305 California.

306 1.56 SFD Service Unit. Each Dwelling Unit, in a residential parcel containing no more
307 than four (4) Dwelling Units, and each Dwelling Unit in a Mobile Home Park serviced by individual
308 Garbage Carts.

309 1.57 Sharps. Sharps includes needles, scalpels, lancets, blades, broken medical glass,
310 broken capillary tubes, and ends of dental wires.

311 1.58 Sludge. The accumulated solids, residues, and precipitates generated as a result of
312 waste treatment or processing, including wastewater treatment, water supply treatment, or
313 operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks,
314 grease traps, privies, or similar disposal appurtenances or any other such waste having similar
315 characteristics or effects.

316 1.59 Solid Waste. Garbage, Recyclable Materials, Organic Waste, Large Items, and
317 permissible items dropped off at CONTRACTOR'S drop-off events or CONTRACTOR'S (or
318 CONTRACTOR'S affiliates') facilities pursuant to this Agreement (such as E-Waste and HHW).

319 1.60 Temporary Debris Box Collection Service. Collection on a temporary or infrequent
320 basis of Garbage, Recyclable Materials, Organic Waste and/or Construction and Demolition
321 Debris at Commercial, CITY or MFD Service Units, utilizing 10 to 50 cubic yard containers, or
322 temporary collection utilizing 6 cubic yard bins at SFD Service Units for Construction and
323 Demolition Debris only.

324 1.61 Universal Waste. Televisions, computer monitors, consumer electronics with circuit
325 boards, fluorescent lamps, cathode ray tubes, non-empty aerosol cans, instruments and switches
326 that contain mercury, and dry cell batteries containing cadmium copper, or mercury.

327 1.62 White Goods. Discarded refrigerators, ranges, water heaters, freezers, and other
328 similar household appliances.

329 1.63 Work Day. Any day, Monday through Saturday that is not a holiday as set forth in
330 Section 3.09 of this Agreement.

331 **ARTICLE 2. Term of Agreement**

332 2.01 Term. The term of this Agreement shall be for an eleven (11) year, nine (9) month
333 period beginning October 1, 2017, and terminating on June 30, 2029.

334 2.02 Five (5) Year Extensions. CONTRACTOR may submit a written request for up to two
335 (2) five (5) year term extensions to the original eleven (11) year, nine (9) month term, and at
336 CITY's sole option, CITY may grant CONTRACTOR's request to extend the term. Under no
337 circumstances will CITY be obligated to extend the term. CONTRACTOR must request the first
338 five (5) year extension by July 1, 2027, in order to be eligible for that extension, and the second
339 five (5) year extension by July 1, 2032, in order to be eligible for that extension.

340 2.03 Performance Review prior to Each Five (5) Year Extension. If CONTRACTOR
341 requests a term extension as described in Section 2.02 above, then, at CITY's sole option, a
342 billing audit and performance review may be conducted with respect to that extension as
343 described in Article 19, and CONTRACTOR must pay the cost of the billing audit and performance
344 review subject to the maximum cost specified in such Article. Regardless of the outcome of this
345 billing audit and performance review, CITY will have no obligation to extend the term of the
346 Agreement.

347 **ARTICLE 3. Services Provided by the Contractor**

348 3.01 Grant of Exclusive Right.

349 3.01.1 SFD Exclusivity. Except as provided in Section 3.02, CONTRACTOR is
350 hereby granted the exclusive right to collect, transport, recycle, process and dispose of Garbage,
351 Recyclable Materials, Large Items, Food Waste, and Green Waste generated by SFD Service
352 Units located within the Service Area.

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353 3.02 Limitations to Scope of Exclusive Agreement.

354 3.02.1 Temporary Debris Box Collection Service is not included within the scope
355 of this Agreement.

356 3.02.2 Recyclable Materials or Large Items that are source separated from
357 Garbage by the generator, which the generator sells or is otherwise compensated by a collector
358 in a manner resulting in a net payment to the generator;

359 3.02.3 Garbage, Recyclable Materials, Large Items, Construction and Demolition
360 Debris or Organic Waste, which is removed from any SFD Service Unit, and which is transported
361 personally by the owner or occupant of such premises (or by his or her full-time employees but
362 not including construction related employees or subcontractors) to a processing or Disposal
363 Facility;

364 3.02.4 Recyclable Materials, Organic Waste or Large Items which are source
365 separated at any premises by the generator and donated to youth, civic or charitable
366 organizations;

367 3.02.5 Beverage containers delivered by the generator for Recycling under the
368 California Beverage Container Recycling Litter Reduction Act, Section 14500, et seq.;

369 3.02.6 Organic Waste removed from a premise by a gardening, landscaping, or
370 tree trimming company as an incidental part of a total service offered by that company rather than
371 as a hauling service;

372 3.02.7 Construction and Demolition Debris where the owner or occupant of the
373 premises holds a building permit for the project, and such project was done by the owner,
374 occupant, or a licensed construction company, and, as an incidental part of a total service offered
375 by the licensed company rather than as a hauling service, and where the owner, occupant, the
376 licensed company, or an authorized/permitted construction and demolition debris collection
377 contractor uses its own equipment and employees for the collection and transportation of such
378 Construction and Demolition Debris;

379 3.02.8 Large Items removed from a premise by a property management or
380 maintenance company as an incidental part of the total cleanup or maintenance service offered
381 by the company rather than as a hauling service, and provided that such removal is not with
382 collection containers placed in use by CONTRACTOR, and

383 3.02.9 Hazardous Waste and other Exempt Waste regardless of its source.

384 3.03 CONTRACTOR acknowledges and agrees that the CITY may permit other persons
385 besides the CONTRACTOR to collect any and all types of materials excluded from the scope of
386 this Agreement, as set forth above, except that CONTRACTOR will have a right of first refusal if
387 the CITY contemplates permitting or licensing other persons to collect such materials. If
388 CONTRACTOR can produce evidence that other persons are servicing collection containers or
389 are Collecting Garbage, Recyclable Materials, Large Items, and/or Organic Waste in a manner
390 that is not consistent with the CITY'S Municipal Code or this Agreement, it shall report the location,
391 the name and phone number of the person or company to the CITY along with CONTRACTOR'S
392 evidence of the violation of the exclusiveness of this Agreement, and the CONTRACTOR shall
393 assist the CITY to enforce the CITY'S Municipal Code and this Agreement. CONTRACTOR may
394 remove illegally placed containers in public right-of-ways, alleys, or streets, but only after notifying
395 the CITY.

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396 3.03.1 The scope of this Agreement shall be interpreted to be consistent with
397 applicable law, now and during the term of the Agreement. If future judicial interpretations of
398 current law or new laws, regulations, or judicial interpretations limit the ability of the CITY to
399 lawfully provide for the scope of services as specifically set forth herein, CONTRACTOR agrees
400 that the scope of the Agreement will be limited to those services and materials which may be
401 lawfully provided and that the CITY shall not be responsible for any lost profits or losses claimed
402 by CONTRACTOR to arise out of limitations of the scope of the Agreement set forth herein.
403 Notwithstanding the foregoing, nothing in this paragraph shall be deemed to limit Sections 4.02
404 or 25.01 of this Agreement.

405 3.04 Service Standards. CONTRACTOR shall perform all Collection Services under this
406 Agreement in a thorough and professional manner. Collection Services described in this
407 Agreement shall be performed regardless of weather conditions or difficulty of collection, except
408 as provided in Section 23.08 (Force Majeure).

409 3.05 Hours and Days of Collection.

410 3.05.1 SFD Collection Services shall be provided, commencing no earlier than
411 6:00 a.m. and terminating no later than 6:00 p.m., Monday through Friday with no service on
412 Saturday (except for holiday service as set forth in Section 3.09 of this Agreement in which case
413 normal collection hours may be utilized) or Sunday. The hours, days, or both of collection may
414 be extended due to extraordinary circumstances or conditions with the prior written consent of the
415 City Representative.

416 3.05.2 Notwithstanding the foregoing, it shall be unlawful for any solid waste
417 collector to collect any garbage, rubbish or waste matter between the hours of 8:00 a.m. and 7:00
418 p.m. in the central business district area described as follows: Bounded on the north by Big Chico
419 Creek, on the south by the south line of Fifth Street, on the west by the west line of Salem Street,
420 and on the east by the east line of Wall Street. This restriction is intended to prohibit collections
421 from any and all properties fronting on the aforementioned boundary streets, as well as the area
422 within said boundaries.

423 3.05.3 The CITY may direct CONTRACTOR to restrict the Collection hours in
424 areas around schools and request CONTRACTOR to restrict Collection hours in high traffic areas
425 during peak commute hours. When the CITY is conducting road overlay or slurry projects, the
426 CITY reserves the right to temporarily redirect or restrict CONTRACTOR from collection in the
427 affected areas or temporarily change the collection hours if needed. The hours of collection may
428 be extended due to extraordinary circumstances or conditions with the prior written consent of the
429 City Representative.

430 3.06 Manner of Collection. The CONTRACTOR shall provide Collection Service with as
431 little disturbance as possible and shall leave any Cart or Bin in an upright position at the same
432 point it was collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

433 3.07 Containers.

434 3.07.1 Carts. Carts introduced into service by CONTRACTOR during the term of
435 this Agreement may be new or refurbished and are to be hot-stamped, embossed, or laminated,
436 or labeled with the type of materials to be Collected (i.e., Garbage/Residual/Landfill, Food Waste,
437 Organic Waste Recyclable Materials) and instructions provided for proper usage at the time of
438 delivery to a new account or upon request of the Service Recipient. Labeling on such Carts shall
439 be on the lids. CONTRACTOR'S phone number shall be included as part of such Cart labeling.
440 Labeling and graphics on such Carts (if different from those commonly used by CONTRACTOR)
441 shall be approved by CITY.

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442 3.07.2 Bins. Bins introduced into service by CONTRACTOR during the term of this
443 Agreement may be new or refurbished and are to be painted, embossed, or hot stamped or
444 labeled with the type of materials to be Collected (i.e., Garbage/Residual/Landfill, Food Waste,
445 Organic Waste, Recyclable Materials) and instructions provided for proper usage at the time of
446 delivery to a new account or upon request of the Service Recipient. CONTRACTOR'S phone
447 number shall be included as part of such Bin labeling. Labeling and graphics of the Bins (if
448 different from those commonly used by CONTRACTOR) shall be approved by CITY.

449 3.07.3 Replacement of Carts and Bins. CONTRACTOR'S employees shall take
450 care to prevent damage to carts or bins by unnecessary rough treatment. However, any Cart or
451 Bin damaged by the CONTRACTOR shall be replaced by the CONTRACTOR, at the
452 CONTRACTOR'S expense within five (5) Work Days at no cost or inconvenience to the Service
453 Recipient.

454 3.07.3.1 Upon notification to the CONTRACTOR by the CITY or a
455 Service Recipient that the Service Recipient's Cart(s), or Bin(s), have been lost, stolen or
456 damaged beyond repair through no fault of the CONTRACTOR, the CONTRACTOR shall deliver
457 a replacement Cart(s), or Bin(s) to such Service Recipient within five (5) Work Days. The
458 CONTRACTOR shall maintain records documenting all Cart and Bin replacements occurring on
459 a monthly basis.

460 3.07.3.2 Where such Cart is lost, stolen or damaged beyond repair
461 through no fault of the CONTRACTOR, each Service Recipient shall be entitled to the
462 replacement of, at no cost to the Service Recipient, one (1) such Garbage Cart, one (1) such
463 Recycling Cart, and one (1) such Organic Waste Cart, during the life of this Agreement. In
464 instances where Carts are reported to have been stolen from the same Service Recipient on
465 multiple occurrences, CONTRACTOR and CITY shall work with the impacted Service Recipient
466 to determine the cause of such repeated stolen Carts and develop a method to reduce or eliminate
467 the occurrences of stolen Carts.

468 3.07.3.3 Where such Bin or Cart replacement occurs through no fault
469 of the CONTRACTOR, CONTRACTOR shall be compensated for the cost of those replacements
470 in excess of the requirements set forth above in accordance with the "Cost to Replace Lost, Stolen
471 or Damaged Containers" Service Rate, as appropriate, as initially set forth in **Exhibit 4**, as
472 adjusted as provided under the terms of this Agreement.

473 3.07.4 Repair of Carts and Bins. CONTRACTOR shall be responsible for repair
474 of carts in the areas to include but not be limited to, hinged lids, wheels and axles. Within five (5)
475 Work Days of notification by the CITY or a Service Recipient of the need for such repairs, the
476 CONTRACTOR shall repair the Cart or Bin or if necessary, remove the Cart or Bin for repairs and
477 deliver a replacement Cart or Bin to the Service Recipient. If the repair is caused by reasons
478 other than normal wear and tear, or CONTRACTOR mishandling, the Service Recipient will be
479 responsible for paying CONTRACTOR'S costs to repair, which shall not exceed the "Cost to
480 Replace Lost, Stolen or Damaged Containers" set forth in **Exhibit 4**.

481 3.07.5 Cart or Bin Exchange. Upon notification to the CONTRACTOR by the CITY
482 or a Service Recipient that a change in the size or number of Carts or Bins is required, the
483 CONTRACTOR shall deliver such Carts or Bins to such Service Recipient within five (5) Work
484 Days. Each SFD Service Unit shall be entitled to receive one (1) free Cart or Bin exchange per
485 Agreement Year during the term of this Agreement. Accordingly, CONTRACTOR shall be
486 compensated for the cost of those exchanges in excess of one (1) per Agreement Year, in
487 accordance with the "Exchange Cart/Bin (cart/bin not damaged)" service rate as set forth in

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488 **Exhibit 4** which is attached to and included in this Agreement or as may be adjusted under the
489 terms of this Agreement.

490 3.07.6 Ownership of Carts. Ownership of Carts shall rest with the
491 CONTRACTOR. In the case of the termination of the Agreement prior to the expiration of the
492 initial term or optional extension terms due to the default of the CONTRACTOR as set forth in
493 Article 23 of this Agreement, the CITY shall have the right to take possession of the Carts in
494 service with customers and retain such possession until satisfactory arrangements can be made
495 to provide Collection Services using other equipment. Such time of possession shall be limited
496 to one hundred eighty (180) days after the effective date of termination. After such time, such
497 Carts shall be returned to CONTRACTOR or, if the parties mutually agree, the CITY shall pay a
498 reasonable monthly rent to the CONTRACTOR for the CITY'S use of the equipment. Upon
499 termination of this Agreement, CONTRACTOR shall be responsible for removing all Carts in
500 service from the Service Area and reusing or recycling such Carts as appropriate.

501 3.07.7 Ownership of Bins. Ownership of Bins distributed by the CONTRACTOR
502 shall rest with the CONTRACTOR. In the case of the termination of the Agreement prior to the
503 expiration of the initial term or optional extension term due to the default of the CONTRACTOR
504 as set forth in Article 23 of this Agreement, the CITY shall have the right to take possession of
505 such Bins and to retain such possession until satisfactory arrangements can be made to provide
506 Collection Services using other equipment. Such time of possession shall be limited to one
507 hundred eighty (180) days after the effective date of termination. After such time, such Bins shall
508 be returned to CONTRACTOR, or, if the parties mutually agree, the CITY shall pay a reasonable
509 monthly rent to the CONTRACTOR for the CITY'S use of the equipment. Upon the receipt of
510 written notice from the CITY, CONTRACTOR shall submit to the City Representative an inventory
511 of Bins, including their locations.

512 3.07.8 Cleaning/Removal of Graffiti from Containers.

513 3.07.8.1 Carts. If CONTRACTOR, or CITY, identifies graffiti on any
514 Cart set out for Collection, or otherwise identifies graffiti on any Cart during the normal course of
515 its work, CONTRACTOR shall exchange that Cart for a clean Cart within five (5) Work Days at no
516 cost to the Service Recipient.

517 3.07.8.2 Bins. If CONTRACTOR, or CITY, identifies graffiti on any
518 Bin set out for Collection, or otherwise identifies graffiti on any Bin during the normal course of its
519 work, CONTRACTOR shall either exchange that Bin for a clean one or paint over the Bin within
520 five (5) Work Days at no cost to the Service Recipient.

521 3.07.8.3 Charges. CONTRACTOR may charge a Service Recipient
522 a Container exchange fee or Bin painting fee (as set forth in **Exhibit 4**), as applicable, for
523 instances of graffiti which exceed one (1) per Agreement year.

524 3.08 Labor and Equipment. CONTRACTOR shall provide and maintain all labor,
525 equipment, tools, facilities, and personnel supervision required for the performance of
526 CONTRACTOR'S obligations under this Agreement. CONTRACTOR shall at all times have
527 sufficient backup equipment and labor to fulfill CONTRACTOR'S obligations under this
528 Agreement. No compensation for CONTRACTOR'S services or for CONTRACTOR'S supply of
529 labor, equipment, tools, facilities or supervision shall be provided or paid to CONTRACTOR by
530 CITY or by any Service Recipient except as expressly provided by this Agreement.

531 3.09 Holiday Service. The CITY observes January 1st, Thanksgiving Day, and December
532 25th as legal holidays. CONTRACTOR shall not provide Collection Services on the designated
533 holidays, and has the option of not providing services on July 4th if this is not a standard work day

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534 for CONTRACTOR, of if Disposal or Processing facilities are closed. In any week in which one
535 of these holidays falls on a Work Day, SFD Collection Services for the holiday and each Work
536 Day thereafter will be delayed one Work Day for the remainder of the week with normally
537 scheduled Friday Collection Services being performed on Saturday.

538 3.10 Processing and Disposal.

539 3.10.1 Compliance with Permits. CONTRACTOR shall not knowingly deliver
540 materials collected under this Agreement to facilities that do not comply in all material aspects
541 with the Department of Resources Recycling and Recovery regulations under Title 14, Division 7,
542 Chapter 3, Minimum Standards for Solid Waste Handling and Disposal (Article 5.9 – Sections
543 17380-17386). CONTRACTOR, and not the CITY, must use reasonable efforts to assure that all
544 Disposal, transfer, and processing facilities to which CONTRACTOR delivers material under this
545 Agreement are properly permitted to receive material collected under this Agreement, except for
546 the Neal Road Recycling and Waste Facility and any facility that CITY specifically directs
547 CONTRACTOR to use. Failure to comply with this provision may result in the CONTRACTOR
548 being in default under this Agreement.

549 3.10.2 Permits and Approvals. CONTRACTOR shall, upon written request from
550 the CITY, arrange for the facilities owned by the CONTRACTOR or an affiliate of the
551 CONTRACTOR to which CONTRACTOR delivers material under this Agreement to provide
552 copies of facility permits, notices of violations, inspection areas or concerns, or administrative
553 action to correct deficiencies related to the operation, but only to the extent the foregoing are
554 material and reasonably related to the services provided under this Agreement. For other facilities
555 selected by the CONTRACTOR to which CONTRACTOR delivers material under this Agreement,
556 if the CONTRACTOR becomes aware of any material permit violations by such facilities that are
557 reasonably related to the services provided under this Agreement, CONTRACTOR shall notify
558 the CITY of the same. Failure to provide facility information may result in the CONTRACTOR
559 being in default under this Agreement.

560 3.10.3 Disposal Facility. All Garbage collected as a result of performing Collection
561 Services shall be transported, and delivered to a legally permitted Disposal Facility. Failure to
562 comply with this provision may result in the levy of liquidated damages as specified in Article 18
563 of this Agreement and may result in the CONTRACTOR being in default under this Agreement.

564 3.10.4 Organic Waste Processing Facility. All Organic Waste collected as a result
565 of performing SFD Organic Waste Collection Services shall be delivered to a legally permitted
566 Organic Waste Processing Facility. Failure to comply with this provision may result in the levy of
567 liquidated damages as specified in Article 18 of this Agreement and may result in the
568 CONTRACTOR being in default under this Agreement.

569 3.10.5 Material Recovery Facility. All Recyclable Materials collected as a result
570 of performing SFD Recycling Services shall be delivered to a legally permitted Material Recovery
571 Facility (MRF). Failure to comply with this provision may result in the levy of liquidated damages
572 as specified in Article 18 of this Agreement and may result in the CONTRACTOR being in default
573 under this Agreement.

574 3.10.6 Cardboard Drop-off Site. CONTRACTOR shall provide a drop off location
575 for the receipt of self-haul cardboard materials from residential SFD subscribers at no additional
576 charge. The drop off location will be located and operate at the CONTRACTOR'S office specified
577 in Article 12 in this agreement. Such cardboard materials must not be contaminated and may be
578 rejected at the CONTRACTOR'S discretion

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579 3.11 Inspections. The CITY shall have the right to inspect the CONTRACTOR'S facilities
580 or collection vehicles used in the performance of this Agreement and their contents at any time
581 while operating inside or outside the CITY.

