

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
GREENWASTE RECOVERY, INC.**

PREAMBLE

This Agreement (Agreement) is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and GreenWaste Recovery, Inc., a California Corporation, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to ensure its solid waste collection and processing system is compliant with Senate Bill (SB) 1383, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants that was enacted in 2016;
- B. City is seeking to contract for certain Solid Waste processing services to support its efforts to ensure systemwide compliance with SB 1383;
- C. Contractor has represented that processing Solid Waste will help the City achieve that compliance generally and compliance will be achieved specific to the Solid Waste materials processed by Contractor given the current state of the regulations;
- D. City is seeking to contract for certain Recyclable Materials processing services beginning in January 2022;
- E. City is seeking to secure an option through December 31, 2020 that, if exercised, would allow City to contract for certain Yard Trimmings processing services beginning in January 2025;
- F. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- G. Contractor's facility for processing City's Solid Waste as described in this Agreement, located at or around 575 and 625 Charles Street, San Jose, received a Solid Waste Facility Permit (SWFP) from the City of San Jose on or about April 18, 2016 (facility no. 43-AN-0019), following a review pursuant to the California Environmental Quality Act (CEQA), for a processing a maximum of 3,500 Tons per Day of material, for which the City of San Jose adopted an Initial Study and Mitigated Negative Declaration on September 30 2015 (SCH #2015062017);



- H. Contractor represents that it has capacity within the tonnage limits of the SWFP to process City's Solid Waste at its Charles Street, San Jose facility, and thus the proposed Solid Waste processing services fall within the scope of the previously adopted Mitigated Negative Declaration, and the Parties agree that no further CEQA review is necessary;
- I. Labor Peace. Contractor has been in business since 1991 and currently has over 500 employees performing various jobs in its collection and recycling operations. Contractor has always had a great relationship with its employees. In its history, Contractor has never had a work stoppage or missed any of its collection or processing requirements due to labor unrest. It is Contractor's commitment to its employees to provide satisfactory working conditions with pay and benefits commensurate with the work performed. Contractor has always subscribed to labor peace and will continue to do so for this contract. Contractor will also abide by all laws relating to labor issues including fair labor negotiations. Contractor has never had "labor discord" in its operations and doesn't anticipate any in the future; however, there is no way to guarantee there will never be any. Contractor has always provided many benefits and programs outside its employment contract with its employees to maintain a competent and contented work force. However, should there be "labor discord" that Contractor is unable to dispel, it guarantees to perform and fulfill all the requirements of this contract;
- J. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide the required services of the quality and type which meet objectives and requirements of City as described in this Agreement; and
- K. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – (Reserved)



Exhibit E – (Reserved)

Exhibit F-1 – Ethical Standards

Exhibit F-2 – Affidavit of Compliance with Ethical Standards

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement mutually agreed upon and executed by the Parties, the term of this Agreement (Term) shall begin on the last date signed by the parties below (Effective Date) and terminate on June 30, 2036 and except as otherwise provided in Section 2.B below, the commencement date for services provided under this Agreement shall be January 1, 2021 (Commencement Date).
- B. Excusable Delay Due to Initial Expansion. The City understands Contractor's ability to commence full service composting at Z-Best described in Exhibit A is contingent on the Contractor's subcontractor, Zanker Road Resource Management, Ltd. (Zanker), completing the permitting and construction of the Z-Best Composting Facility (Z-Best) expansion. Contractor expects that services under this Agreement for Mixed Waste Processing will commence on January 1, 2021. However, if circumstances beyond Contractor's control cause this initial expansion to be delayed beyond December 31, 2020, Contractor shall guarantee 300 tons per week of composting capacity at the CF for Mixed Waste if the facility expansion is delayed and as long as such capacity is provided Contractor shall not be in breach of this Agreement, modified Services for the remaining Mixed Waste shall be rendered in accordance with Section 7 of Exhibit A at the Contingency Rates in Exhibit B and full Services shall commence immediately upon completion of the Z-Best expansion. After Contractor begins performing the full scope of work described in Exhibit A, this clause shall be of no further effect.

3. FIVE (5) YEAR EXTENSION

Contractor may request one five (5) year term extension to the original term, and at the City's sole option, City may grant Contractor's request to extend the term. Under no circumstances will the City or Contractor be obligated to extend the term.



4. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence. Except as provided in Section 5.2 below, Contractor shall be the exclusive provider of the Services described in Exhibit A.