582 3.12 Commingling of Materials. Except contaminated loads, CONTRACTOR shall not at
583 any time commingle Garbage with separated Organic Waste or with separated Recyclable
584 Materials, or commingle separated Organic Waste with separated Recyclable Materials collected
585 pursuant to this Agreement without the express prior written authorization of the City
586 Representative. Such approval by the CITY will not be unreasonably withheld.

587 3.13 Recyclable Materials and Organic Waste Contamination. CONTRACTOR has an
588 obligation to offer the Service Recipients the correct combination of Cart and Bin sizes and
589 collection frequency that matches their unique service needs to reduce contamination of
590 Recyclable Materials and Organic Waste. To support the CITY'S diversion goals and
591 CONTRACTOR'S Diversion Requirements as set forth in Article 5 of this Agreement,
592 CONTRACTOR shall only be required to collect Recyclable Materials if they have been separated
593 by the Service Recipient from Garbage and Organic Waste, and shall only be required to collect
594 Organic Waste if it has been separated by the Service Recipient from Garbage and Recyclable
595 Materials.

596 As part of CONTRACTOR'S Public Education Services under Article 13 of this Agreement,
597 CONTRACTOR has agreed to provide outreach and support to SFD Service Recipients.
598 Additionally, CONTRACTOR'S route collection personnel will report to CONTRACTOR'S
599 supervisors and/or Sustainability Support Staff if they observe potential contamination problems,
600 and/or insufficient collection capacity. For purposes of determining if Recyclable Materials or
601 Organic Waste are deemed to be contaminated, if, by visual or digital inspection, Recyclable
602 Materials are commingled with fifteen percent (15%) by weight or volume of Garbage or Organic
603 Waste, or if, by visual inspection, Organic Waste is commingled with three percent (3%) by volume
604 of Garbage or Recyclable Materials, then Recyclable Materials and/or Organic Waste shall be
605 deemed to be contaminated and CONTRACTOR may take the following steps:

606 3.13.1 First and Second Occurrence. For the first and second occurrence (if within
607 12 months of the first) of contamination for a particular container (i.e., Recyclable Materials or
608 Organic Waste), CONTRACTOR shall collect the contaminated container and shall affix a Notice
609 to the contaminated container which contains instructions on the proper procedures for sorting
610 Recyclable Materials or Organic Waste, and shall notify the Service Recipient by phone, U.S.
611 mail, e-mail, in person (which may be a container tag), that for the third and subsequent incidents
612 of excess contamination, the Service Recipient may be charged a contamination fee for the
613 contaminated container, and after the fifth incident of excess contamination, CONTRACTOR may
614 remove the Cart or Bin. CONTRACTOR representative shall also contact the Service Recipient
615 by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have
616 the appropriate level of service for proper collection of Garbage, Recyclable Materials and/or
617 Organic Waste. CONTRACTOR must also provide digital/visual documentation to the Service
618 Recipient that clearly documents the Service Recipient's on-going contamination problems.

619 3.13.2 Third and Fourth Occurrence. For the third and fourth occurrence (if within
620 12 months of the first) of contamination for a particular container (i.e., Recyclable Materials or
621 Organic Waste), CONTRACTOR shall provide a Notice that contains instructions on the proper
622 procedures for setting out Recyclable Materials or Organic Waste, and CONTRACTOR shall
623 collect the contaminated Container and may charge the Service Recipient a contamination fee as
624 set forth in **Exhibit 4**. For any contamination fee charge being assessed, CONTRACTOR must

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625 provide digital/visual documentation to the Service Recipient that clearly documents the Service
626 Recipient's on-going contamination problems.

627 3.13.3 Fifth and Subsequent Occurrence. For the fifth or subsequent occurrence
628 (if within 12 months of the first) of contamination for a particular container (i.e., Recyclable
629 Materials or Organic Waste), CONTRACTOR may collect the contaminated Container and may
630 charge the Service Recipient a contamination fee as set forth in **Exhibit 4**. CONTRACTOR may
631 also, after notifying Service Recipient, remove the Recyclable Materials or Organic Waste
632 Container, as applicable, and discontinue providing the Recyclable Materials or Organic Waste
633 Collection Services for a period not to exceed one (1) year. Prior to the removing any such
634 containers or discontinuing Recyclable Materials or Organic Waste Service, CONTRACTOR must
635 provide (or have provided) digital documentation to the Service Recipient that clearly documents
636 the Service Recipient's on-going contamination problems and written notices of contamination as
637 described above. CONTRACTOR shall notify CITY within five (5) Work Days of removal of
638 Recyclable Materials or Organic Waste Containers for excessive contamination.

639 3.13.4 Tracking Occurrences of Contamination. Regarding Sections 3.13.1 –
640 3.13.3, after twelve (12) months have passed from the last applicable contamination occurrence,
641 the next contamination occurrence shall be deemed a first contamination occurrence.

642 3.13.5 Service Re-start. After one (1) year, or a shorter time-period if appropriate,
643 the Service Recipient may request CONTRACTOR and the CITY to reinstate the discontinued
644 service, and CONTRACTOR may charge a Container re-delivery fee as specified in **Exhibit 4** for
645 restarting the Recyclable Materials or Organic Waste Collection Service.

646 3.13.6 Disputes Over Excess Contamination Charges. If Service Recipient
647 disputes a contamination charge (which must be within 30 days of them being assessed),
648 CONTRACTOR shall temporarily halt any contamination charge and/or increased Maximum
649 Service Rate resulting from increasing the Cart or Bin or size or collection frequency, and
650 CONTRACTOR may request a ruling by the City Manager to resolve the dispute. A request by
651 CONTRACTOR to the City Manager to rule on any such dispute must be filed within 15 calendar
652 days of CONTRACTOR'S halting of contamination charge, or increased Maximum Rate, and must
653 include written documentation and digital/visual evidence of ongoing overall problems. The City
654 Manager may request a meeting (in person or phone) with both the Service Recipient and
655 CONTRACTOR to resolve the dispute. Following such a meeting, the City Manager will rule on the
656 dispute within 15 calendar days, and the City Manager's decision on resolving the dispute
657 between and Service Recipient shall be final. If the City Manager rules in favor of the Service
658 Recipient, CONTRACTOR shall credit the disputed contamination charges or increased
659 Maximum Service Rate. If the City Manager rules in favor of CONTRACTOR, CONTRACTOR
660 may charge Service Recipient the prior halted contamination charge and/or increased Maximum
661 Service Rate resulting from increasing the Cart or Bin size or collection frequency, and may follow
662 the steps in Section 4.01.6 for collection of delinquent accounts.

663 3.14 Spillage and Litter. The CONTRACTOR shall not litter premises in the process of
664 providing Collection Services or while its vehicles are on the road. The CONTRACTOR shall
665 transport all materials collected under the terms of this Agreement in such a manner as to prevent
666 the spilling or blowing of such materials from the CONTRACTOR'S vehicle. The CONTRACTOR
667 shall exercise all reasonable care and diligence in providing Collection Services so as to prevent
668 spilling or dropping of Garbage, Organic Waste, or Recyclable Materials and shall immediately,
669 at the time of occurrence, clean up such spilled or dropped materials.

670 3.14.1 The CONTRACTOR shall not be responsible for cleaning up un-sanitary
671 conditions caused by the carelessness of the Service Recipient; however, the CONTRACTOR

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672 shall clean up any material or residue that are spilled or scattered by the CONTRACTOR or its
673 employees.

674 3.14.2 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris
675 resulting from the CONTRACTOR'S operations or equipment repair shall be covered immediately
676 with an absorptive material and removed from the street surface. When necessary,
677 CONTRACTOR shall apply a suitable cleaning agent to the street surface to provide adequate
678 cleaning. To facilitate such cleanup, CONTRACTOR'S vehicles shall at all times carry sufficient
679 quantities of petroleum absorbent materials along with a broom and shovel.

680 3.14.3 The above paragraphs notwithstanding, CONTRACTOR shall clean up any
681 spillage or litter caused by CONTRACTOR within two (2) hours upon notice from the CITY.

682 3.14.4 In the event where damage to CITY streets is caused by a hydraulic oil spill
683 (i.e., any physical damage in excess of a simple cosmetic stain caused by the spill),
684 CONTRACTOR shall be responsible for all repairs to return the street to the same condition prior
685 to the spill. CONTRACTOR shall also be responsible for all clean-up activities related to the spill.
686 Repairs and clean-up shall be performed in a manner satisfactory to the City Representative and
687 at no cost to the CITY.

688 3.14.5 Ownership of Materials. Title to Garbage and Organic Waste shall pass to
689 CONTRACTOR at such time as said materials are placed in the CONTRACTOR'S collection
690 vehicles by CONTRACTOR. Title to Recyclable Materials shall pass to CONTRACTOR at such
691 time as said materials are set out by the Service Recipient for collection

692 3.14.6 Hazardous Waste. Under no circumstances shall CONTRACTOR'S
693 employees knowingly collect Hazardous Waste, or remove unsafe or poorly containerized
694 Hazardous Waste, from a collection container. If CONTRACTOR determines that material placed
695 in any container for collection is Hazardous Waste, or other material that may not legally be
696 accepted at the Disposal Facility or one of the processing facilities, or presents a hazard to
697 CONTRACTOR'S employees, the CONTRACTOR shall have the right to refuse to accept such
698 material. The generator shall be contacted by the CONTRACTOR and requested to arrange for
699 proper disposal service. If the generator cannot be reached immediately, the CONTRACTOR
700 shall, before leaving the premises, leave a Non-collection Notice, which indicates the reason for
701 refusing to collect the material, and how the Hazardous Waste can be properly disposed or
702 recycled.

703 3.14.7 If Hazardous Waste is found in a collection container that poses an
704 imminent danger to people or property, the CONTRACTOR shall immediately notify the CITY'S
705 Dispatch non-emergency response number at 530-897-4900. The CONTRACTOR shall also
706 immediately notify the CITY of any Hazardous Waste that has been identified.

707 3.14.8 If Hazardous Waste is identified at the time of delivery to the Disposal
708 Facility, or one of the processing facilities and the generator cannot be identified, CONTRACTOR
709 (and not CITY) shall be solely responsible for handling and arranging transport and disposition of
710 the Hazardous Waste, provided that nothing in this section or this Agreement shall limit
711 CONTRACTOR'S remedies against the generator of any Hazardous Waste.

712 3.15 Garbage Overage and Correction Procedures.

713 3.15.1 CONTRACTOR has an obligation to offer the Service Recipients the
714 correct combination of Container sizes and collection frequency that matches each Service
715 Recipient's unique service needs to enable clean, efficient, and cost-effective collection of
716 Garbage, Recyclable Materials, and Organic Waste. The CITY and CONTRACTOR agree that

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717 overflow of Garbage that is not properly in the Service Recipient's Garbage Container(s) may
718 negatively impact public health and safety. CONTRACTOR has also agreed to conduct recycling
719 audits and provide outreach and support to SFD accounts receiving the correct service level.
720 However, in the event that Service Recipients are found to habitually overflow their Garbage
721 Container(s), CONTRACTOR may take the steps as listed below to correct Service Recipient's
722 on-going overflow of Garbage.

723 3.15.2 Prior Arrangements for Collection. If the Service Recipient has made prior
724 arrangements with CONTRACTOR for collection of Garbage Overages, CONTRACTOR shall
725 collect such overages as arranged, and may charge the Service Recipient the Container overflow
726 charge (prior arrangement) rate set forth in **Exhibit 4**.

727 3.15.3 No Prior Arrangements. If the Service Recipient has not made prior
728 arrangements with CONTRACTOR for collection of Garbage Overage, (a) CONTRACTOR may
729 collect such Garbage Overage at no additional charge as a courtesy, (b) CONTRACTOR may not
730 collect the Garbage Overage and leave a tag explaining the reason for non-collection of the
731 Garbage Overage, (c) CONTRACTOR may collect the Garbage Overage (up to two lifts) and
732 charge the Service Recipient the Garbage Overage fee (no prior arrangement) rate set forth in
733 **Exhibit 4** as provided below, or increase the capacity or frequency of collection of the existing
734 Container to match documented service needs as provided below. In managing Garbage
735 Overages, the following shall apply:

736 3.15.3.1 First and Second Occurrence. For the first and second
737 occurrence (if within 12 months of the first of Garbage Overage), CONTRACTOR may collect the
738 Garbage Overage and CONTRACTOR shall provide the following written notice (via e-mail, U.S.
739 mail, or in person ((which may be by container tag)) to the Service Recipient: (i) the date,
740 description and photograph of the Garbage Overage, (ii) that on the third and subsequent
741 incidents of Garbage Overage, the Service Recipient may be charged a Garbage Overage fee,
742 and (iii) that on the fifth or subsequent occurrence of Garbage Overage, the Container size or
743 collection frequency may be increased and charged at a higher Service Rate.

744 3.15.3.2 Third and Fourth Occurrence. For the third and fourth
745 occurrence (if within 12 months of the first of Garbage Overage), CONTRACTOR shall collect the
746 Garbage Overage (up to two lifts), provide the notice described in 3.15.3.1 above, and may charge
747 the Service Recipient a Garbage Overage fee as set forth in **Exhibit 4**. CONTRACTOR's
748 representative shall also contact the Service Recipient by phone, U.S. mail e-mail or in person
749 (which may be by container tag) to encourage the Customer to have the appropriate level of
750 service.

751 3.15.3.3 Fifth and Subsequent Occurrence. For the fifth and
752 subsequent occurrence (if within 12 months of the first of Garbage Overage), CONTRACTOR shall
753 collect the Garbage Overage (up to two lifts), provide the notice described in 3.15.3.1 above, may
754 charge the Service Recipient a Garbage Overage fee as set forth in **Exhibit 4**, and increase the
755 capacity or collection frequency of the Container to match documented service needs. At least
756 15 days prior to increasing the Container size or frequency of collection, CONTRACTOR's
757 representative shall also contact the Service Recipient by phone, U.S. mail, e-mail or in person
758 (which may be by container tag) to ensure that Service Recipient has the appropriate level of
759 service. CONTRACTOR shall notify CITY within five (5) Work Days of any changes in Service
760 Recipient's Container size or collection frequency. The increased capacity or collection frequency
761 shall remain in effect until CONTRACTOR determines that it is no longer needed to prevent
762 overages, which may be longer than the 12-month period stated above. Such determination shall

763 be in CONTRACTOR's sole but reasonable discretion, and shall be subject to the dispute
764 resolution procedure set forth below.

765 3.15.3.4 Tracking Occurrences of Overage. Regarding Sections
766 3.15.3.1 – 3.15.3.3, after twelve (12) months have passed from the last applicable Overage
767 occurrence, the next Overage occurrence shall be deemed a first Overage occurrence.

768 3.15.4 Disputes Over Container Overflow Charges. If Service Recipient disputes
769 garbage Overage charge or size or collection frequency change (must be within 30 days of the
770 disputed action), CONTRACTOR shall temporarily halt Garbage Overage charge and/or
771 increased Maximum Service Rate resulting from increasing the Garbage Container size or
772 collection frequency, and CONTRACTOR may request a ruling by the City Manager to resolve
773 the dispute. A request by CONTRACTOR to the City Manager to rule on any such dispute must
774 be filed within 15 calendar days of CONTRACTOR'S halting of Garbage Overage charge, or
775 increased Maximum Rate, and must include written documentation and digital/visual evidence of
776 ongoing overall problems. The City Manager may request a meeting (in person or phone) with
777 both the Service Recipient and CONTRACTOR to resolve the dispute. Following such a meeting,
778 the City Manager will rule on the dispute within 15 calendar days, and the City Manager's decision
779 on resolving the dispute between and Service Recipient shall be final. If the City Manager rules
780 in favor of the Service Recipient, CONTRACTOR shall credit the disputed charge or increased
781 Maximum Service Rate. If the City Manager rules in favor of CONTRACTOR, CONTRACTOR
782 may charge Service Recipient the prior halted Garbage Overage charge and/or increased
783 Maximum Service Rate resulting from increasing the Garbage Container size or collection
784 frequency, and may follow the steps in Section 4.01.5 for collection of delinquent accounts.

785 3.16 Regulations and Record Keeping. CONTRACTOR shall comply with emergency
786 notification procedures required by applicable laws and regulatory requirements. All records
787 required by regulations shall be maintained at the CONTRACTOR'S facility. These records shall
788 include waste manifests, waste inventories, waste characterization records, inspection records,
789 incident reports, and training records.

790 **ARTICLE 4. Charges and Contractor Compensation**

791 4.01 CONTRACTOR Billing. CONTRACTOR shall be responsible for the billing and
792 collection of payments for all Collection Services. CONTRACTOR may charge Service Recipients
793 any amount, provided that it does not exceed the Maximum Service Rates attached as **Exhibit 4**
794 to this Agreement, as the same may be adjusted under the terms of this Agreement. The City
795 Representative shall approve the form and format for all customer bills, if different from the ones
796 commonly used by CONTRACTOR.

797 4.01.1 Partial Month Service. If, during a month, a Service Unit is added to or
798 deleted from CONTRACTOR'S Service Area, CONTRACTOR'S billing shall be pro-rated based
799 either on (i) the weekly service rate (the weekly service rate shall be the service rate established
800 in **Exhibit 4** divided by four (4)), and then multiplied by the number of actual weeks in the month
801 that service was provided to the Service Unit, or (ii) the number of pickups the Service Unit actually
802 received during the partial month, as compared to the number of pickups the Service Unit would
803 have received during the whole month.

804 4.01.2 Production of Invoices for SFD Service Units. CONTRACTOR shall
805 produce a quarterly invoice for SFD Service Recipients, billing them for services to be provided
806 in the current month (i.e. the month in which the invoice is produced) and the following two (2)

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807 months. CONTRACTOR'S invoice shall be sent to the Service Recipient no earlier than the
808 twentieth (20th) day of the 1st month of the period for which service is being billed.

809 4.01.3 City Provided Billing Inserts. CITY may provide educational and other
810 material to CONTRACTOR for inclusion in the invoices provided by CONTRACTOR to SFD
811 Customers for Collection Services. CONTRACTOR shall not charge CITY for the inclusion of
812 additional educational or other materials in the invoices.

813 4.01.4 Methods of Payment. CONTRACTOR shall provide the means for
814 customers to pay bills through the following methods: cash, checks, credit cards, internet payment
815 service or automatic withdrawal from bank account. On-line (E-Pay) bill methods shall be
816 password protected and comply with state and federal law protecting the privacy of customer
817 credit information. At CITY's request, CONTRACTOR shall provide evidence of such security
818 certifications and advise CITY of CONTRACTOR'S security measures implemented for on-line
819 payment.

820 4.01.5 Delinquent Service Accounts. CONTRACTOR may report to the City
821 Representative, on a monthly basis, a SFD Service Recipient who has received Collection Service
822 and whose account is over ninety (90) days past due. CONTRACTOR may take such action as
823 is legally available to collect or cause collection of such past due amounts; and CONTRACTOR
824 may discontinue providing Garbage Collection Services for non-payment.

825 4.01.5.1 In the event that the CITY authorizes a lien process for non-
826 payment of bills by customers, CONTRACTOR may utilize a CITY authorized lien process. Except
827 for implementing such lien process, CITY shall have no responsibility for collecting monies owed
828 to CONTRACTOR from delinquent service accounts.

829 4.02 Adjustments to CONTRACTOR'S Compensation. CONTRACTOR'S sole
830 compensation is derived from the application of the Maximum Service Rates to actual services
831 provided to SFD Service Recipients. The Maximum Service Rates are as specified in **Exhibit 4**
832 of this Agreement, and are firm and fixed through July 1, 2018. CONTRACTOR shall not be
833 entitled to any compensation that is not listed in **Exhibit 4**, as adjusted from time to time in
834 accordance with this Agreement. On or after July 1, 2018, and each subsequent July 1st,
835 CONTRACTOR's Maximum Service Rates shall be adjusted as follows:

836 4.02.1 Annual Adjustments to Maximum Services Rates

837 4.02.1.1 Adjustments to Maximum Service Rates (Curbside and
838 **On-Premise Rates Only).** Beginning on July 1, 2018, and annually thereafter on each July 1st,
839 CONTRACTOR shall, subject to compliance with all provisions of this Section, receive an annual
840 adjustment to the Maximum Service Rates as set forth in **Exhibit 4(A), (B) and (C)** to this
841 Agreement.

842 4.02.1.1.1. Adjustment to Garbage Collection Cost: CONTRACTOR may
843 increase the collection costs portion of the Garbage Maximum Service Rates as listed in **Exhibit**
844 **4 Sections A, B, and C** for all service recipients by the same percentage as the change in CPI.
845 The CPI adjustment shall be calculated using the change in the 12-month annual average of CPI
846 index values between the January 1st and December 31st of the prior year, and the January 1st
847 and December 31st of the year before the prior year (the prior previous year), each as published
848 by the U.S. Department of Labor, Bureau of Labor Statistics. Therefore, the first CPI adjustment
849 (effective July 1, 2018) will be based on the percentage change between the average index values
850 for the period of January 1, 2017, through December 31, 2017, (the previous year) and January
851 1, 2016, through December 31, 2016 (the prior previous year).

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852 4.02.1.1.2. Adjustment to Disposal Cost: CONTRACTOR may increase the
853 disposal cost portion of the Maximum Service Rates as listed in **Exhibit 4 Sections A, B, and B**
854 for all service recipients by the same percentage as the percentage change in per ton disposal
855 rate for "Commercial Haulers" at the Neal Road Landfill as published by Butte County on or around
856 January 1st each calendar year. The starting per ton fee as published by Butte County effective
857 January 1, 2017, is \$42.11 per ton. For purposes of calculating disposal costs, the Neal Road
858 Landfill is used to establish disposal increases solely because it is a publicly owned landfill.
859 CONTRACTOR is not required to use the Neal Road Landfill for disposal.

860 4.02.1.1.3. Allocated Costs between Collection and Disposal. For the sole
861 purpose of calculating adjustments to the Maximum Service Rates under this Section 4.02.1,
862 CONTRACTOR and CITY have agreed that the collection cost is equal to seventy nine and eight
863 tenths percent (79.8%) of the total Maximum Service Rates as listed in **Exhibit 4 Sections A, B,**
864 **and C**, and the disposal cost is equal to twenty and two tenths percent (20.2%) of the total
865 Maximum Service Rates as listed in **Exhibit 4 Sections A, B, and c.** Contractor and City have
866 agreed that these percentages shall remain constant during the term of this Agreement unless
867 mutually agreed to by the CITY and all contractors providing franchised collection service.

868 4.02.1.2 Adjustment to Additional Services Maximum Rates.
869 Contractor may increase the Additional Services Maximum Rates as listed in **Exhibit 4(D)** for all
870 service recipients by the same percentage as the change in CPI. The CPI adjustment shall be
871 calculated using the change in the 12-month annual average of CPI index values between the
872 January 1st and December 31st of the prior year, and the January 1st and December 31st of the
873 year before the prior year (the prior previous year), each as published by the U.S. Department of
874 Labor, Bureau of Labor Statistics. Therefore, the first CPI adjustment (effective July 1, 2018) will
875 be based on the percentage change between the average index values for the period of January
876 1, 2017, through December 31, 2017, (the previous year) and January 1, 2016, through December
877 31, 2016 (the prior previous year).

878 4.02.1.3 Rounding. Calculation of rates and determination of any
879 annual adjustments shall be made only in units of one cent (\$0.01) and shall not result in a
880 decrease to the rates currently in effect. Fractions of less than one cent (\$0.01) shall not be
881 considered in making adjustments. The indices shall be truncated at four (4) decimal places for
882 the adjustment calculations.

883 4.02.1.4 New Maximum Service Rates. CONTRACTOR'S shall
884 submit a request for an adjustment in the Maximum Service Rates to the CITY in the same form
885 as **Exhibit 4**, for confirmation by the CITY that the CONTRACTOR's calculations are correct. The
886 request for an adjustment to the Maximum Service Rates shall be submitted to the CITY by May
887 1st of each Agreement Year beginning May 1, 2018. If the request is not submitted to the CITY
888 by May 1st, the CONTRACTOR will be deemed to have waived its right to a rate adjustment for
889 that year.

890 4.02.1.5 CITY Approval of Maximum Service Rates. On or before
891 June 1, 2018, and each June 1st annually thereafter during the term of this Agreement, the CITY
892 Representative shall notify CONTRACTOR that CITY has confirmed CONTRACTOR's
893 calculation of the adjustments to the affected Maximum Service Rates to take place on the
894 subsequent July 1st, or, that the CITY has identified calculation errors that need to be rectified, in
895 which case the parties shall cooperate in good faith to reconcile the discrepancy before the new
896 Maximum Service Rates take effect on July 1st.

897 4.02.1.6 Cap on Annual Adjustments to Maximum Service Rates.
898 Under no circumstance shall the total increase to the Maximum Service Rates pursuant to this

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899 Section 4.02.1 exceed five percent (5%) in one Agreement Year. In the event that total increase
900 to the Maximum Service Rates as calculated pursuant to this Section 4.02.1 exceeds five percent
901 (5.00%) or is negative (below 0.00%), the total adjustment for that year shall equal five percent
902 (5.00%) or zero percent (0.00%), respectively, and the amounts above five percent (5.00%) or
903 below zero percent (0.00%) shall be added to the rate adjustment percentage in the following
904 year, subject to the same floor and cap limitations and carryover. Additionally, in the event that
905 substantial changes occur in landfill disposal practices that results in an increase to
906 CONTRACTOR's disposal component costs greater than twenty percent (20%), CONTRACTOR
907 may request an increase above five percent (5.00%) solely to adjust for such extraordinary
908 increases to disposal costs. CONTRACTOR shall provide sufficient documentation of disposal
909 total cost increases above twenty percent (20%).

910 4.03 Adjustments Due to Change in Law.

911 4.03.1 If a Change in Law occurs after the date hereof that results in an increase
912 in CONTRACTOR's costs of performing its obligations under this Agreement, or a reduction in
913 CONTRACTOR's Gross Revenue, then CITY and CONTRACTOR shall negotiate in good faith a
914 reasonable and appropriate adjustment to Maximum Service Rates sufficient to offset
915 CONTRACTOR's increased costs or reduced Gross Revenue resulting from the Change in Law.

916 4.03.2 The Parties may negotiate and agree on the amount of any Maximum
917 Service Rate adjustment pursuant to this Section 4.03 without a Detailed Rate
918 Review. CONTRACTOR shall bear the burden of justifying to CITY any adjustment due to a
919 Change in Law and shall bear its own costs of preparing its request for an adjustment and
920 supporting documentation. CITY may request from CONTRACTOR such further information as it
921 reasonably deems necessary to fully evaluate CONTRACTOR'S request and make its
922 determination whether CONTRACTOR has satisfied its burden, which determination shall not be
923 unreasonably withheld. CITY shall notify CONTRACTOR of its determination within ninety (90)
924 calendar days of receipt of the written request and all other additional information reasonably
925 requested by CITY. Any such change will be implemented on the following July 1st, or within any
926 other time frame agreed upon between CITY and CONTRACTOR. The adjustment in Maximum
927 Service Rates shall be approved by the City Council and memorialized in a written amendment
928 to this Agreement.

929 4.03.3 Without limiting the foregoing, if the proposed annual increase in Maximum
930 Service Rates resulting from a Change in Law exceeds five percent (5%), and if after negotiating
931 in good faith for at least thirty (30) days the parties are still unable to agree on the amount of such
932 increase, then either party, in addition to continuing to negotiate with the other party, may submit
933 the matter to non-binding mediation upon the terms and conditions in Section 24.06.1.

934 4.04 Detailed Rate Review. Only if requested by the CITY a Detailed Rate Review may
935 be conducted provided that a pre-established methodology is agreed to by both the CITY and the
936 CONTRACTOR.

937 4.05 Adjustments Due to Changes in the Franchise Fee. In the event that CITY elects to
938 increase the amount of fees provided for in Section 4.06 below, such increase shall take effect on
939 the next July 1st, and the CONTRACTOR shall be entitled to an additional adjustment as part of
940 their regularly scheduled July 1st rate adjustment to cover the cost of those new fees. This
941 additional adjustment shall be calculated using the following methodology, and such calculation
942 must be included in the CONTRACTOR'S regular rate adjustment request submitted to the CITY
943 by April 1st in order for the CONTRACTOR to be eligible to receive the additional rate adjustment:

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944 4.05.1.1 The CONTACTOR shall calculate the additional rate
945 adjustment percentage in accordance with the following formula:

946
$$RA = [(1 - FF(\text{old})) / (1 - FF(\text{new}))] - 1$$

947 *where:*

948 FF(old) = then-current Franchise Fee percentage (before giving effect to the
949 Franchise Fee adjustment)

950 FF(new) = new Franchise Fee percentage (after giving effect to the Franchise
951 Fee adjustment)

952 RA = percentage increase to be applied to each Maximum Service Rate
953 (after giving effect to all other then-applicable adjustments) to reflect
954 the change in the Franchise Fee

955 All percentages in the above calculation to be expressed as fractions (i.e. 0.10
956 for 10%).

957 For example, if the Franchise Fee were increased from five percent (5%) to ten percent (10%),
958 then each Maximum Service Rate would increase by an additional 5.56%, over and above any
959 other then-applicable adjustments. If in that same year, the CPI adjustment were 2.00%, and no
960 other adjustments were applicable, then the total Maximum Service Rate increase for that year
961 would be 7.67% ($1.0556 \times 1.0200 = 1.0767$).

962 4.06 CONTRACTOR'S Payments to CITY. As consideration for the exclusive franchise
963 granted by this Agreement, CONTRACTOR shall make payment to CITY of a Franchise Fee.
964 Each payment shall be accompanied by an accounting, which sets forth CONTRACTOR'S Gross
965 Revenues during the preceding quarter in sufficient detail to allow for an independent
966 recalculation of payments.

967 4.06.1 Franchise Fee. The Franchise Fee will be a percentage of
968 CONTRACTOR'S Gross Revenue collected each calendar quarter under the terms of this
969 Agreement. The Franchise Fee percentage shall be **Ten Percent (10%) of Gross Revenues**
970 unless otherwise adjusted by CITY. CONTRACTOR shall make payment of the Franchise Fee to
971 CITY on a quarterly basis with payments due on January 31st (covering the prior October,
972 November and December), April 30th (covering the prior January, February, and March), July 31st,
973 (covering the prior April, May, and June), and October 31st (covering the prior July, August, and
974 September), of each Agreement Year, with the first payment due on January 31, 2018. In the
975 event that CITY adjusts the Franchise Fee percentage, such adjustment shall take effect on the
976 next July 1st, and the Maximum Service Rates will also be adjusted simultaneously and
977 commensurately as provided above, to incorporate any such changes in the Franchise Fee
978 percentage.

979 4.06.2 No acceptance by CITY of any payment shall be construed as an accord
980 that the amount is in-fact the correct amount, nor shall such acceptance of payment be construed
981 as a release of any claim CITY may have against CONTRACTOR for any additional sums payable
982 under the provisions of this Agreement. All amounts paid shall be subject to independent audit
983 and recompilation by CITY. If, after the audit, such recompilation indicates an underpayment
984 CONTRACTOR shall pay to CITY the amount of the underpayment and shall reimburse CITY for
985 all reasonable costs and expenses incurred in connection with the audit and recompilation within
986 ten (10) Work Days of receipt of written notice from CITY that such is the case. If, after audit,
987 such recompilation indicates an overpayment, CITY shall notify CONTRACTOR in writing of the
988 amount of the overpayment, less costs and expenses incurred in connection with the audit and

989 recompilation. CONTRACTOR may offset the amounts next due following receipt of such notice
990 by the amount specified therein.

991 ARTICLE 5. Diversion Requirements

992 5.01 CONTRACTOR'S Diversion Requirements.

993 5.01.1 CONTRACTOR shall fully implement CONTRACTOR'S required
994 Recyclable Materials and Organic Waste diversion programs to meet a minimum amount of the
995 Solid Waste diverted from landfill disposal as listed below:

996 5.01.2 Thirty percent (30%) of all material collected by CONTRACTOR in each
997 calendar year beginning January 1, 2019.

998 5.01.3 Thirty-two percent (32%) of all material collected by CONTRACTOR in
999 each calendar year beginning January 1, 2021.

1000 5.01.4 Thirty-five percent (35%) of all material collected by CONTRACTOR in
1001 each calendar year beginning January 1, 2024, and thereafter for the Term of this Agreement.

1002 5.01.5 CONTRACTOR will also assist the CITY in reaching CalRecycle's seventy-
1003 five percent (75%) goal, to the extent CONTRACTOR can do so without incurring additional
1004 expense or interfering with CONTRACTOR's ability to perform its other obligations under this
1005 Agreement.

1006 5.02 Diversion Requirements Calculation. For purposes of determining if CONTRACTOR
1007 achieves CONTRACTOR'S diversion requirements, the Parties agree the annual diversion rate
1008 will be calculated using the following formula: "the tons of materials collected by CONTRACTOR
1009 from the provision of Collection Services in CITY that are sold or delivered to a recycler or re-
1010 user, or processor, divided by the total tons of materials collected in CITY by CONTRACTOR in
1011 each calendar year." Notwithstanding any other provision of this Agreement to the contrary, no
1012 Liquidated Damages shall be assessed against CONTRACTOR for failure to meet diversion
1013 requirements during a particular calendar year if during that calendar year CONTRACTOR has
1014 demonstrated good faith efforts to achieve the diversion requirements by (i) implementing public
1015 education efforts as outlined in Article 13, (ii) delivering all Recyclable Materials collected
1016 hereunder to a legally permitted Materials Recovery Facility, and (iii) delivering all Organic Waste
1017 collected hereunder to a legally permitted Organic Waste Processing Facility. In addition, in
1018 determining whether to assess Liquidated Damages for failure to meet diversion requirements,
1019 CITY may also take into account CONTRACTOR's other good faith efforts, changes in recyclable
1020 materials markets, availability of Organic Waste Processing Facilities, and documented changes
1021 in waste characterization.

1022 5.02.1 As part of the Quarterly Reports submitted in accordance with Section
1023 15.02.1, CONTRACTOR shall provide documentation to the CITY stating and supporting each
1024 calendar quarter's diversion rate. Diversion from other sources other than CONTRACTOR'S
1025 diversion shall not be counted as diversion achieved by CONTRACTOR.

1026 5.03 Use of Transformation Facility. CONTRACTOR may direct up to ten percent (10%)
1027 of the CITY'S total waste stream to a waste-to-energy facility for diversion purposes provided that
1028 such diversion is allowable and deemed to be diversion by CalRecycle. CONTRACTOR is not
1029 entitled to any additional compensation associated with use of any Transformation Facility.

1030 5.04 Use of Alternative Daily Cover (ADC). CONTRACTOR may utilize Organic Waste as
1031 Alternative Daily Cover (ADC) if higher use of Organic Waste is not feasible. However, any tons

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1032 of materials Collected by CONTRACTOR that are ultimately used as ADC may only be counted
1033 as diversion if such use is deemed to be diversion by CalRecycle.

1034 5.05 Changes in the Market Conditions for Recyclable Materials. Upon notice to and prior
1035 approval by CITY, CONTRACTOR may deem additional materials or groups of materials
1036 Recyclable Materials if they become capable of recycling at CONTRACTOR'S facilities in or near
1037 the Service Area. CONTRACTOR reserves the right, upon written notice to and prior written
1038 approval by the CITY, to discontinue acceptance of any category of Recyclable Materials as a
1039 result of market conditions related to such materials. With regard to the preceding two sentences,
1040 the CITY's approval shall not be unreasonably withheld. Such CITY approval for reducing the
1041 types of Recyclable Materials collected shall not exceed 12 months at a time; if CONTRACTOR
1042 wishes to extend the period, CONTRACTOR shall again seek CITY approval as provided above.

1043 5.06 Compliance with Laws. CONTRACTOR's diversion programs set forth herein shall
1044 be implemented in a manner consistent with the Applicable Laws governing this Agreement
1045 (including AB 341, AB 939, AB 1594, AB 1826, SB 1016 and all amendments and related
1046 subsequent legislation, to the extent they apply to CONTRACTOR), and CONTRACTOR shall
1047 implement its diversion programs set forth herein without charging any costs or fees other than
1048 those set forth in **Exhibit 4**, as adjusted in accordance with the provisions of this Agreement.

1049 5.07 Mutual Cooperation. CITY and CONTRACTOR shall reasonably cooperate in good
1050 faith with all efforts by each other to meet CITY'S diversion and other compliance requirements
1051 imposed by AB 939 and other Applicable Laws. In this regard, CITY'S obligations shall include,
1052 without limitation, making such petitions and applications as may be reasonably requested by
1053 CONTRACTOR for time extensions in meeting diversion goals, or other exceptions from the terms
1054 of Applicable Laws, and agreeing to authorize such changes to CONTRACTOR'S recycling or
1055 Solid Waste programs as may be reasonably requested by CONTRACTOR in order to achieve
1056 the diversion requirements set forth herein. CONTRACTOR shall provide such assistance as may
1057 reasonably be requested by CITY in preparing such petitions and applications. In addition,
1058 CONTRACTOR shall provide such assistance as may reasonably be requested by CITY in
1059 preparing for or participating in any hearing conducted by CalRecycle or any other regulatory
1060 agency relating to CITY's failure to comply with the California Integrated Waste Management Act
1061 of 1989, as amended (including by AB 341, AB 1594 or AB 1826), and the rules and regulations
1062 thereunder, to the extent such failure results from CONTRACTOR's failure to perform its
1063 obligations under this Agreement.

1064 5.08 Reporting. As may reasonably be requested by the CITY, CONTRACTOR shall
1065 provide data and information to CITY to assist CITY with the preparation of all reports and other
1066 information as may be required by CalRecycle or any other regulatory agency, in order to comply
1067 with AB 939 and other Applicable Laws, and to assist CITY in responding to inquiries from
1068 CalRecycle or any other regulatory agency, in so much as such data and information directly
1069 relates to portions of services under the terms of this Agreement.

1070 5.09 Indemnification. CONTRACTOR agrees that it will carry out its obligations
1071 specifically required under this Agreement in a manner consistent with Applicable Laws, including,
1072 but not limited to, AB 939, AB 341, AB 1594, AB 1826 and SB 1016, to the extent they apply to
1073 CONTRACTOR. In this regard, CONTRACTOR agrees that it will, in addition to any other
1074 requirements contained herein, at its sole cost and expense, to the extent legally permitted,
1075 defend, with counsel reasonably acceptable to CITY, indemnify, and hold harmless CITY and
1076 CITY'S officials, employees, and agents from and against all fines and/or penalties which may be
1077 imposed on CITY by CalRecycle or any other regulatory agency, to the extent such fines and/or
1078 penalties result from CONTRACTOR's failure or refusal to timely provide information relating to

1079 its operations which is required pursuant to this Agreement or the Applicable Laws, and such
1080 failure or refusal prevents or delays CITY from submitting reports required by the Applicable Laws
1081 including AB 939, AB 341, AB 1594, and AB 1826, in a timely manner. The indemnity in this
1082 Section 5.09 is in addition to the indemnity set forth in Section 22.03 relating to CITY's failure to
1083 meet state-mandated diversion goals.

1084 5.10 Waste Generation/Characterization Studies. CONTRACTOR acknowledges that
1085 CITY may perform Solid Waste generation and disposal characterization studies periodically to
1086 comply with the requirements of the Applicable Laws, including AB 939. As may reasonably be
1087 requested by CITY, CONTRACTOR agrees to participate and cooperate with CITY and its agents
1088 and to accomplish studies, provided that such participation and cooperation can be accomplished
1089 at no additional cost to CONTRACTOR and without substantially interfering with
1090 CONTRACTOR's operations.

1091 **ARTICLE 6. Service Units**

1092 6.01 Service Units shall include all the following categories of premises that are in the
1093 Service Area as of October 1, 2017, and all SFD Service Units that may be added to the Service
1094 Area by means of annexation, new construction, or as otherwise set forth in this Agreement during
1095 the term of this Agreement:

1096 6.01.1 SFD Service Units

1097 6.01.1.1 Any question as to whether a premise falls within one of
1098 these categories shall be determined by the City Representative and the determination of the City
1099 Representative shall be final.

1100 6.02 Service Unit Changes. The CITY and CONTRACTOR acknowledge that during the
1101 term of this Agreement, the number of Service Units for which CONTRACTOR will provide
1102 Collection Services may increase or decrease, due to annexation, development, or other reasons.
1103 Any such change in Service Units shall be the responsibility of CONTRACTOR

1104 6.02.1 Service Unit Additions. CONTRACTOR shall provide services described
1105 in this Agreement to new Service Units within five (5) Work Days of receipt of notice from the
1106 CITY or new Service Unit to begin such service.

1107 6.03 Coordination with Street Sweeping. The CITY and CONTRACTOR acknowledge
1108 that CONTRACTOR may have to modify collection days to accommodate the CITY'S street
1109 sweeping schedule. CITY and CONTRACTOR shall cooperate in any changes to CITY'S street
1110 sweeping schedule so not to adversely impact CONTRACTOR's route operations

1111 6.04 Route Map Update. CONTRACTOR shall revise the Service Unit route maps to
1112 show the addition of Service Units added due to annexation and shall provide such revised maps
1113 to the City Representative as requested. Route maps will indicate the service day by street for
1114 SFD service units.

1115 **ARTICLE 7. SFD Collection Services**

1116 7.01 SFD Collection Services. These services shall be governed by the following terms
1117 and conditions:

1118 7.01.1 Conditions of Service. The CONTRACTOR shall provide SFD Collection
1119 Service to all SFD Service Units in the Service Area whose Garbage is properly containerized in
1120 Garbage Carts, Recyclable Materials are properly containerized in Recycling Carts, except as set

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1121 forth in Section 7.05.3; and Organic Waste is properly containerized in Organic Waste Carts,
1122 except as set forth in Sections 7.06.5 and 7.09. The Garbage, Recycling and Organic Waste Carts
1123 will be collected at least once a week. CONTRACTOR shall offer Garbage Carts 32, 64 and 96
1124 gallon cart sizes, and Recyclable Materials and Organic Waste Carts in 64 or 96 gallon cart sizes,
1125 with 32 gallon Recyclable Materials and Organic Waste Carts available on request. The size of
1126 the Cart shall be determined between the SFD Service Recipient and the CONTRACTOR.
1127 CONTRACTOR shall not charge for collection of Recyclable Materials or Organic Waste collected
1128 in Carts except in accordance with extra cart charges as listed in **Exhibit 4**.

1129 7.01.2 Curbside Collection Service. SFD Curbside Collection shall be done where
1130 Garbage, Recyclable Materials and Organic Waste Carts are placed within five (5) feet of the
1131 curb, swale, or at edge of street pavement for streets without curbs, or other such location agreed
1132 to by the CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility
1133 to the CONTRACTOR's collection crew and vehicle. This shall apply to both public and private
1134 streets. CONTRACTOR may charge for Curbside Collection at the rates as set forth in **Exhibit**
1135 **4**.

1136 7.01.2.1 On-Premise Collection Service - Subscription. A SFD
1137 Service Recipient may subscribe for On-premise SFD Collection Service where Garbage,
1138 Recyclable Materials, and Organic Waste Carts are collected from a side-yard, backyard, or other
1139 off-street location agreed on between the CONTRACTOR and the Service Recipient.
1140 CONTRACTOR may charge for On-premise collection at the rates as set forth in **Exhibit 4**.

1141 7.01.2.2 On-Premise Collection Service – Physical Disability. A SFD
1142 Service Recipient, and all other adults living at the Service Unit residing therein, that has
1143 disabilities that prevent him/her from being physically able to place Garbage, Recyclable
1144 Materials, or Organic Waste Carts at the curb for collection shall receive On-premise Collection
1145 Service where all Garbage, Recyclable Materials, and Organic Waste Carts are collected from a
1146 side-yard, backyard, or other off-street location agreed on between the CONTRACTOR and the
1147 Service Recipient. CONTRACTOR shall provide this service at the Curbside collection rates as
1148 set forth in **Exhibit 4**. CONTRACTOR may require proof of disability.

1149 7.02 Frequency and Scheduling of Service. Except as set forth in Sections 7.07 (Curbside
1150 Christmas Tree Collection), and 7.08 (Bulky Waste Collection Service), curbside SFD Collection
1151 Services shall be provided one (1) time per week on a scheduled route basis. SFD Collection
1152 Services shall be scheduled so that a SFD Service Unit receives SFD Garbage Collection Service,
1153 SFD Recycling Collection Service, and SFD Organic Waste Collection Service on the same Work
1154 Day.

1155 7.03 Non-Collection. Except as set forth in Sections 7.05.3 (Overages), 7.07 (Curbside
1156 Christmas Tree Collection), and 7.08 (Bulky Waste Collection Service), CONTRACTOR shall not
1157 be required to collect curbside any Garbage, Recyclable Material, or Organic Waste that is not
1158 placed in a Cart. In the event of non-collection, CONTRACTOR shall affix to the Cart a Non-
1159 collection Notice explaining why collection was not made. CONTRACTOR shall maintain a copy
1160 of such notices during the term of this Agreement.

1161 7.04 SFD Garbage Collection Service. This service will be governed by the following
1162 additional terms and conditions:

1163 7.04.1 Disposal Facility. All Garbage collected as a result of performing SFD
1164 Garbage Collection Services shall be transported to, and disposed of, at the Disposal Facility.
1165 Failure to comply with this provision shall result in the levy of an administrative charge as specified
1166 in this Agreement and may result in the CONTRACTOR being in default under this Agreement.

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1167 7.04.2 Additional Garbage Carts. Upon notification to the CONTRACTOR by the
1168 CITY or a Service Recipient that additional Garbage Carts are requested, the CONTRACTOR
1169 shall deliver such Garbage Carts to such Service Recipient within five (5) Work Days.
1170 CONTRACTOR shall be compensated for the cost of additional Garbage Carts in accordance
1171 with the "Additional Garbage Cart" Service Rate as set forth in **Exhibit 4** or as may be adjusted
1172 under the terms of this Agreement.

1173 7.05 SFD Recycling Collection Service. This service will be governed by the additional
1174 following terms and conditions:

1175 7.05.1 Material Recovery Facility. All Recyclable Materials collected as a result
1176 of performing Recycling Services shall be delivered to the Materials Recovery Facility. Failure to
1177 comply with this provision shall result in the levy of liquidated damages as specified in this
1178 Agreement. All expenses related to Recyclable Materials processing and marketing will be the
1179 sole responsibility of CONTRACTOR.

1180 7.05.2 Additional Recycling Carts. CONTRACTOR shall provide additional SFD
1181 Recycling Carts to SFD Collection Service Recipients within five (5) Work Days of request
1182 provided that additional carts are used by Service Recipients for the purposes of setting out
1183 additional Recyclable Materials for regular weekly Recycling Collection Service. CONTRACTOR
1184 shall be compensated for the cost of additional Recycling Carts, in excess of two (2) Recycling
1185 Carts offered at no charge, in accordance with the "Additional Recycling Cart" Service Rate as
1186 set forth in **Exhibit 4** or as may be adjusted under the terms of this Agreement.

1187 7.05.3 Recycling Overages. Corrugated cardboard that will not fit inside the
1188 Recycling Cart may be flattened and placed beside the Recycling Cart. The maximum size for
1189 Recycling Overages is 3 foot x 2 foot.

1190 7.05.4 Recycling - Changes to Work. Should changes in law arise that necessitate
1191 any additions or deletions to the work described herein including the type of items included as
1192 Recyclable Materials, the parties shall negotiate any necessary cost changes and shall enter into
1193 an Agreement amendment covering such modifications to the work to be performed and the
1194 compensation to be paid before undertaking any changes or revisions to such work.

1195 7.06 SFD Organic Waste Collection Service. This service, which includes both Green
1196 Waste and Food Waste collected in the same Container, is to begin on the Service
1197 Commencement Date. This service will be governed by the following terms and conditions:

1198 7.06.1 Organic Waste Processing Services. CONTRACTOR shall ensure that all
1199 Organic Waste collected pursuant to this Agreement is diverted from the landfill in accordance
1200 with AB 939 and any subsequent or other applicable legislation and regulations.

1201 7.06.2 Organic Waste Processing Facility. CONTRACTOR shall deliver all
1202 collected Organic Waste to a fully permitted Organic Waste Processing Facility or a fully permitted
1203 Organic Waste transfer station. All expenses related to Organic Waste processing and marketing
1204 will be the sole responsibility of CONTRACTOR.

1205 7.06.3 Organic Waste Disposal. CONTRACTOR shall ensure that the Organic
1206 Waste collected pursuant to this Agreement is not disposed of in a landfill, except as a residue
1207 resulting from processing.

1208 7.06.4 Additional Organic Waste Carts. CONTRACTOR shall provide additional
1209 SFD Organic Waste Carts to SFD Service Recipients within five (5) Work Days of request
1210 provided that additional carts are used by SFD Service Recipients for the purposes of setting out
1211 additional Organic Waste Materials for regular weekly Organic Waste Collection Service.

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1212 CONTRACTOR shall be compensated for the cost of additional Organic Waste Carts, in excess
1213 of two (2) offered Organic Waste Carts offered at no charge, in accordance with the "Additional
1214 Organic Waste Cart" Service Rate as set forth in **Exhibit 4** or as may be adjusted under the terms
1215 of this Agreement.

1216 7.06.5 Bundled Organics. Branches and prunings no larger than three (3) feet
1217 and/or two (2) inches in diameter may be tied in bundles and placed beside the Organics Cart for
1218 collection. Individual bundles may not weigh more than fifty (50) pounds. CONTRACTOR may
1219 not charge for bundled Organics.

1220 7.07 Curbside Christmas Tree Collection. CONTRACTOR shall collect Christmas trees
1221 from all SFD Service Units as part of the SFD Organic Waste Collection Services.
1222 CONTRACTOR shall provide this service beginning on the first Work Day after December 25 until
1223 January 22, or dates approved by the CITY. Such collection service shall be provided for
1224 Christmas trees placed outside of Carts on the street or curb, provided that Christmas Trees are
1225 cut into sections no longer than three (3) feet, as well as to Christmas trees that have been cut
1226 and placed into Organic Waste Carts by Service Recipients,

1227 7.07.1 Contaminated Christmas Trees. Christmas trees that are flocked or
1228 contain tinsel or other decorations may be delivered to the Disposal Facility at the discretion of
1229 the CONTRACTOR.

1230 7.08 Bulky Waste Collection Service. This service will be governed by the following terms
1231 and conditions:

1232 7.08.1 Conditions of Service. The CONTRACTOR shall provide SFD Bulky Waste
1233 Collection Service to all SFD Service Units in the Service Area whose Bulky Waste have been
1234 placed within five (5) feet of the curb, swale, paved surface of the public or private roadway,
1235 closest accessible roadway, or other such location agreed to by the CONTRACTOR and Service
1236 Recipient, that will provide safe and efficient accessibility to the CONTRACTOR'S collection crew
1237 and vehicle. Each SFD Service Unit in the Service Area shall be entitled to receive free Bulky
1238 Waste Collection Service a maximum of two (2) collection times per Agreement Year. Bulky
1239 Waste Collection Service shall be a combination of loose items not exceeding an approximate
1240 equivalent of four (4) cubic yards, plus three (3) additional individual Large Items such as a TV,
1241 couch, or water heater. White Goods and E-Waste will be included as eligible SFD Large Items.
1242 In accordance with the "Additional Bulky Waste Collection" service rate as set in **Exhibit 4**,
1243 CONTRACTOR shall be compensated for the cost of Collecting Large Items in excess of 1) a
1244 single collection of over four (4) cubic yards, 2) more than two (2) Bulky Waste Collections per
1245 year, or more than three (3) individual Large Items during any single Bulky Waste Collection.

1246 7.08.2 Frequency of Service. SFD Service Recipients must call at least forty-eight
1247 (48) hours in advance to schedule SFD Bulky Waste Collection Service. Collection will usually
1248 occur on the CONTRACTOR'S next scheduled Bulky Waste Collection day for the collection area
1249 the Service Unit is located in.

1250 7.09 Hard to Service Areas. Notwithstanding any term or definition set forth in this
1251 Agreement, CONTRACTOR, at service rates as set in **Exhibit 4**, shall collect SFD Garbage,
1252 Recyclable Materials, Organic Waste, and Bulky Waste from a SFD Service Unit where
1253 topography, street conditions, or limited street access prevents CONTRACTOR'S collection
1254 vehicle access for Collecting Garbage, Recycling, Organic Waste, and Large Items for collection.

1255 7.10 SFD Insta-Bin Collection Service. Within five (5) Work Days request by a SFD
1256 Service Unit for an Insta-Bin, CONTRACTOR shall provide an Insta-Bin at the Service Unit. Such

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1257 SFD Insta-Bin Collection Service shall be on a temporary basis not to exceed seven (7) days
1258 without collection, emptying, and replacement of the Insta-Bin.

1259 7.10.1 Charges for Insta-Bin shall be in accordance with **Exhibit 4** of this
1260 Agreement.

1261 7.10.2 The CONTRACTOR shall provide SFD Insta-Bin Collection Services with
1262 as little disturbance as possible without obstructing alleys, roadways, driveways, sidewalks, or
1263 mail boxes. CONTRACTOR shall only place Insta-Bins in strict adherence with the CITY'S right-
1264 of-way requirements and Municipal Code.

1265 **ARTICLE 8. Reserved**

1266 **ARTICLE 9. Reserved**

1267 **ARTICLE 10. SFD Collection Routes**

1268 10.01 SFD Collection Route Changes. The CONTRACTOR shall submit to the CITY, in
1269 writing, any proposed route change (including maps thereof) not less than sixty (60) calendar
1270 days prior to the proposed date of implementation. To the extent possible, CONTRACTOR will
1271 provide the map data in an electronic format that is compatible with the format used by the CITY.
1272 The CONTRACTOR shall not implement any route changes to SFD Service Recipients without
1273 the prior review of the City Representative. If the route change will change the collection day for
1274 a Service Recipient, the CONTRACTOR shall notify those Service Recipients in writing of route
1275 changes not less than thirty (30) days before the proposed date of implementation.

1276 **ARTICLE 11. Collection Vehicles**

1277 11.01 General Provisions. All Cart and Bin collection vehicles used by CONTRACTOR
1278 in the performance of services under this Agreement shall be of a high quality. CONTRACTOR
1279 shall replace or refurbish its Collection vehicles in accordance with the replacement/replacement
1280 protocol schedule set forth in **Exhibit 3**. When commercially feasible, CONTRACTOR may
1281 operate CNG fueled collection vehicles, and may utilize its CNG fueled collection vehicles to
1282 provide Collection; this CNG requirement will not apply to backup trucks or trucks typically used
1283 for manual collection (e.g., Bulky Items).

1284 11.02 Vehicle Registration, Licensing and Inspection. Upon request by the CITY,
1285 CONTRACTOR shall submit documentation to the CITY Representative to verify that each of the
1286 CONTRACTOR'S collection vehicles is in compliance with all registration, licensing and
1287 inspection requirements of the state, federal and local governmental agencies. Each vehicle shall
1288 comply, at all times, with all applicable statutes, laws or ordinances of any public agency.

1289 11.03 Clean Air Vehicles. During the term of this Agreement, to the extent required by
1290 law, CONTRACTOR shall provide for its collection vehicles to be in full compliance with all then-
1291 applicable local, state and federal clean air requirements, including, but not limited to, the
1292 California Air Resources Board Heavy Duty Engine Standards; the Federal EPA's Highway Diesel
1293 Fuel Sulfur regulations, and any other applicable air pollution control.

1294 11.04 On-Board Global Positioning Systems (GPS). CONTRACTOR may use collection
1295 vehicles equipped with on-board GPS systems that are linked to CONTRACTOR'S customer
1296 service systems.

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1297 11.05 Vehicle Noise Level. All collection operations shall be conducted as quietly as
1298 possible and must comply with U.S. EPA noise emission regulations currently codified at 40 CFR
1299 Part 205, and other applicable State, County, and CITY noise control regulations.

1300 11.06 Safety Equipment. All collection equipment used by CONTRACTOR shall have
1301 appropriate safety markings including, but not limited to, highway lighting, flashing and warning
1302 lights, clearance lights, and warning flags. All such safety markings shall be subject to the
1303 approval of the CITY (if different from the markings commonly used by CONTRACTOR) and shall
1304 be in accordance with the requirements of the California Vehicle Code, as may be amended from
1305 time to time. All collection vehicles shall be equipped with audible back-up warning devices and
1306 visual back-up warning devices.

1307 11.07 Vehicle Signage and Painting. Unless otherwise agreed to with the CITY,
1308 Collection vehicles shall have signage in letters of contrasting color, at least four (4) inches high,
1309 on each side and the rear of each vehicle that clearly states the CONTRACTOR'S name, the
1310 CONTRACTOR'S customer service telephone number, and the number of the vehicle. No
1311 advertising shall be permitted other than the name of the CONTRACTOR except promotional
1312 advertisement of the Recyclable Materials and Organic Waste programs. CONTRACTOR shall
1313 repaint all vehicles (including vehicles striping) during the term of this Agreement on a frequency
1314 as necessary to maintain a positive public image as reasonably determined by the City
1315 Representative, but CONTRACTOR shall not be required to repaint any vehicle more than once
1316 every eight (8) years.

1317 11.08 Vehicle Maintenance. CONTRACTOR shall maintain collection vehicles in a clean
1318 condition and in good repair at all times and ensure that no collected materials, oil, grease, or
1319 other substances will blow, fall out, escape or leak out of the vehicle, with the exceptions of vehicle
1320 emission. All parts and systems of the collection vehicles shall operate properly and be
1321 maintained in a condition reasonably satisfactory to CITY. CONTRACTOR shall wash all
1322 collection vehicles in a frequency to maintain a clean appearance.

1323 11.09 Maintenance Log. CONTRACTOR shall maintain a maintenance log for all
1324 collection vehicles. The log shall at all times be accessible to CITY by physical inspection upon
1325 request of City Representative, and shall show, at a minimum, each vehicles' CONTRACTOR
1326 assigned identification number, date purchased or initial lease, dates of performance of routine
1327 maintenance, dates of performance of any additional maintenance, and description of additional
1328 maintenance performed.

1329 11.10 Reserve Equipment. The CONTRACTOR shall have available to it, at all times,
1330 reserve collection equipment. Such reserve equipment shall have adequate capacity to perform
1331 the contractual duties.

1332 ARTICLE 12. Customer Service

1333 12.01 Customer Service Program. CONTRACTOR shall provide all customer service
1334 functions, and shall develop, implement, and maintain a Customer Service Program to ensure
1335 that all services provided under this Agreement are provided at high quality.

1336 12.02 CONTRACTOR'S Office. The CONTRACTOR shall maintain an office that
1337 provides local or toll-free telephone access to residents and businesses of the CITY and is staffed
1338 by trained and experienced Customer Service Representatives (CSRs). Such office shall be
1339 equipped with sufficient telephones that all Collection Service related calls received during normal
1340 business hours are answered and shall have responsible persons in charge during collection
1341 hours and shall be open during such normal business hours, 8:00 a.m. to 5:00 p.m. Monday

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1342 through Friday, except holidays. The CONTRACTOR shall provide either a telephone answering
1343 service or mechanical device to receive Service Recipient inquiries during those times when the
1344 office is closed. Calls received after normal business hours shall be addressed the next Work
1345 Day morning.

1346 12.03 Emergency Contact. The CONTRACTOR shall provide the CITY Representative
1347 with an emergency phone number where the CONTRACTOR can be reached outside of the
1348 required office hours with a two (2) hour response time.

1349 12.04 Multilingual/TDD Service. CONTRACTOR shall at all times maintain the capability
1350 of responding to telephone calls in English and Spanish.

1351 12.05 Service Recipient Calls. During office hours, CONTRACTOR shall maintain
1352 a telephone answering system capable of accepting at least ten (10) incoming calls at one (1)
1353 time. CONTRACTOR shall record all calls including any inquiries, service requests and
1354 complaints into a customer service log

1355 12.06 Website. CONTRACTOR shall develop and maintain a website dedicated to
1356 services provided in the CITY that is accessible by the public. The website shall include answers
1357 to frequently asked questions, listing and description of Recyclable Materials and Organic Waste,
1358 Collection Service schedules and maps, and other related topics. CONTRACTOR shall arrange
1359 for the CITY'S website to include an e-mail link to CONTRACTOR and a link to CONTRACTOR'S
1360 website. The CONTRACTOR'S website shall provide the public the ability to e-mail complaints to
1361 CONTRACTOR. The CONTRACTOR'S website shall also provide customers with the ability to
1362 request changes to service volume and collection frequency, and also the ability to request special
1363 services including Bulky Waste Collection. CONTRACTOR'S website shall also promote reuse
1364 and recycling. The CITY shall review with CONTRACTOR any changes to CONTRACTOR'S
1365 current website.

1366 ARTICLE 13. Public Outreach Services

1367 13.01 Public Outreach Services. The CITY and the CONTRACTOR will collaboratively
1368 develop a specific annual Waste Diversion and Sustainability Work Plan to guide the Contractor's
1369 waste diversion and sustainability support staff's work efforts. To accomplish this, by October 15th,
1370 the CONTRACTOR will submit their proposed Waste Diversion and Sustainability Work Plan
1371 covering proposed activities for the coming calendar year. The CITY may then confirm and/or
1372 work collaboratively with the CONTRACTOR to revise the Waste Diversion and Sustainability
1373 Annual Work Plan. CONTRACTOR shall submit the final Waste Diversion and Sustainability
1374 Annual Work Plan as part of their Annual Reports submitted in accordance with Section 15.02.2.

1375 13.01.1 The Waste Diversion and Sustainability Work Plan must include
1376 specific steps designed to increase diversion and participation for the CITY'S SFD Service Units
1377 and may include annual campaigns, billing inserts, newsletters, participation at public events, and
1378 sponsorship of Earth Day activities. Campaigns should target certain diverted materials or
1379 "problem" areas of the CONTRACTOR'S Service Area where improvements can be maximized.
1380 Targets of outreach should be based on local trends and recycling patterns based on information
1381 obtained by both the City Representative and CONTRACTOR staff. The CONTRACTOR shall
1382 provide space in CONTRACTOR'S public outreach materials, such as mailers, flyers and
1383 newsletters, for the CITY to include announcements, community information, articles, and
1384 photographs.

1385 13.01.2 CONTRACTOR's diversion and sustainability services in the CITY
1386 will include activities such as supporting recycling goals, and developing educational and

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1387 promotional materials. The CITY and the CONTRACTOR will develop in cooperation with one
1388 another, measurable goals for the CONTRACTOR's diversion and sustainability services.
1389 CONTRACTOR will be responsible for recycling and organic outreach in effort to educate
1390 customers on proper participation in diversion programs CONTRACTOR will focus their efforts on
1391 ensuring that the customers are equipped with the information needed to meet the CITY's
1392 diversion rate, which will include public outreach and education. The CONTRACTOR may
1393 supplement staff for the sustainability services with other employees of the CONTRACTOR who
1394 have skills and experience useful for the CITY's efforts regarding the waste reduction, waste
1395 diversion, Recycling, and Customer education programs.

1396 13.02 Sustainability Support Staff. CONTRACTOR will provide CONTRACTOR's staff
1397 resources to support waste diversion and sustainability programs.

1398 13.03 Annual Collection Service Notice. Each Agreement Year during the term of this
1399 Agreement, the CONTRACTOR shall publish and distribute notices to all SFD Service Units
1400 regarding the SFD Collection Service. To the extent appropriate, based on the category of
1401 customer receiving the notice, it shall contain at a minimum: definitions of the materials to be
1402 collected, procedures for setting out the materials, collection and disposal options for
1403 unacceptable materials such as Hazardous Waste, maps of the Service Area indicating the day
1404 of the week that Collection Service will be provided, and the CONTRACTOR's customer service
1405 phone number and website address. The notice shall be provided in English, and shall be
1406 distributed by the CONTRACTOR no later than April 1st of each Agreement Year.

1407 13.04 Additional Outreach Programs and Services. CONTRACTOR shall provide
1408 additional public outreach services and programs as requested by CITY at a price to be mutually
1409 agreed upon between the CONTRACTOR and the City Representative and included in Maximum
1410 Rates. In the event the CONTRACTOR and the City Representative cannot reach a mutually
1411 agreed upon price for the requested service or program, CITY shall have the right to procure the
1412 service of other vendors or contractors to provide the requested public outreach service.

1413 13.05 News Media Relations. When practicable, CONTRACTOR shall notify the City
1414 Representative by Fax, e-mail or phone of all requests for news media interviews related to the
1415 Collection Services program within twenty-four (24) hours of CONTRACTOR'S receipt of the
1416 request. When practicable, before responding to any inquiries involving controversial issues or
1417 any issues likely to affect participation or Service Recipient perception of services,
1418 CONTRACTOR will discuss CONTRACTOR'S proposed response with the City Representative.

1419 13.05.1 Copies of draft news releases or proposed trade journal articles
1420 CONTRACTOR related to the Collection Services program shall be submitted to CITY for prior
1421 review and approval at least five (5) Work Days in advance of release, except where
1422 CONTRACTOR is required by any law or regulation to submit materials to any regulatory agency
1423 in a shorter period of time, in which case CONTRACTOR shall submit such materials to CITY
1424 simultaneously with CONTRACTOR'S submittal to such regulatory agency.

1425 13.05.2 Copies of articles related to the Collection Services program
1426 resulting from media interviews or news releases shall be provided to the CITY within five (5)
1427 Work Days after publication.

1428 ARTICLE 14. Emergency Service Provisions

1429 14.01 Emergency Services. In the event of a tornado, major storm, earthquake, fire,
1430 natural disaster, or other such event, the City Representative may grant the CONTRACTOR a
1431 variance from regular routes and schedules. As soon as practicable after such event, the

1432 CONTRACTOR shall advise the City Representative when it is anticipated that normal routes and
1433 schedules can be resumed. The City Representative shall make an effort through the local news
1434 media to inform the public when regular services may be resumed. The clean-up from some
1435 events may require that the CONTRACTOR hire additional equipment, employ additional
1436 personnel, or work existing personnel on overtime hours to clean debris resulting from the event.
1437 The CONTRACTOR shall receive additional compensation, above the normal compensation
1438 contained in this Agreement, to cover the costs of rental equipment, additional personnel,
1439 overtime hours and other documented expenses based on the rates set forth in **Exhibit 4** to this
1440 Agreement provided the CONTRACTOR has first secured written authorization and approval from
1441 the CITY through the City Representative.

1442 ARTICLE 15. Record Keeping & Reporting Requirements

1443 15.01 Record Keeping.

1444 15.01.1 Accounting Records. CONTRACTOR shall maintain full and
1445 complete financial, statistical and accounting records as required by this Agreement. Such
1446 records shall be subject to audit and inspection with prior sixty (60) days written request by the
1447 CITY. These records shall be distinguished from other records maintained by CONTRACTOR for
1448 the provision of other services outside the scope of this Agreement. CONTRACTOR shall
1449 maintain and preserve all applicable records for a period of not less than five (5) years following
1450 the close of each of the CONTRACTOR'S fiscal years.

1451 15.01.2 Tonnage Records. CONTRACTOR shall maintain records of the
1452 quantities of (i) Garbage, Recyclable Material, and Organic Waste collected, processed,
1453 composted, and disposed under the terms of this Agreement, and (ii) Recyclable Materials and
1454 Organic Waste, by material type, purchased, sold, donated or given for no compensation, and
1455 residue disposed.

1456 15.01.3 Records. CONTRACTOR shall maintain all other records
1457 reasonably related to provision of Collection Services, whether or not specified in this Article 15
1458 or elsewhere in the Agreement.

1459 15.02 Reporting Requirements. Quarterly reports shall be submitted to the City
1460 Representative no later than thirty (30) calendar days after the end of the reporting quarter (i.e.,
1461 May 1, August 1, October 1, February 1), and annual reports shall be submitted to the City
1462 Representative no later than forty-five (45) days after the end of each preceding Agreement Year
1463 (i.e., February 15th for the preceding calendar year). Quarterly and annual reports shall be
1464 submitted in hard copy, and shall be provided electronically via e-mail. Reports shall be submitted
1465 in a format mutually agreed upon between the CITY and CONTRACTOR.

1466 15.02.1 Quarterly Reports. Quarterly reports to the CITY shall include:

1467 15.02.1.1 Garbage, Recycling, and Organic Waste Data. A listing of
1468 the tonnage from all Collection Services, including Bulky Waste Collection Service, collected,
1469 diverted and disposed by the CONTRACTOR for the preceding quarter. All tonnage data should
1470 be compared to the corresponding tonnage data from the prior year comparable period.

1471 15.02.1.2 Diversion Rate. CONTRACTOR shall provide
1472 documentation stating and supporting the calendar quarter's diversion rate, as calculated in
1473 accordance with the provisions of Article 5.

1474 15.02.1.3 Property Damage or Injury. Indicate instances of property
1475 damage or injury caused by CONTRACTOR to Service Recipients.

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1476 15.02.1.4 Overweight Collection Vehicles. During normal collection
1477 activities (i.e., excluding periods of heavy rain), the number of incidents CONTRACTOR operated
1478 a collection vehicle on CITY streets that exceeds, by more than two thousand (2,000) pounds,
1479 the maximum weight allowed under the California Vehicle Code for such vehicle.

1480 15.02.1.5 Gross Revenue and Franchise Fees. A summary of the
1481 prior quarter's Gross Receipts and franchise fees.

1482 15.02.2 Annual Reports. The annual report submitted to the CITY shall
1483 include the information required for quarterly reports in Sections 15.02.1.1 through 15.02.1.5
1484 summarized by quarter and averaged for the Agreement Year. For all annual reports beginning
1485 with the report for the second Agreement Year, the CONTRACTOR shall also include a historical
1486 comparison of the last Agreement Year and the average of all Agreement Years. The annual
1487 reports shall also specifically include:

1488 15.02.2.1 Public Education and Information Activities. CONTRACTOR
1489 shall report on all public education and information activities undertaken during the period,
1490 including distribution of bill inserts, collection notification tags, community information and events,
1491 and other activities related to the provision of Collection Services. This report shall discuss the
1492 impact of these activities on Recycling and Organic Waste program participation and provide
1493 details of events and activities planned for the next period.

1494 15.02.2.2 Processing and Marketing Data. Recycling and Organic
1495 Waste processing and marketing issues or conditions occurring during the previous quarter (such
1496 as participation, setouts, contamination, etc.) and possible solutions.

1497 15.02.2.3 Customer Service Data. Upon request by the CITY, a copy
1498 of the customer service log, including a summary of the type and number of praises, complaints
1499 and their resolution, and problems encountered with collection and processing activities and
1500 actions taken. Copies of a written record of all calls related to missed pickups and responses to
1501 such calls as well as type and number of Notices left at Service Recipient locations

1502 15.02.2.4 Gross Revenue and Franchise Fees. A summary of the
1503 prior year's Gross Receipts and franchise fees paid broken down by the type Service Units.

1504 15.02.2.5 Account Data. Account data broken down by the type of
1505 Service Units including the total number of accounts serviced, and the number of accounts,
1506 account names and addresses of collection locations per each service category.

1507 15.03 Additional Reporting. The CONTRACTOR shall furnish the CITY with any
1508 additional reports as may reasonably be requested by CITY, such reports to be prepared within
1509 a reasonable time following the request. In addition, CONTRACTOR shall furnish to CITY
1510 information regarding CONTRACTOR'S activities under this Agreement that is needed for CITY
1511 to prepare its reports to CalRecycle.

1512 ARTICLE 16. Nondiscrimination

1513 16.01 Nondiscrimination. In the performance of all work and services under this
1514 Agreement, CONTRACTOR shall not unlawfully discriminate against any person on the basis of
1515 such person's race, sex, color, national origin, religion, marital status, age, disability or sexual
1516 orientation. CONTRACTOR shall comply with all applicable local, state and federal laws and
1517 regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

1518 **ARTICLE 17. Service Inquiries and Complaints**

1519 17.01 CONTRACTOR'S Customer Service. CONTRACTOR shall at all times
1520 provide office staff and office hours, including personnel to answer phones and phone answering
1521 capabilities when CONTRACTOR'S office is closed, as specified in Article 12 of this Agreement.
1522 All service inquiries and complaints regarding CONTRACTOR'S services shall be directed to the
1523 CONTRACTOR. A representative of the CONTRACTOR shall be available to receive the
1524 complaints during normal business hours. All service complaints will be handled by the
1525 CONTRACTOR in a prompt, courteous, and efficient manner. In the case of a dispute between
1526 the CONTRACTOR and a Service Recipient, the matter will be reviewed and a decision made by
1527 the City Representative.

1528 17.01.1 The CONTRACTOR will utilize a customer service log to maintain
1529 a record of all inquiries and complaints in a format agreed to by the CITY.

1530 17.01.2 For those complaints related to missed Collections that are received
1531 by 12:00 noon on a Work Day, the CONTRACTOR will return to the Service Unit address and
1532 collect the missed Carts or Bins before leaving the Service Area for the day. For those complaints
1533 related to missed collections that are received after 12:00 noon on a Work Day, the
1534 CONTRACTOR shall have until the end of the following Work Day to resolve the complaint. For
1535 those complaints related to repair or replacement of carts or bins, the appropriate Articles of this
1536 Agreement shall apply.

1537 17.01.3 CONTRACTOR agrees that it is in the best interest of the CITY that
1538 all Garbage, Recyclable Materials, and Organic Waste be collected on the scheduled collection
1539 day. Accordingly, missed Collections will normally be collected as set forth herein regardless of
1540 the reason that the collection was missed. However, in the event a Service Recipient reports
1541 missed collection service more than two (2) times in any consecutive two (2) month period the
1542 City Representative will work with the CONTRACTOR to determine an appropriate resolution to
1543 that situation. In the event the CONTRACTOR believes any complaint to be without merit,
1544 CONTRACTOR shall notify the City Representative, either by Fax or e-mail. The City
1545 Representative will investigate all disputed complaints and render a decision.

1546 **ARTICLE 18. Quality of Performance of Contractor**

1547 18.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY'S primary
1548 goals in entering into this Agreement is to ensure that the Collection Services are of the highest
1549 caliber, that Service Recipient satisfaction remains at the highest level, that required diversion
1550 levels are achieved, and that materials collected are reasonably put to the highest and best use
1551 to the extent feasible.

1552 18.02 Service Supervisor. CONTRACTOR has designated a supervisor to be in charge
1553 of the Collection Service within the Service Area. As soon as practicable before replacing the
1554 designated supervisor, CONTRACTOR shall notify CITY in writing of the name and qualifications
1555 of the new service supervisor. CONTRACTOR shall ensure that such replacement is an individual
1556 with sufficient qualifications and experience. The supervisor shall be available to the City
1557 Representative through the use of a mobile telephone at all times that CONTRACTOR is providing
1558 Collection Services. In the event the supervisor is unavailable due to illness or vacation,
1559 CONTRACTOR shall designate an acceptable substitute who shall be available and who has the
1560 authority to act in the same capacity as the supervisor. The service supervisor shall provide the
1561 CITY with an emergency phone number where the supervisor can be reached outside of normal
1562 business hours.

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1563 18.03 Liquidated Damages. The parties further acknowledge that consistent and reliable
 1564 Collection Service is of utmost importance to CITY and that CITY has considered and relied on
 1565 CONTRACTOR'S representations as to its quality of service commitment in awarding the
 1566 Agreement to it. The parties further recognize that some quantified standards of performance are
 1567 necessary and appropriate to ensure consistent and reliable service and performance. The parties
 1568 further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to
 1569 submit required documents in a timely manner, CITY, and CITY'S residents and businesses will
 1570 suffer damages and that it is and will be impractical and extremely difficult to ascertain and
 1571 determine the exact amount of damages. Therefore, without prejudice to CITY'S right to treat
 1572 such non-performance as an event of default under Article 23, the parties agree that the liquidated
 1573 damages amount defined in this Article represent reasonable estimates of the amount of such
 1574 damages considering all of the circumstances existing on the effective date of this Agreement,
 1575 including the relationship of the sums to the range of harm to CITY, customers and the community
 1576 as a whole that reasonably could be anticipated and the anticipation that proof of actual damages
 1577 would be costly or impractical. In placing their initials at the places provided, each party
 1578 specifically confirms the accuracy of the statements made above and the fact that each party has
 1579 had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated
 1580 damage provisions at the time that the Agreement was made.

1581 CITY Initial Here MO CONTRACTOR Initial Here [Signature]
 1582 CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the following amounts:

LIQUIDATED DAMAGES			
Item		Amount if Not Cured in 30 Days	If Cured in 15 Days
a.	Failure to respond to each complaint within three (3) Work Days of receipt of complaint.	\$100 per incident per Service Recipient.	
b.	Failure to maintain call center hours as required by this Agreement.	\$100 per day.	-0-
c.	Failure to submit to CITY all reports by the deadlines required under the provisions of this Agreement.	\$100 per day.	-0-
d.	Failure to display CONTRACTOR'S name and customer service phone number on collection vehicles.	\$100 per incident per day.	-0-
e.	Failure to collect a missed collection by close of the next Work Day upon notice to CONTRACTOR.	\$100 per incident per day.	-0-
f.	Failure to repair or replace damaged Containers to deliver or exchange Containers within the time required by this Agreement.	\$100 per incident per day.	
g.	Failure to maintain collection hours as required by this Agreement.	\$250 per incident per day.	-0-
h.	Failure to have CONTRACTOR personnel in CONTRACTOR-provided uniforms.	\$250 per incident per day.	-0-

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LIQUIDATED DAMAGES			
Item		Amount if Not Cured in 30 Days	If Cured in 15 Days
i.	Failure to clean up spillage or litter on public streets located within CITY caused by CONTRACTOR's collection vehicles within two (2) hours after notice by CITY to CONTRACTOR.	\$500 per incident per location.	Cannot be cured
j.	Disposal of separately collected Recyclable Materials or separately collected Organic Waste in the Disposal Facility without first obtaining the required permission of the CITY.	\$500 per load.	Cannot be cured
k.	Failure to deliver Garbage collected under this Agreement to the Disposal Facility, except as otherwise expressly provided in this Agreement.	\$5,000 each failure.	Cannot be cured
l.	Failure to meet the minimum annual diversion requirements set forth in Section 5.	The current disposal cost/ton for each ton under the diversion requirement.	Cannot be cured
m.	Failure to submit Franchise Fee in accordance with Section 4.06.1.	2.5% of the unpaid amount due or \$250 per month, whichever amount is higher	Cannot be cured

1583 18.04 Procedure for Review of Liquidated Damages. The City Representative may
 1584 assess liquidated damages pursuant to this Article 18 on a monthly basis. The City
 1585 Representative may issue a written notice to CONTRACTOR ("Notice of Assessment") of the
 1586 liquidated damages assessed and the basis for each assessment. In order for liquidated damages
 1587 to be assessed with respect to any item listed above that cannot be cured, the Notice of
 1588 Assessment with respect to that item must be sent within 12 months after the item occurred.

1589 18.04.1 If CONTRACTOR cures those items within fifteen (15) Work Days
 1590 of receipt of the Notice of Assessment, then the Assessment shall be deemed to be cleared and
 1591 no Liquidated Damages will be assessed.

1592 18.04.2 For items that cannot be cured or are not cured within fifteen (15)
 1593 Work Days, the assessment shall become final unless, within thirty (30) Wok Days of the date of
 1594 the notice of assessment, CONTRACTOR provides a written request for a meeting with the City
 1595 Representative to present evidence that the assessment should not be made.

1596 18.04.3 The City Representative shall schedule a meeting between
 1597 CONTRACTOR and the City Manager or the City Manager's designee as soon as reasonably
 1598 possible after timely receipt of CONTRACTOR'S request.

1599 18.04.4 The City Manager or the City Manager's designee shall review
 1600 CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated damages
 1601 as soon as reasonably possible after the meeting. Written notice of the decision shall be provided
 1602 to CONTRACTOR.

1603 18.04.5 In the event CONTRACTOR does not submit a written request for
1604 a meeting within thirty (30) calendar days of the date of the Notice of Assessment, the City
1605 Representative's determination shall be final and CONTRACTOR shall submit payment to CITY
1606 no later than fifteen (15) calendar days following final determination. Or at the sole option of CITY,
1607 if monies are owed to CONTRACTOR, CITY may deduct the liquidated damages from amounts
1608 otherwise due to CONTRACTOR.

1609 18.04.6 CITY'S assessment or collection of liquidated damages shall not
1610 prevent CITY from exercising any other right or remedy, including the right to terminate this
1611 Agreement, for CONTRACTOR'S failure to perform the work and services in the manner set forth
1612 in this Agreement.

1613 18.05 General Contingency Plan. In conjunction with the execution of this Agreement,
1614 CONTRACTOR shall develop and provide a General Contingency Plan to address
1615 CONTRACTOR's program to minimize disruption of service during a labor disruption. The
1616 Contingency Plan shall be provided to CITY sixty (60) days prior to the Service Commencement
1617 Date.

1618 ARTICLE 19. Contract Compliance and Performance 1619 Reviews

1620 19.01 Contract Compliance and Performance Review

1621 19.01.1 Selection and Cost. The CITY may conduct up to two (2) contract
1622 compliance and performance reviews ("review") of the CONTRACTOR'S performance during the
1623 term of this Agreement: one conducted prior to the first five (5) year extension contemplated by
1624 Section 2.02, and one prior to the second five (5) year extension contemplated by Section 2.02.
1625 Such reviews paid for by CONTRACTOR will only be conducted if CONTRACTOR requests the
1626 applicable five (5) year extension. The reviews will be performed by a qualified firm under contract
1627 to the CITY. The CITY shall have the final responsibility for the selection of the firm but shall seek
1628 and accept comments and recommendations from the CONTRACTOR. CONTRACTOR will be
1629 responsible for reimbursing the cost of CITY's consultant up to a maximum of **Thirty Thousand**
1630 **Dollars (\$30,000.00)** per review, and starting in Agreement Year 2020 this amount will be
1631 adjusted annually by the same percentage change as the percentage change in CONTRACTOR's
1632 Maximum Service Rates under Section 4.02.

1633 19.01.2 Purpose. The review shall be designed to verify CONTRACTOR'S
1634 compliance with the reporting requirements and performance standards of the Collection Service
1635 Agreement, and verify the diversion percentages reported by the CONTRACTOR. The CITY (or
1636 its designated consultant) may utilize a variety of methods in the execution of the contract
1637 compliance and performance review, including, but not limited to, analysis of relevant documents,
1638 on-site and field observations, and interviews. The CITY (or its designated consultant) will review
1639 and document the items in the Agreement that require the CONTRACTOR to meet specific
1640 performance standards, submit information or reports, perform additional services, or document
1641 operating procedures, that can be objectively evaluated.

1642 19.01.3 CONTRACTOR'S Cooperation. CONTRACTOR shall cooperate
1643 fully with the review and provide all requested data required to be provided herein, including
1644 operational data and other data reasonably requested by the CITY within thirty (30) Work Days.
1645 Failure of the CONTRACTOR to cooperate or provide the requested documents in the required
1646 time shall be considered an event of default.

1647 19.01.4 Additional Contract Compliance and Performance Review. In the
1648 event that the Contract Compliance and Performance Review concludes that CONTRACTOR is
1649 not in compliance with all terms and conditions of this Agreement and such non-compliance is
1650 material, the CITY may conduct an Additional Contract Compliance and Performance Review to
1651 ensure that CONTRACTOR has cured any such area of non-compliance. CONTRACTOR shall
1652 be responsible for the cost of any such Additional Contract Compliance and Performance Review,
1653 subject to the maximum in Section 19.01.1.

1654 19.02 Cooperation with Other Program Reviews. If the CITY wants to collect program
1655 data, perform field work, conduct route audits to investigate customer participation levels and
1656 setout volumes and/or evaluate and monitor program results related to Garbage, Recyclable
1657 Materials and Organic Waste collected in the CITY by the CONTRACTOR, the CONTRACTOR
1658 shall cooperate with the CITY or its agent(s) as reasonably requested by CITY, provided that such
1659 cooperation can be accomplished at no additional cost to CONTRACTOR and without interfering
1660 with CONTRACTOR'S operations.

1661 ARTICLE 20. Performance Bond

1662 20.01 Performance Bond. A performance bond must be furnished by the
1663 CONTRACTOR within fifteen (15) calendar days of notification to the CONTRACTOR that the
1664 Agreement has been executed. The CONTRACTOR shall furnish to the CITY, and keep current,
1665 a performance bond in a form with language that is reasonably acceptable to the CITY, for the
1666 faithful performance of this Agreement and all obligations arising hereunder in an amount of **One**
1667 **Million Dollars (\$1,000,000.00).**

1668 20.02 Renewal. Beginning on the Service Commencement Date, and each October 1st
1669 thereafter, CONTRACTOR shall have the performance bond renewed annually and be executed
1670 by a surety company that is an admitted surety company licensed to do business in the State of
1671 California and has an "A:VII" or better rating by A. M. Best or Standard and Poor's, or that is
1672 otherwise acceptable to CITY.

1673 20.03 Letter of Credit. As an alternative to the performance bond required by Section
1674 20.01, CONTRACTOR may request that it deposit with CITY an irrevocable letter of credit in an
1675 amount as set forth in Section 20.01. CITY will have sole discretion whether to allow a Letter of
1676 Credit in lieu of the performance bond. If allowed, the letter of credit must be issued by an FDIC
1677 insured banking institution chartered to do business in the State of California, in the CITY'S name,
1678 and be callable at the discretion of the CITY. Nothing in this Article shall, in any way, obligate the
1679 CITY to accept a letter of credit in lieu of the performance bond.

1680 ARTICLE 21. Insurance

1681 21.01 Insurance Policies. CONTRACTOR shall secure and maintain throughout the term
1682 of this Agreement insurance against claims for injuries to persons or damages to property, which
1683 may arise from or in connection with CONTRACTOR'S performance of work or services under
1684 this Agreement. CONTRACTOR'S performance of work or services shall include performance by
1685 CONTRACTOR'S employees, agents, representatives and subcontractors.

1686 21.02 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

1687 21.02.1.1 Commercial General Liability: Insurance Services Office
1688 (ISO) Occurrence Form CG 0001 or its equivalent, or, if approved by CITY, Claims Made Form

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1689 No. CG 0002. Automobile Liability: Insurance Services Office Form No. CA 0001, or its
1690 equivalent, code 1 "any auto".

1691 21.02.2 Workers' Compensation Insurance as required by the State of
1692 California and Employers Liability Insurance.

1693 21.02.3 Hazardous Waste and Environmental Impairment Liability
1694 Insurance.

1695 21.03 Minimum Limits of Insurance. CONTRACTOR shall maintain insurance limits no
1696 less than:

1697 21.03.1 Commercial General Liability: **Five Million Dollars (\$5,000,000.00)**
1698 combined single limit per occurrence, **Ten Million Dollars (\$10,000,000.00)** annual aggregate;
1699 including products and completed operations coverage.

1700 21.03.2 Automobile Liability: **Five Million Dollars (\$5,000,000.00)**
1701 combined single limit per accident for bodily injury and property damage.

1702 21.03.3 Workers' Compensation and Employers Liability: Workers'
1703 Compensation insurance as required by the State of California, with statutory limits, and
1704 Employers Liability insurance with limits of **One Million Dollars (\$1,000,000.00)** per accident.

1705 21.03.4 Hazardous Waste and Environmental Impairment Liability: **Ten**
1706 **Million Dollars (\$10,000,000.00)** per occurrence, **Twenty Million Dollars (\$20,000,000.00)**
1707 policy aggregate covering liability arising from the release of waste materials and/or irritants,
1708 contaminants or pollutants. Such coverage shall, if commercially available without involvement of
1709 CITY, automatically broaden in its form of coverage to include legislated changes in the definition
1710 of waste material and/or irritants, contaminants or pollutants.

1711 21.04 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention
1712 shall be for the account of the CONTRACTOR and paid entirely by CONTRACTOR without
1713 contribution from the CITY.

1714 21.05 Endorsements. The liability policies are to contain, or be endorsed to contain, the
1715 following provisions:

1716 21.05.1 The CITY, its officers, employees, agents and volunteers are to be
1717 covered as additional insureds with respect to liability arising out of automobiles owned, leased,
1718 hired or borrowed by or on behalf of CONTRACTOR; products and completed operations of
1719 CONTRACTOR; liability arising out of work or operations performed by or on behalf of the
1720 CONTRACTOR, including material parts or equipment furnished in connection with such work or
1721 operations; and with respect to Hazardous Waste, Pollution and/or Environmental Impairment
1722 Liability.

1723 21.05.2 As respects to the services provided by CONTRACTOR under this
1724 Agreement, CONTRACTOR'S insurance coverage (except for Workers' Compensation) shall be
1725 primary insurance as respects CITY, its officers, officials, employees, agents and volunteers. Any
1726 insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents or
1727 volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.

1728 21.05.3 The CONTRACTOR'S insurance shall apply separately to each
1729 insured against whom claim is made or suit is brought, except with respect to the limits of the
1730 insurer's liability, and except for Workers' Compensation cover.

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1731 21.05.4 The Automobile Liability policy shall be endorsed to delete the
1732 Pollution and/or the Asbestos exclusion, or documentation that the CONTRACTOR carries
1733 environmental pollution liability coverage for Solid Waste transported by the CONTRACTOR. The
1734 Automobile Liability policy shall also be endorsed to add the Motor Carrier act endorsement
1735 (MCS-90) TL 1005, TL 1007 and /or other endorsements required by federal or state authorities.

1736 21.06 Waiver of Subrogation CONTRACTOR hereby agrees to waive subrogation
1737 against CITY which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of
1738 the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be
1739 necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be
1740 endorsed with a waiver of subrogation in favor of the CITY for all work performed by the
1741 CONTRACTOR, its employees, agents and subcontractors.

1742 21.07 Cancellation. Each insurance policy required by this clause shall be occurrence-
1743 based or an alternate form as approved by the CITY and endorsed to state that coverage shall
1744 not be cancelled except after thirty (30) days' prior written notice has been given to the CITY. Ten
1745 (10) days' notice applies to cancellation due to non-payment of premium.

1746 Any failure to comply with reporting provisions of the policies shall not affect
1747 CONTRACTOR'S obligations to CITY, its officers, officials, employees, agents or volunteers.

1748 21.08 Claims Made Coverage. If General Liability or Hazardous Waste and
1749 Environmental Impairment Liability coverage is written on a claims-made from:

1750 1. The "Retro Date" must be shown, and must be before the date of the contract or
1751 the beginning of contract work.

1752 2. Insurance must be maintained and evidence of insurance must be provided for at
1753 least five (5) years after completion of the contract of work

1754 3. If coverage is canceled or non-renewed, and not replaced with another claims-
1755 made policy form with a "Retro Date" prior to the contract effective date, the
1756 CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5)
1757 years after completion of contract work.

1758 21.09 Acceptability of Insurers. Insurance is to be placed with insurers licensed to
1759 transact business in California with a current A.M. Best's rating of no less than A:VII. If pollution
1760 and/or Environmental Impairment and/or Umbrella/Excess coverage are not available from an
1761 admitted insurer, the coverage may be written with the CITY'S permission, by a non-admitted
1762 insurance company. A Non-admitted company should have an A.M. Best's rating of A:X or higher

1763 21.10 Verification of Coverage. CONTRACTOR shall furnish the CITY with original
1764 certificates and amendatory endorsements effecting coverage required by this clause. All
1765 certificates and endorsements are to be received and approved by the CITY before work
1766 commences. However, failure to obtain the required documents prior to the work beginning shall
1767 not waive the CONTRACTOR'S obligation to provide them.

1768 21.11 Subcontractors. CONTRACTOR shall include all subcontractors as insureds
1769 under its policies or require and verify that all subcontractors maintain insurance meeting all the
1770 requirements of this contract.

1771 21.11.1 Proof of insurance shall be mailed to the following address or any
1772 subsequent address as may be directed in writing by the CITY.

1773 **City of Chico**
1774 **Attn: Risk Manager**
1775 **P.O. Box 3420**
1776 **Chico, CA 95927**
1777

1778 21.12 Modification of Insurance Requirements. The insurance requirements provided in
1779 this Agreement may be modified or waived by the CITY, in writing, upon the request of
1780 CONTRACTOR, if the CITY determines such modification or waiver is in the best interest of CITY
1781 considering all relevant factors, including exposure to CITY.

1782 **ARTICLE 22. Indemnification**

1783 22.01 Indemnification of the CITY. CONTRACTOR shall defend, with counsel
1784 reasonably acceptable to the CITY, indemnify and hold harmless, to the fullest extent allowed by
1785 law, CITY, its officers, officials, employees, volunteers, agents and assignees (collectively,
1786 "Indemnitees"), from and against any and all loss, liability, penalties, forfeitures, claims, demands,
1787 actions, proceedings or suits, in law or in equity, of every kind and description, (including, but not
1788 limited to, injury to and death of any person and damage to property, or for contribution or
1789 indemnity claimed by third parties) (collectively, "Loss") arising or resulting from: (i) the negligent
1790 action or omission of the CONTRACTOR, its agents, employees, and/or subcontractors, in
1791 exercising the privileges granted to it by this Agreement; (ii) the failure of the CONTRACTOR, its
1792 agents, employees, and/or subcontractors to comply in all respects with the provisions and
1793 requirements of this Agreement, applicable laws, ordinances and regulations, and/or applicable
1794 permits and licenses; and (iii) the acts of CONTRACTOR, its agents, employees, and/or
1795 subcontractors in performing services under this Agreement for which strict liability is imposed by
1796 law. The foregoing indemnity shall apply regardless of whether such Loss is also caused in part
1797 by any of the Indemnitees' negligence.

1798 The indemnities set forth in this Section shall not be limited by the insurance requirements
1799 set forth in the Agreement.

1800 CONTRACTOR's indemnification of Indemnitees will not include indemnification for
1801 Losses which arise as the result of the active negligence of Indemnitees, or the sole negligence
1802 or willful misconduct of Indemnitees.

1803 22.02 The CONTRACTOR'S obligation to defend, hold harmless, and indemnify shall not
1804 be excused because of the CONTRACTOR'S inability to evaluate liability or because the
1805 CONTRACTOR evaluates liability and determines that the CONTRACTOR is not liable to the
1806 claimant. The CONTRACTOR must respond within thirty (30) days to the tender of a claim for
1807 defense and indemnity by the CITY, unless this time has been extended by the CITY. If the
1808 CONTRACTOR fails to accept or reject a tender of defense and indemnity within thirty (30) days,
1809 in addition to any other remedy authorized by law, so much of the money due the CONTRACTOR
1810 by virtue of this Agreement as shall reasonably be considered necessary by the CITY, may be
1811 retained by the CITY until final disposition has been made or the claim or suit for damages, or
1812 until the CONTRACTOR accepts or rejects the tender of defense, whichever occurs first.

1813 With respect to third party claims against the CONTRACTOR indemnifiable under Section
1814 22.01, the CONTRACTOR waives any and all rights of any type to express or implied indemnity
1815 against the Indemnitees.

1816 22.03 Hazardous Substances Indemnification. The CONTRACTOR shall indemnify,
1817 defend with counsel reasonably acceptable to the CITY, and hold harmless the Indemnitees from

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1818 and against all claims, damages (including but not limited to special, consequential, natural
1819 resources and punitive damages), injuries, hazardous materials response, remediation and
1820 removal costs, losses, demands, liens, liabilities, causes of action, suits, legal or administrative
1821 proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and
1822 expenses (including but not limited to attorney's and expert witness fees and costs incurred in
1823 connection with defending against any of the foregoing or enforcing this indemnity) of any kind
1824 whatsoever paid, incurred or suffered by, or asserted against CITY or its officers, officials,
1825 employees, agents, assigns, or successors (collectively, "Claims") arising from or attributable to
1826 any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial,
1827 response, closure or other plan (regardless of whether undertaken due to governmental action)
1828 concerning any Hazardous Waste released, spilled or disposed of by CONTRACTOR under this
1829 Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section
1830 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section
1831 25364, to defend, hold harmless and indemnify the CITY from liability. Notwithstanding the
1832 foregoing, CONTRACTOR is not required to indemnify, defend or hold harmless under this
1833 paragraph against Claims arising from CONTRACTOR'S delivery of materials collected under this
1834 Agreement to any processing, disposal, transfer or other facilities, or their handling at such
1835 facilities or subsequent delivery to other locations, unless such Claims are due to
1836 CONTRACTOR'S negligence or willful misconduct.

1837 22.04 CalRecycle Diversion Goals. CONTRACTOR agrees to indemnify, hold harmless,
1838 and defend CITY, with counsel selected by CONTRACTOR and reasonably acceptable to CITY,
1839 from and against all fines or penalties imposed by the California Department of Resources
1840 Recycling and Recovery ("CalRecycle") due to CITY'S failure to meet the mandated diversion
1841 goals specified in California Public Resources Code Section 41780 (as amended) with respect to
1842 the materials collected by CONTRACTOR, if and to the extent the failure to meet such goals
1843 results from the failure of the CONTRACTOR to perform its obligations under this Agreement.

1844 22.05 Consideration. It is specifically understood and agreed that the consideration
1845 inuring to the CONTRACTOR for the execution of this Agreement consists of the promises,
1846 payments, covenants, rights and responsibilities contained in this Agreement.

1847 22.06 Obligation. The execution of this Agreement by the CONTRACTOR shall obligate
1848 the CONTRACTOR to comply with the foregoing indemnification provisions; however, the
1849 collateral obligation of providing insurance must also be fully complied with as set forth in Article
1850 21 above.

1851 22.07 Exception. Notwithstanding Sections 22.01, 22.02, 22.03 and 22.04,
1852 CONTRACTOR'S obligation to indemnify, hold harmless and defend the Indemnitees shall not
1853 extend to any Loss or Claims to the extent arising or resulting from acts or omissions constituting
1854 willful misconduct or negligence on the part of Indemnitees.

1855 22.08 Damage by CONTRACTOR. If CONTRACTOR'S employees or subcontractors
1856 cause any damage or loss to CITY property, including but not limited to CITY streets or curbs,
1857 other than as a result of ordinary wear and tear, then CONTRACTOR shall repair such property
1858 to the reasonable satisfaction of CITY, at CONTRACTOR'S sole cost and expense. If
1859 CONTRACTOR fails to do so within a reasonable period after CITY notifies CONTRACTOR of
1860 the damage or loss, then CITY may affect the repair, and CONTRACTOR shall reimburse CITY
1861 for CITY'S reasonable cost of repairing such damage or loss. Such reimbursement is not in
1862 derogation of any right of CITY to be indemnified by CONTRACTOR for any such damage or loss.

1863 **ARTICLE 23. Default of Agreement**

1864 23.01 Termination By CITY. The CITY may terminate this Agreement, except as
1865 otherwise provided below in this Article, by giving the CONTRACTOR thirty (30) calendar days
1866 advance written notice, to be served as provided in Article 40, upon the happening of any one of
1867 the following events:

1868 23.01.1 The CONTRACTOR shall take the benefit of any present or future
1869 insolvency statute, or shall make a general assignment for the benefit of creditors, or file a
1870 voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its
1871 reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or
1872 under any other law or statute of the United States or any state thereof, or consent to the
1873 appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

1874 23.01.2 By order or decree of a Court, the CONTRACTOR shall be
1875 adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or
1876 by any of the stockholders of the CONTRACTOR, seeking its reorganization or the readjustment
1877 of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United
1878 States or of any state thereof, and such judgment or order is not stayed or vacated within sixty
1879 (60) calendar days after the entry thereof; or

1880 23.01.3 By, or pursuant to, or under the authority of any legislative act,
1881 resolution or rule or any order or decree of any Court or governmental board, agency or officer
1882 having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or
1883 substantially all of the property of the CONTRACTOR, and such possession or control shall
1884 continue in effect for a period of sixty (60) calendar days; or

1885 23.01.4 The CONTRACTOR has defaulted, by failing or refusing to pay in a
1886 timely manner the liquidated damages or other monies due the CITY and said default is not cured
1887 within thirty (30) calendar days of receipt of written notice by the CITY to do so; or

1888 23.01.5 CONTRACTOR has defaulted, by failing or refusing to perform or
1889 observe its obligations under this Agreement, and said default is not cured within thirty (30)
1890 calendar days of receipt of written notice from the CITY to do so. If by reason of the nature of
1891 such default, the same cannot be remedied within thirty (30) calendar days following receipt by
1892 the CONTRACTOR of written demand from the CITY to do so, then the cure period shall be
1893 extended for such additional period as is reasonably required to cure the default, provided that
1894 the CONTRACTOR commences the remedy of such default within said thirty (30) calendar days
1895 following such written notice, and having so commenced thereafter continues with diligence the
1896 curing thereof. In any dispute concerning failure to commence remedying a default or diligence
1897 in pursuing a cure, the CONTRACTOR shall have the burden of proof to demonstrate (a) that the
1898 default cannot reasonably be cured within thirty (30) calendar days, and (b) that it is proceeding
1899 with diligence to cure said default, and such default will be cured within a reasonable period of
1900 time.

1901 23.02 Termination By CONTRACTOR. The CONTRACTOR may terminate this
1902 Agreement, except as otherwise provided below in this Article, by giving the CITY one-hundred
1903 eighty (180) calendar days advance written notice for the default events specified in Section
1904 23.02.01, or by giving the CITY sixty (60) calendar days advance written notice for the default
1905 events specified in Section 23.02.02. Such notice shall be served as provided in Article 40.

1906 23.02.1 CITY has defaulted, by failing or refusing to perform or observe its
1907 obligations under the Agreement, excluding Sections 4.01 through 4.03, and said default is not

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1908 cured within ninety (90) calendar days of receipt of written notice from CONTRACTOR to do so.
1909 If by reason of the nature of such default, the same cannot be remedied within ninety (90) calendar
1910 days following receipt by the CITY of written demand from CONTRACTOR to do so, then the cure
1911 period shall be extended for such additional period as is reasonably required to cure the default,
1912 provided that the CITY commences the remedy of such default within ninety (90) calendar days
1913 of receipt of written notice, and having so commenced thereafter continues with diligence the
1914 curing thereof.

1915 23.02.2 CITY has defaulted, by failing or refusing to perform or observe its
1916 obligations under Sections 4.01 through 4.03, and said default is not cured within thirty (30)
1917 calendar days of receipt of written notice from CONTRACTOR to do so. If by reason of the nature
1918 of such default, the same cannot be remedied within thirty (30) calendar days following receipt by
1919 the CITY of written demand from CONTRACTOR to do so, then the cure period shall be extended
1920 for such additional period as is reasonably required to cure the default, provided that the CITY
1921 commences the remedy of such default within thirty (30) calendar days within receipt of written
1922 notice, and having so commenced thereafter continues with diligence the curing thereof.

1923
1924 23.03 Temporary Possession of CONTRACTOR'S Equipment. Notwithstanding
1925 anything contained herein to the contrary, if the CONTRACTOR fails to provide Collection
1926 Services for a period of three (3) consecutive Work Days for reasons other than Force Majeure,
1927 on the fourth (4th) Work Day the CITY may take possession of the CONTRACTOR'S equipment,
1928 customer account and service records, and other property used in providing Collection Services
1929 under this Agreement in order to provide interim Collection Services until such time as the
1930 CONTRACTOR is again able to perform Collection Services pursuant to this Agreement;
1931 provided, however, if the CONTRACTOR is unable for any reason or cause to resume
1932 performance of Collection Service at the end of thirty (30) consecutive calendar days of
1933 nonperformance of Collection Services, then this Agreement may be terminated by the CITY upon
1934 written notice to CONTRACTOR, and the CITY may retain possession of such equipment, records
1935 and other property used in providing Collection Services on an interim basis until the CITY has
1936 made other suitable arrangements for the provision of Collection Services, which may include
1937 award of an agreement to another contractor. Notwithstanding any other provision in this
1938 Agreement to the contrary, CITY'S right to take interim possession of, or make use of, any of
1939 CONTRACTOR'S equipment, including, without limitation, vehicles, Carts, Bins and containers,
1940 shall not allow the CITY to assign ownership of such vehicles, Carts, Bins and containers to
1941 another contractor, and CITY acknowledges that the CONTRACTOR'S lender has a security
1942 interest in such equipment. In addition, notwithstanding any other provision of this Agreement to
1943 the contrary, CITY'S right to take possession of such equipment, records and other property (i)
1944 shall be limited to one hundred eighty (180) days after the effective date of termination of this
1945 Agreement, (ii) shall not apply regarding property needed for CONTRACTOR to service
1946 customers outside of the CITY, and which is non-essential to the CITY's provision of solid waste
1947 services, and (iii) is contingent on CITY paying a reasonable rental value for such property.

1948 23.03.1 CITY shall defend, with counsel reasonably acceptable to the
1949 CONTRACTOR, indemnify and hold harmless, to the fullest extent allowed by law,
1950 CONTRACTOR, its officers, officials, employees, volunteers, agents and assignees (collectively,
1951 "Indemnitees"), from and against any and all loss, liability, penalties, forfeitures, claims, demands,
1952 actions, proceedings or suits, in law or in equity, of every kind and description, (including, but not
1953 limited to, injury to and death of any person and damage to property, or for contribution or
1954 indemnity claimed by third parties) (collectively, "Loss") arising or resulting from the CITY's
1955 negligent operation or possession of the CONTRACTOR's property pursuant to this Section.

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1956 23.04 Diversion Not Default. Notwithstanding the foregoing or any other provision of this
1957 Agreement to the contrary, CONTRACTOR'S failure to meet the diversion requirements set forth
1958 in Article 5 shall not be a default entitling the CITY to terminate this Agreement (it being
1959 understood that CITY shall have the remedies set forth in Article 2 (term extension) and Article
1960 18 (liquidated damages) with respect to any such failure).

1961 23.04.1 In the event that the Agreement is terminated, CONTRACTOR shall
1962 furnish the CITY with immediate access to all of its business records related to its customer and
1963 billing accounts for collection services.

1964 23.05 Effective Date. In the event of the aforesaid events specified above, and except
1965 as otherwise provided in said subsections, termination by CITY shall be effective upon the date
1966 specified in the CITY'S written notice to the CONTRACTOR and upon said date this Agreement
1967 shall be deemed immediately terminated, and the CITY shall have the right to call the performance
1968 bond and shall be free to negotiate with other contractors for the operation of the herein specified
1969 services.

1970 23.06 Termination for Failure to Maintain Insurance. CITY may terminate this Agreement
1971 in the event CONTRACTOR fails to provide and maintain the performance bond as required by
1972 this Agreement, or if CONTRACTOR fails to obtain or maintain insurance policies endorsements
1973 as required by this Agreement, or if CONTRACTOR offers or gives any gift prohibited by the
1974 CITY'S Municipal Code. Such termination shall not occur unless CONTRACTOR has been given
1975 five (5) business days to cure said breach after receiving written notice from CITY, and has failed
1976 to cure the breach within such period.

1977 23.07 Termination Cumulative. CITY'S right to terminate this Agreement is cumulative
1978 to any other rights and remedies provided by law or by this Agreement.

1979 23.08 Force Majeure. Notwithstanding any other provision of this Agreement to the
1980 contrary, a party shall be excused from performing its obligations hereunder in the event it is
1981 prevented from so performing by reason of any acts of God, such as landslides, lightning, fires,
1982 storms, floods, pestilence, freezing, and earthquakes; actual or perceived threats of terrorism,
1983 explosions, power outages, sabotage, civil disturbances, acts of a public enemy, wars, blockades,
1984 riots, or other industrial disturbances, eminent domain, condemnation or other taking, or other
1985 events of a similar nature, not caused or maintained by such party, which event is not reasonably
1986 within the control of the party claiming the excuse from its obligations due to such event, to the
1987 extent such event has a significant and material adverse effect on the ability of the party to perform
1988 its obligations thereunder. Force Majeure shall not include fuel shortages or labor disruptions
1989 (e.g., strikes, work stoppage or slowdown, sickout, lockout, picketing or other concerted job action
1990 conducted by CONTRACTOR'S employees or directed at CONTRACTOR or any of its
1991 subcontractors) to the extent they last longer than seven (7) days. Force Majeure shall include a
1992 Change in Law to the extent such Change in Law materially impedes a party's performance
1993 hereunder. Notwithstanding the foregoing, (i) no failure of performance by any subcontractor of
1994 CONTRACTOR shall be a Force Majeure unless such failure was itself caused by a Force
1995 Majeure; (ii) except as provided herein, no event which merely increases CONTRACTOR'S cost
1996 of performance shall be a Force Majeure; and (iii) no event, the effects of which could have been
1997 prevented by reasonable precautions, including compliance with agreements and applicable laws,
1998 shall be a Force Majeure.

1999 **ARTICLE 24. Modifications to the Agreement**

2000 24.01 Agreement Modifications and Changes in Law. The CITY and the CONTRACTOR
2001 understand and agree that the California Legislature has the authority to make comprehensive
2002 changes in Garbage, Recyclables, or Organic Waste Management legislation and that these and
2003 other Changes in Law in the future which mandate certain actions or programs for counties or
2004 municipalities may require changes or modifications in some of the terms, conditions or
2005 obligations under this Agreement. The CONTRACTOR agrees that the terms and provisions of
2006 the Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of
2007 the provisions of this Agreement and the Service Recipients of the CONTRACTOR located within
2008 the Service Area; provided, however that the CITY will not amend the Municipal Code in a way
2009 that is inconsistent with the Agreement unless compelled to do so by federal or state law. In the
2010 event any future Change in Law, including state or federally mandated modifications to the CITY
2011 Municipal Code, alters the rights or obligations of the CONTRACTOR or the services to be
2012 provided by CONTRACTOR hereunder, then Maximum Service Rates as otherwise established
2013 under this Agreement shall be adjusted as provided in Section 4.03. Nothing contained in this
2014 Agreement shall require any party to perform any act or function contrary to law.

2015 24.02 City-Directed Changes. CITY may direct CONTRACTOR to perform additional
2016 services (including new diversion programs, additional public education activities, etc.), eliminate
2017 programs, or modify the manner in which it performs existing services. Changes in the minimum
2018 diversion requirement set forth in Article 5 of this Agreement is not among the changes that can
2019 be directed by CITY. Direction of Garbage to a Disposal Facility other than that originally selected
2020 by the CITY, direction of Recyclable Materials or Organic Waste to a processing facility other than
2021 that selected by the CONTRACTOR, pilot programs and innovative services, which may entail
2022 new collection methods, targeted routing, different kinds of services, different types of collection
2023 vehicles, and/or new requirements for Service Recipients, are included among the kinds of
2024 changes which CITY may direct. CONTRACTOR shall be entitled to an adjustment in its
2025 compensation for providing such additional or modified services but not for the preparation of its
2026 proposal to perform such services. CONTRACTOR shall not be required to begin implementing
2027 a CITY-directed change until the associated Maximum Service Rate adjustment has been agreed
2028 upon and has taken effect.

2029 24.03 Service Proposal. Within thirty (30) calendar days of receipt of a request for a
2030 service change from the CITY under Section 24.02, or such longer time as may be reasonably
2031 needed, CONTRACTOR shall submit a proposal to provide such service. At a minimum, the
2032 proposal shall contain a complete description of the following:

2033 24.03.1 Collection methodology to be employed (equipment, manpower,
2034 etc.).

2035 24.03.2 Equipment to be utilized (vehicle number, types, capacity, age,
2036 etc.).

2037 24.03.3 Labor requirements (number of employees by classification).

2038 24.03.4 Type of carts or bins to be utilized.

2039 24.03.5 Provision for program publicity, education, and marketing.

2040 24.03.6 CONTRACTOR's proposed compensation.

2041 24.04 CONTRACTOR acknowledges and agrees that CITY may permit other companies
2042 besides CONTRACTOR to provide additional services outside the scope of the services

2043 contemplated by this Agreement (such as street sweeping or curbside collection of household
2044 hazardous waste) if CONTRACTOR and CITY cannot agree on terms and conditions, including
2045 compensation adjustments, for CONTRACTOR'S provision of such services, within one hundred
2046 twenty (120) calendar days from the date when CITY first requests a proposal from
2047 CONTRACTOR to perform such services, provided, however, that (i) the terms and conditions
2048 offered by CITY to any other company are no more favorable to that company than the terms and
2049 conditions offered to CONTRACTOR, and (ii) the services do not conflict with CONTRACTOR'S
2050 exclusive rights under Section 3.01.

2051 24.05 Monitoring and Evaluation. If the CITY requests, the CONTRACTOR shall meet
2052 with the CITY to describe the progress of each new program and other service issues arising from
2053 the program. If applicable, CONTRACTOR shall document the results of the new programs on a
2054 monthly basis, including at a minimum the tonnage diverted by material type, the end use or
2055 processor of the diverted materials and the cost per ton for transporting and processing each type
2056 of material and other such information reasonably requested by the CONTRACTOR and/or CITY
2057 necessary to evaluate the performance of each program.

2058 24.05.1 At each meeting, the CITY and CONTRACTOR shall have the
2059 opportunity to discuss revisions to the program. The CITY shall have the right to terminate a
2060 program if the CONTRACTOR is not complying with the terms and conditions agreed upon with
2061 the CITY, and the termination is effected in accordance with such terms and conditions. Prior to
2062 such termination, the CITY shall meet and confer with the CONTRACTOR for a period of up to
2063 ninety (90) calendar days to resolve the CITY'S concerns. After such termination, the CITY may
2064 utilize a third party to perform these services, provided that (i) the services are outside the scope
2065 of the services contemplated by this Agreement (such as street sweeping or curbside collection
2066 of household hazardous waste), and (ii) the services do not conflict with CONTRACTOR'S
2067 exclusive rights under Section 3.01.

2068 24.06 Dispute Resolution. All disputes relating to service or compensation changes
2069 relating to a Change in Law that meet the conditions specified in Section 4.03.3 shall, upon the
2070 request of either party, be resolved by the following procedures:

2071 24.06.1 The party desiring mediation shall first give written notice thereof to
2072 the other party to this Agreement, specifying the dispute to be mediated.

2073 24.06.2 The mediation shall be held at Chico, California, or at such other
2074 location as may be mutually agreed among the parties. The mediation shall be conducted
2075 according to and a mediator chosen pursuant to the rules of the American Arbitration Association.
2076 Each side shall bear its own costs in the mediation. The cost of the mediator shall be shared
2077 equally between the parties.

2078 24.06.3 At least ten (10) business days before the date of the mediation,
2079 each side shall provide the mediator with a statement of its position and copies of all supporting
2080 documents. Each party shall send to the mediation one or more persons who has authority to
2081 negotiate on behalf of the party. If a subsequent dispute will involve third parties, such as insurers
2082 or subcontractors, they shall also be asked to participate in the mediation.

2083 **ARTICLE 25. Legal Representation**

2084 25.01 Acknowledgement. It is acknowledged that each party was, or had the opportunity
2085 to be, represented by counsel in the preparation of and contributed equally to the terms and
2086 conditions of this Agreement and, accordingly, the rule that a contract or Agreement shall be

2087 interpreted strictly against the party preparing the same shall not apply herein due to the joint
2088 contributions of both parties.

2089 **ARTICLE 26. Financial Interest**

2090 26.01 Representation. CONTRACTOR warrants and represents that (i) to its knowledge,
2091 no elected official, officer, agent or employee of the CITY has a financial interest as defined in
2092 California Government Code Section §87103, in this Agreement or the compensation to be paid
2093 under it and, further, that (ii) no CITY employee who acts in the CITY as a “purchasing agent” as
2094 defined in the appropriate Section of California Statutes, nor any elected or appointed officer of
2095 the CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed
2096 officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that (iii) no
2097 such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child
2098 of any of them, alone or in combination, has a “material interest” in the CONTRACTOR. “Material
2099 interest” means direct or indirect ownership of more than five percent (5%) of the total assets or
2100 capital stock of the CONTRACTOR.

2101 **ARTICLE 27. Contractor's Personnel**

2102 27.01 Personnel Requirements. The CONTRACTOR shall employ and assign qualified
2103 personnel to perform all services set forth herein. The CONTRACTOR shall be responsible for
2104 ensuring that its employees comply with all applicable laws and regulations and meet all federal,
2105 state and local requirements related to their employment and position.

2106 27.01.1 The CITY may request the transfer of any employee of the
2107 CONTRACTOR who materially violates any provision hereof, or who is wanton, negligent, or
2108 discourteous in the performance of his duties.

2109 27.01.2 CONTRACTOR’S field operations personnel shall be required to
2110 wear a clean uniform shirt bearing the CONTRACTOR’S name. CONTRACTOR’S employees,
2111 who normally come into direct contact with the public, including drivers, shall bear some means
2112 of individual identification such as a nametag or identification card.

2113 27.01.3 Each driver of a collection vehicle shall at all times carry a valid
2114 California driver’s license and all other required licenses for the type of vehicle that is being
2115 operated.

2116 27.01.4 Each driver of a collection vehicle shall at all times comply with all
2117 applicable state and federal laws, regulations and requirements.

2118 27.01.5 CONTRACTOR’S employees, officers, and agents shall at no time
2119 be allowed to identify themselves or in any way represent themselves as being employees of the
2120 CITY.

2121 27.01.6 The CONTRACTOR’S name and the Customer Service telephone
2122 number shall be properly displayed on all collection vehicles.

2123 **ARTICLE 28. Exempt Waste**

2124 28.01 The CONTRACTOR shall not be required to collect or dispose of Exempt Waste,
2125 but may offer such services. All such collection and disposal of Exempt Waste is not regulated
2126 under this Agreement, but if provided by the CONTRACTOR shall be in strict compliance with all
2127 federal, state and local laws and regulations.

2128 **ARTICLE 29. Independent Contractor**

2129 29.01 In the performance of services pursuant to this Agreement, CONTRACTOR shall
2130 be an independent contractor and not an officer, agent, servant or employee of CITY.
2131 CONTRACTOR shall have exclusive control of the details of the services and work performed
2132 and over all persons performing such services and work. CONTRACTOR shall be solely
2133 responsible for the acts and omissions of its officers, agents, employees, contractors and
2134 subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors
2135 or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits,
2136 or any other compensation or benefits, which accrue, to CITY employees and CONTRACTOR
2137 expressly waives any claim it may have or acquire to such compensation or benefits.

2138 **ARTICLE 30. Laws to Govern**

2139 30.01 The law of the State of California shall govern the rights, obligations, duties and
2140 liabilities of CITY and CONTRACTOR under this Agreement and shall govern the interpretation
2141 of this Agreement.

2142 **ARTICLE 31. Consent to Jurisdiction**

2143 31.01 The parties agree that any litigation between CITY and CONTRACTOR concerning
2144 or arising out of this Agreement shall be filed and maintained exclusively in the Municipal or
2145 Superior Courts of Butte County, State of California, or in the United States District Court for the
2146 Northern District of California to the fullest extent permissible by law. Each party consents to
2147 service of process in any manner authorized by California law.

2148 **ARTICLE 32. Assignment**

2149 32.01 No assignment of this Agreement or any right occurring under this Agreement shall
2150 be made to any third party in whole or in part by the CONTRACTOR without the express written
2151 consent of the CITY. The CITY shall have full discretion to approve or deny, with or without cause,
2152 any proposed or actual assignment by the CONTRACTOR. Such approval shall not unreasonably
2153 be withheld. Any assignment of this Agreement made by the CONTRACTOR without the express
2154 written consent of the CITY shall be null and void and shall be grounds for the CITY to declare a
2155 default of this Agreement. In the event of any assignment, the assignee shall fully assume all the
2156 liabilities of the CONTRACTOR.

2157 32.02 The use of a subcontractor to perform services under this Agreement shall not
2158 constitute delegation of CONTRACTOR'S duties provided that CONTRACTOR has received prior
2159 written authorization from the City Representative to subcontract such services and the City
2160 Representative has approved a subcontractor who will perform such services. CONTRACTOR
2161 shall be responsible for directing the work of CONTRACTOR'S subcontractors and any
2162 compensation due or payable to CONTRACTOR'S subcontractor shall be the sole responsibility
2163 of CONTRACTOR. The City Representative shall have the right to require the removal of any
2164 approved subcontractor for reasonable cause.

2165 32.03 For purposes of this Article when used in reference to CONTRACTOR,
2166 "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of at least
2167 fifty-one percent (51%) of CONTRACTOR'S assets dedicated to service under this Agreement to
2168 a third party; (ii) a sale, exchange or other transfer of outstanding common stock of
2169 CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of

2170 control of CONTRACTOR (with control being defined as ownership of more than fifty percent
2171 (50%) of CONTRACTOR'S voting securities); (iii) any dissolution, reorganization, consolidation,
2172 merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow
2173 arrangement, liquidation, subcontracting or lease-back payments, or other transaction which
2174 results in a change of control of CONTRACTOR; (iv) any assignment by operation of law,
2175 including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of
2176 attachment for an execution being levied against this Agreement, appointment of a receiver taking
2177 possession of CONTRACTOR'S property, or transfer occurring in the event of a probate
2178 proceeding; and (v) any combination of the foregoing (whether or not in related or
2179 contemporaneous transactions) which has the effect of any such transfer or change of control of
2180 CONTRACTOR. As used herein, "third party" excludes affiliates of CONTRACTOR (i.e. direct or
2181 indirect subsidiaries of Waste Management, Inc.).

2182 32.04 CONTRACTOR acknowledges that this Agreement involves rendering a vital
2183 service to CITY'S residents and businesses, and that CITY has selected CONTRACTOR to
2184 perform the services specified herein based on (i) CONTRACTOR's experience, skill and
2185 reputation for conducting its garbage, recyclable materials and organic Waste management
2186 operations in a safe, effective and responsible fashion, at all times in keeping with applicable
2187 environmental laws, regulations and best garbage, recycling and organic waste management
2188 practices, and (ii) CONTRACTOR'S financial resources to maintain the required equipment and
2189 to support its indemnity obligations to CITY under this Agreement. CITY has relied on each of
2190 these factors, among others, in choosing CONTRACTOR to perform the services to be rendered
2191 by CONTRACTOR under this Agreement.

2192 **ARTICLE 33. Compliance with Laws**

2193 33.01 In the performance of this Agreement, CONTRACTOR shall comply with all
2194 applicable laws, regulations, ordinances and codes of the federal, state and local governments,
2195 including without limitation the Municipal Code of the City of Chico.

2196 33.02 CITY shall provide written notice to CONTRACTOR of any planned amendment of
2197 the CITY Municipal Code that would substantially affect the performance of CONTRACTOR'S
2198 services pursuant to this Agreement. Such notice shall be provided at least thirty (30) calendar
2199 days prior to the City Council's approval of such an amendment.

2200 **ARTICLE 34. Permits and Licenses**

2201 34.01 CONTRACTOR shall obtain, at its own expense, all permits and licenses required
2202 by law or ordinance and maintain same in full force and effect throughout the term of this
2203 Agreement. CONTRACTOR shall provide proof of such permits, licenses or approvals and shall
2204 demonstrate compliance with the terms and conditions of such permits, licenses and approvals
2205 upon the request of the City Representative.

2206 **ARTICLE 35. Ownership of Written Materials**

2207 35.01 CITY Materials. All reports, documents, brochures, public education materials, and
2208 other written, printed, electronic or photographic materials developed by CITY or CONTRACTOR
2209 for CITY'S use or for public dissemination in connection with the services to be performed under
2210 this Agreement, whether developed directly or indirectly by CITY or CONTRACTOR, may be used
2211 by CITY without limitation or restrictions on the use of such materials by CITY. CONTRACTOR
2212 shall not use any such materials specific to CITY in connection with any project not connected

2213 with this Agreement without the prior written consent of the City Representative. This Article 35
2214 does not apply to ideas or concepts described in such materials and does not apply to the format
2215 of such materials and does not apply to CONTRACTOR'S website.

2216
2217 35.02 CONTRACTOR Materials. If CITY receives a request from a third Person to review
2218 or copy material which CONTRACTOR has marked "confidential", CITY will Notify
2219 CONTRACTOR promptly and allow CONTRACTOR to present arguments and facts to CITY in
2220 support of CONTRACTOR's position that the material is entitled to an exemption from disclosure
2221 under the California Public Records Act and should not be released. If CITY determines that the
2222 material is not entitled to an exemption under this Agreement and that it must be released, CITY
2223 will so advise CONTRACTOR before releasing that material so that CONTRACTOR may seek a
2224 court order enjoining that release. If CITY determines that the material is entitled to that
2225 exemption, and the Person who requested the information files a legal action seeking its release,
2226 CITY will promptly inform CONTRACTOR and will not oppose a motion by CONTRACTOR to
2227 intervene in the action. Contractor must either intervene or accept the release of the material.
2228 CITY will not have any obligation to defend the action and may release the material sought without
2229 liability whatsoever for CITY.

2230 **ARTICLE 36. Waiver**

2231 36.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term covenant
2232 or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or
2233 condition or any subsequent breach or violation of the same or of any other term, covenant or
2234 condition. The subsequent acceptance by CITY of any fee, tax, or any other monies, which may
2235 become due from CONTRACTOR to CITY shall not be deemed to be a waiver by CITY of any
2236 breach for violation of any term, covenant or condition of this Agreement.

2237 **ARTICLE 37. Prohibition Against Gifts**

2238 37.01 CONTRACTOR shall not offer any CITY officer or designated employee any gifts
2239 that are prohibited by the CITY's Municipal Code.

2240 **ARTICLE 38. Point of Contact**

2241 38.01 Contact for issues related to the management of this Agreement shall be between
2242 the CONTRACTOR's General Manager and the City Representative.

2243 **ARTICLE 39. Conflict of Interest**

2244 39.01 CONTRACTOR shall comply with CITY requirements for conflict of interest and
2245 will file all required disclosure statements.

2246 **ARTICLE 40. Notices**

2247 40.01 Except as provided herein, whenever either party desires to give notice to the
2248 other, it must be given by written notice addressed to the party for whom it is intended, at the
2249 place last specified and to the place for giving of notice in compliance with the provisions of this
2250 paragraph. For the present, the parties designate the following as the respective persons and
2251 places for giving of notice:

2252 As to the CITY:

2253 **City of Chico**
2254 **City Manager**
2255 **P.O. Box 3420**
2256 **Chico, CA 95927**
2257 **Telephone: (530) 896-7210**
2258 **E-mail: CMWeb@chicoca.gov**

2259

2260

2261 As to the CONTRACTOR:

2262 **USA Waste of California, Inc.**
2263 **MAGM/Public Sector Manager**
2264 **1333 E. Turner Road**
2265 **P.O. Box 241001**
2266 **Lodi, CA 95241-9501**
2267 **Telephone: 209-333-5613**
2268 **Facsimile: 209-369-6894**
2269 **Email: aoseguer@wm.com**
2270
2271
2272

2273 40.02 Notices shall be effective when received at the address as specified above.
2274 Changes in the respective address to which such notice is to be directed may be made by written
2275 notice. Facsimile transmission is acceptable notice, effective when received, however, facsimile
2276 transmissions received (i.e. confirmed transmitted) after 4:30 p.m. or on weekends or holidays,
2277 will be deemed received on the next business day. Receipt is deemed to have taken place within
2278 five (5) Work Days of notice mailed by U.S. Postal Service return receipt requested. The original
2279 of items that are transmitted by facsimile equipment must also be mailed as required herein.

2280 40.03 Notice by CITY to CONTRACTOR of a collection or other Service Recipient
2281 problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR'S
2282 local office with confirmation sent as required above by the end of the Work Day.

2283 **ARTICLE 41. Transition to Next Contractor**

2284 41.01 In the event CONTRACTOR is not awarded an Agreement to continue to provide
2285 Collection Services following the expiration or early termination of this Agreement,
2286 CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a
2287 smooth transition of services described in this Agreement. Such cooperation shall include but not
2288 be limited to transfer of computer data, files and tapes containing customer account and service
2289 information; providing routing information, route maps, vehicle fleet information, and list of Service
2290 Recipients; providing a complete inventory of all carts and bins; providing adequate labor and
2291 equipment to complete performance of all Collection Services required under this Agreement;
2292 offering to sell carts and bins to the subsequent contractor or CITY; taking all actions necessary
2293 to transfer ownership of any sold carts and bins, as appropriate, to the subsequent contractor or
2294 CITY, including transporting such containers to a location designated by the City Representative;
2295 coordinating collection of materials set out in new containers if new containers are provided for a

2296 subsequent Agreement before the expiration or early termination of this Agreement; and providing
2297 other reports and data required by this Agreement.

2298 **ARTICLE 42. Contractor's Records**

2299 42.01 CONTRACTOR shall maintain any and all letters, books of account, invoices,
2300 vouchers, canceled checks, and other records or documents evidencing or relating to charges for
2301 services or expenditures and disbursements charged to Service Recipients for a minimum period
2302 of five (5) years, or for any longer period required by law, from the date of final payment to
2303 CONTRACTOR pursuant to this Agreement.

2304 42.02 CONTRACTOR shall maintain all documents and records, which demonstrate
2305 performance under this Agreement for a minimum period of five (5) years, or for any longer period
2306 required by law, from the date of termination or completion of this Agreement.

2307 42.03 Any records or documents required to be maintained pursuant to this Agreement
2308 shall be made available for inspection or audit, at any time during regular business hours, upon
2309 written request by the City Representative, the City Attorney, City Auditor, City Manager, or a
2310 designated representative of any of these officers. Copies of such documents shall be provided
2311 to CITY for inspection at the CITY offices when it is practical to do so. Otherwise, unless an
2312 alternative site is mutually agreed upon, the records shall be available at CONTRACTOR'S
2313 address indicated for receipt of notices in this Agreement. The CITY'S rights to inspect, audit or
2314 review confidential or proprietary information of CONTRACTOR shall be subject to CITY entering
2315 into a reasonable confidentiality agreement with CONTRACTOR. In addition, the CITY will take
2316 reasonable measures, subject to the requirements of applicable law, to prevent the dissemination
2317 of any such information to third parties, and will promptly notify CONTRACTOR upon receipt of a
2318 request by a third party under the Public Records Act to review or obtain such information.

2319 42.04 Where CITY has reason to believe that such records or documents may be lost or
2320 discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business, CITY
2321 may, by written request or demand of any of the above named officers, require that custody of
2322 the records be given to CITY and that the records and documents be maintained by City. Access
2323 to such records and documents shall be granted to any party authorized by CONTRACTOR,
2324 CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

2325 **ARTICLE 43. Entire Agreement**

2326 43.01 This Agreement and the Exhibits attached hereto constitute the entire Agreement
2327 and understanding between the parties hereto, and it shall not be considered modified, altered,
2328 changed or amended in any respect unless in writing and signed by the parties hereto.

2329 **ARTICLE 44. Severability**

2330 44.01 If any provision of this Agreement or the application of it to any person or situation
2331 shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the
2332 application of such provisions to persons or situations other than those as to which it shall have
2333 been held invalid or unenforceable, shall not be affected, shall continue in full force and effect,
2334 and shall be enforced to the fullest extent permitted by law.

2335 **ARTICLE 45. Right to Require Performance**

2336 45.01 The failure of either party at any time to require performance by the other party of
2337 any provision hereof shall in no way affect the right of such party thereafter to enforce same. Nor
2338 shall waiver by either party of any breach of any provision hereof be taken or held to be a waiver
2339 of any succeeding breach of such provision or as a waiver of any provision itself.

2340 **ARTICLE 46. All Prior Agreements Superseded**

2341 46.01 This document supersedes all prior negotiations, correspondence, conversations,
2342 agreements, contracts and understandings, whether oral or written, applicable to the matters
2343 contained in this Agreement. Accordingly, it is agreed that no deviation from the terms of this
2344 Agreement shall be predicated upon any prior representations, agreements, understandings or
2345 contracts, whether oral or written.

2346 **ARTICLE 47. Headings**

2347 47.01 Headings in this document are for convenience of reference only and are not to be
2348 considered in any interpretation of this Agreement.

2349 **ARTICLE 48. Exhibits**

2350 48.01 Each Exhibit referred to in this Agreement forms an essential part of this
2351 Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this
2352 reference.

2353 **ARTICLE 49. Representations and Warranties**

2354 The Parties, by acceptance of this Agreement, represents and warrants the conditions presented
2355 in the Article, as of the date of CONTRACTOR'S signature hereon.

2356 49.01 Corporate Status. The CONTRACTOR is a corporation duly organized
2357 (Delaware), validly existing and in good standing under the laws of the State of California ("State").
2358 It is qualified to transact business in the State and has the power to own its properties and to carry
2359 on its business as now owned and operated and as required by this Agreement.

2360 49.02 Corporate Authorization. CONTRACTOR has the authority to enter this
2361 Agreement and perform its obligations under this Agreement. The Board of Directors of
2362 CONTRACTOR (or the shareholders, if necessary) has taken all actions required by law, its
2363 articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.
2364 The Person signing this Agreement on behalf of CONTRACTOR represents and warrants that
2365 they have the authority to do so. This Agreement constitutes the legal, valid, and binding
2366 obligation of the CONTRACTOR.

2367 49.03 Agreement Will Not Cause Breach. To the best of each Party's knowledge after
2368 responsible investigation, the execution or delivery of this Agreement or the performance of their
2369 respective obligations hereunder does not conflict with, violate, or result in a breach: (i) of any
2370 applicable law or governmental regulation; or (ii) any term or condition of any judgment, order,
2371 decree, of any court, administrative agency or other governmental authority, or any Agreement or
2372 instrument to which it is a party or by which it or any of its properties or assets are bound, or
2373 constitutes a default thereunder.

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2374 49.04 No Litigation. To the best of each Party's knowledge after responsible
2375 investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by
2376 any court or governmental authority, commission, board, agency or instrumentality, pending or
2377 threatened against it wherein an unfavorable decision, ruling or finding, in any single case or in
2378 the aggregate would:

2379 49.04.1 Materially adversely affect the performance by it of its obligations
2380 hereunder;

2381 49.04.2 Adversely affect the validity or enforceability of this Agreement; or

2382 49.04.3 Have a material adverse effect on the financial conditions of it, or
2383 any surety or entity guaranteeing its performance under this Agreement.

2384 49.05 No Adverse Judicial Decisions. To the best of each Party's knowledge after
2385 responsible investigation, there is no judicial decision binding upon it that would prohibit this
2386 Agreement or subject this Agreement to legal challenge.

2387 49.06 No Legal Prohibition. To the best of each Party's knowledge after reasonable
2388 investigation, there is no Applicable Law in effect on the date it signed this Agreement that would
2389 prohibit its performance of its obligations under this Agreement and the transactions contemplated
2390 hereby.

2391 49.07 CONTRACTOR'S Investigation. CONTRACTOR has made an independent
2392 investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement
2393 and the work to be performed hereunder. CONTRACTOR has taken such matters into
2394 consideration in entering this Agreement to provide services in exchange for the compensation
2395 provided for under the terms of this Agreement.

2396 **ARTICLE 50. Effective Date**

2397 This Agreement shall become effective at such time as it is properly executed by the CITY and
2398 the CONTRACTOR and the CONTRACTOR shall begin Collection Services, as covered herein,
2399 on the Service Commencement Date.

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Chico - Waste Management SFD Collection Service Agreement

2401 IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this Agreement on
2402 the day and year first written above.

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2406 **CITY:**

CONTRACTOR:

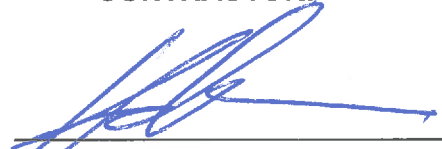
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2411 Mark Orme, City Manager*

By: Barry Skolnick

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Title: President – Northern California Area
USA Waste of California, Inc.

2413 *Authorized pursuant to City Council

2414 Ordinance No. 2500 adopted August 15, 2017.

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2419 **APPROVED AS TO FORM:**

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2424 Vincent C. Ewing, City Attorney*

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2426 *Pursuant to The Charter of the

2427 City of Chico, Section 906(D)

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2432 **REVIEWED AS TO CONTENT:**

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2437 Scott Dowell, Administrative Services Director*

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2439 *Reviewed by Finance and Information Systems

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Exhibit 1
RESERVED

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Exhibit 2
INITIAL CONTRACTOR DESIGNATED FACILITIES

North Valley Disposal & Recycling (maintenance/storage/offices)
2569 Scott Ave
Chico, CA 95928

North Valley Bin Yard (bin/container storage)
320 Southgate Ave
Chico, CA 95928

Neal Rd. Landfill (disposal facility)
1023 Neal Rd, Chico
CA 95926

Anderson Landfill (disposal facility)
18703 Cambridge Rd
Anderson, CA 96007

North Valley MRF (transfer station)
2569 Scott Ave
Chico, CA 95928

Oroville Transfer Station [RBCC] (transfer station)
2720 South 5th Ave
Oroville, CA 95965

Central Valley Waste (MRF)
1333 E. Turner Rd
Lodi, CA 95816

Sacramento Recycling & Transfer Station (MRF)
8491 Fruitridge Rd
Sacramento, CA 95826

North Valley Organics [City of Chico] (compost facility)
4441 Cohasset Rd
Chico, CA 95973

North State Rendering (rendering plant WTE)
15 Shippee Rd
Oroville, CA 96965

Exhibit 3

VEHICLE REPLACEMENT SCHEDULE

CONTRACTOR shall replace collection vehicle as follows:

- Residential side-loaders – no later than 10 years after date first placed in service.
- Residential side-loader (mechanical) – no later than 15 years after date first placed in service
- Residential rear-loaders – no later than 15 years after date first placed in service
- Commercial side-loaders – no later than 12 years after date first placed in service
- Roll-offs – no later than 15 years after date first placed in service

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Exhibit 4			
MAXIMUM SERVICE RATES SFD SERVICE UNITS (OCTOBER 1, 2017 – JUNE 30, 2018)			
A. SFD CURBSIDE Garbage, Recycling and Organics Collection Maximum Rates (monthly) (includes customers with qualified physical disabilities are charged at the SFD Curbside Rates in accordance with Section 7.01.2.2 of this Agreement).			
CURBSIDE Garbage Container Size (includes recycling & organics)	32 Gal	64 Gal	96 Gal
	\$19.90	\$28.46	\$34.50
Each Extra Garbage Cart	\$14.11	\$22.67	\$28.71
Each Extra Organics Cart (3 plus carts)	No Offered		\$7.00
Each Extra Recycling Cart (3 plus carts)	Not Offered	\$5.00	Not Offered
Low Volume Garbage Users (no Organics Carts, limited to 1 Bulky Waste Collection Per Year)	\$14.11	Not Offered	
Senior Rate (includes Garbage and Recycling Only)	\$14.11	Not Offered	
Organics Exemption (organic exception is limited to 2% of the total annual SFD customers)	\$5.79/month/unit reduction from curbside rates each month		
B. SFD ON-PREMISE (Backyard) Garbage, Recycling and Organics Collection Maximum Rates (monthly) (Customer requested subscription service).			
BACKYARD Garbage Container Size (includes recycling & organics)	32 Gal	64 Gal	96 Gal
	\$22.97	\$31.75	\$42.02
Each Extra Garbage Cart	\$17.18	\$25.96	\$36.23
Each Extra Organics Cart (3 plus carts)	Not Offered		\$7.00

Chico - Waste Management SFD Collection Service Agreement

Exhibit 4 MAXIMUM SERVICE RATES SFD SERVICE UNITS (OCTOBER 1, 2017 – JUNE 30, 2018)			
Each Extra Recycling Cart (3 plus carts)	Not Offered	\$5.00	Not Offered
Organics Exemption (organic exception is limited to 400 of the total annual SFD customers)	\$5.79/month/unit reduction from curbside rates each month		
C. Home Owners Associations & Mobile Home Parks			
Home Owners Associations where each Service Unit is serviced with an individual Garbage Cart and an individual Recycling Cart, but not serviced with an individual Organics Cart with (common or individual billing)	\$5.79/month/unit reduction from SFD Curbside rates each month each month/account		
Home Owners Associations where each Service Unit is serviced with an individual Garbage Cart but not serviced with an individual Recycling Cart or an individual Organics Cart (common or individual billing))	\$7.79/month/unit reduction from SFD Curbside rates each month each month/account		
Mobile Home Parks serviced with individual Garbage Carts Only	\$13.25/month - 32 Gallon (Garbage only)		
	\$14.58/month - 64 Gallon (Garbage only)		
	\$15.98/month - 96 Gallon (Garbage only)		
Mobile Home Parks serviced with individual Garbage Carts, Recycling Cart Organics Carts	32 Gallon – Not Available		
	\$23.96 /month - 64 Gallon Garbage Cart, includes Recycling and Organics Cart		
	\$25.26/month 96 Gallon Garbage Cart, includes Recycling and Organics Cart		
Mobile Home Parks requesting Recycling Carts or Organic Carts if service is not bundled with Garbage Carts	\$4.69/month – Organics Cart		
	\$4.69/month – Recycling Cart		
Recycling Bin (common/shared location)	\$44.61/bin/1/week/month		

Exhibit 4 MAXIMUM SERVICE RATES SFD SERVICE UNITS (OCTOBER 1, 2017 – JUNE 30, 2018)		
D. Additional Services Maximum Rates		
Service	Rate	
SFD Units that are not serviced with individual Organics Carts	\$5.79/month/unit reduction from curbside rates each month	
Additional Bulky Waste Collection	\$55.00 1 st cubic yard/occurrence	
Additional Bulky Waste Item(s) (same trip)	\$15.00 per cubic yard/occurrence	
Bulky Waste Items Containing Freon (same trip)	\$44.00 per item/occurrence	
Garbage Overage at Time of Service (after 2 nd notice)	\$7.00/lift	
Cart/Bin Return – each cart/bin	\$27.50 each cart/bin/occurrence	
Extra Pickup/Each Container (all cart sizes)	\$27.05 each cart/occurrence	
Contamination in Recycling or Organics Containers (after 2 nd notice)	\$27.05 each cart/bin/occurrence	
Deliver, Exchange or Remove Bins (after 1 st occurrence, bin not damaged)	\$82.50 each bin/occurrence	
Deliver, Exchange or Remove Carts (after 1 st occurrence, cart not damaged)	\$38.50 each cart/occurrence	
Cart Cleaning	\$44.00 each cart/occurrence	
Lock Sale	\$27.50 each lock	
Locked Containers	\$7.70/lock/month	
On-Premise Collection (each cart) if not placed at curb, sidewalk, or gutter	0-10 feet No Charge	11-25 feet \$5.00/month
	26-50 feet \$10.00/month	51-100 feet \$15.00/month
	101+ feet \$21.64/month	

Exhibit 4			
MAXIMUM SERVICE RATES SFD SERVICE UNITS (OCTOBER 1, 2017 – JUNE 30, 2018)			
Scout / Stinger / Valet Truck Services		Negotiated	
Cost to Replace Lost, Stolen or Damaged Containers			
32 Gallon Cart		\$48.00 each cart/occurrence after 1 st occurrence	
64 Gallon Cart		\$58.00 each cart/occurrence after 1 st occurrence	
96 Gallon Cart		\$67.00 each cart/occurrence after 1 st occurrence	
Service Restart <u>without</u> Bin/Cart Delivery		\$16.23 each occurrence	
Service Restart <u>with</u> Bin/Cart Delivery		\$90.00 each occurrence	
Late Payment		Greater of 2.5% of invoice or \$5.00. Charge is per every 30 days	
Payment by Check if rejected by Bank		\$40.00 each occurrence	
Insta-Bin Collection Maximum Service Rates (includes delivery, removal, processing/disposal, 7-day bin rental)			
Bin Size	Each Service Order	Additional Charge if more than one collection per Service Order	Per Day Bin Rental After 7 Days
3 Cubic Yard Insta-Bin	\$107.88	\$76.25	\$3.00
4 Cubic Yard Insta-Bin	\$125.40	\$91.68	\$4.00
6 Cubic Yard Insta-Bin	\$170.44	\$127.53	\$5.50

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