5. EXCLUSIVITY

5.1 Grant of Exclusive Right. The City shall deliver or cause to be delivered to Contractor:

A. Mixed Waste. The City shall deliver or cause to be delivered to Contractor all Mixed Waste generated by Single Family (SFD) Customers, Multi-Family Customers, and Commercial Customers that is placed out for collection by the City or City's exclusively franchised hauler as Mixed Waste beginning January 1, 2021

B. Residential Recyclable Materials. City shall deliver or cause to be delivered to Contractor all Residential Recyclable Materials generated by Single Family (SFD) Customers and Multi-Family Customers that is placed out for collection by the City or City's exclusively franchised hauler as Recyclable Materials beginning in January 1, 2022, or earlier if mutually agreed to by the Parties at the pricing specified in Exhibit B. City and/or City's exclusively franchised hauler(s) shall not separate or pre-process any Residential Recyclable Materials collected through under the Franchise Agreement(s) prior to delivery to Contractor and City agrees, on behalf of itself and/or City's exclusively franchised hauler(s), to use commercially reasonable efforts to collect and deliver Residential Recyclable Materials to the Contractor's Recyclable Materials Processing Facility in a manner that does not cause the Recyclable Materials to be in a form where processing is impracticable under accepted industry methods and understands that the form of delivery impacts the classification of loads.

C. Yard Trimmings / Green Waste / Clean Green Waste. Contractor has granted the City an option for guaranteed Processing capacity, exercisable at the City's sole option through December 31, 2020, for Contractor to be the exclusive Processor of all Yard Trimmings generated by Single Family (SFD) Customers and Multi-Family Customers placed out for collection by the City or City's exclusively franchised hauler(s) as Yard Trimmings beginning January 1, 2025 at the pricing specified in Exhibit B; provided, however, that such option expires at 11:59 p.m. on December 31, 2020 if not exercised by the City through delivery of a signed writing to Contractor prior to expiration.

D. Collection System Modifications. City's modification to its exclusively franchised collection system for Mixed Waste, Recyclable Materials, Yard Trimmings, Organic Materials and/or Food Waste generated by Single



Family (SFD) Customers, Multi-Family Customers, and Commercial Customers shall not relieve City of its responsibility to Contractor under this Agreement.

5.2 Limitations on Exclusivity. Contractor shall have the right to receive and Process all Mixed Waste generated by Single Family (SFD) Customers, Multi-Family Customers, and Commercial Customers, and also, if the option is exercised pursuant to Section 5.1.C above, all Yard Trimmings generated by Single Family (SFD) Customers, Multi-Family Customers, and Commercial Customers, subject to the limitations and other terms and conditions set forth below.

The City may allow its exclusively franchised hauler to deliver source separated Food Waste collected from Commercial Customers subscribing to source separated collection to Sustainable Alternative Feed Enterprises (SAFE) for processing at the facilities located within the City of Santa Clara, or deliver source separated Organic Waste or Yard Trimmings collected from Commercial Customers subscribing to source separated Yard Trimmings collection to Newby Island Landfill, located at 1601 Dixon Landing Road, San Jose, CA for processing (only through December 31, 2024, and to other locations as approved by the City thereafter) provided, however, that for every five percent (5%) incremental increase in subscribed weekly volume of Food Waste, Organic Waste and Yard Trimmings from Commercial Customers beyond the subscribed volume of 750 cubic yards per week on the Effective Date of this Agreement (37.5 cubic yards), Contractor's rate to Process Commercial Mixed Waste shall increase by one half of one percent (0.5%), per the following example:

	Weekly Volume of Food Waste, Organic Waste and Yard Trimmings	% change in Weekly Volume from 750 Cubic Yards	Example Tip Fee Adjustment for Commercial Mixed Waste Processing
January 2021	725	-3.33%	\$171.00
February 2021	750	0.00%	\$171.00
March 2021	790	5.33%	\$171.86
April 2021	825	10.00%	\$172.72
May 2021	775	3.33%	\$172.72
June 2021	805	7.33%	\$172.72
July 2021*	750	0.00%	\$177.90
August 2021	725	-3.33%	\$177.90

**Hypothetical 3.0% CPI Increase*

Such rate increase shall become effective in the calendar month following the increase in subscribed weekly volume of source separated Commercial Food Waste, Organic Waste and Commercial Yard Trimmings (as defined in the agreement between the City and its exclusively franchised hauler), and shall remain effective even if the subscribed weekly volume of source



separated materials noted above subsequently drops. The subscribed weekly volume of source separated Commercial Food Waste, Organic Waste and Commercial Yard Trimmings collected from Commercial Customers shall be calculated based as provided in reports from the City's exclusively franchised hauler to the City and City shall be responsible for notifying Contractor of the subscribed weekly volume of source separated Food Waste, Organic Waste and Yard Trimmings collected from Commercial Customers from the prior month within thirty (30) days of the close of each calendar month and compensation adjustments shall be retroactive to the calendar month in which the increase in subscribed weekly volume occurred.

6. WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

7. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

8. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor on a per ton basis for all Solid Waste/Mixed Waste (Materials) provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum rates of compensation for Services performed under this Agreement are included in Exhibit B, which includes all payments authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. Except as provided in Sections 11 (Change in Scope) and 12 (Change in Law) of this Agreement, all work performed or materials provided in excess of the maximum rates of compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.



- A. City and Contractor agree Contractor's rates in Exhibit B shall be adjusted annually, as set forth in that Exhibit and subject to the provisions of Section 5.2 above.
- B. Invoicing; Reporting; Timing of Payments. Within thirty (30) days following the end of each calendar month, Contractor shall provide to City a report containing the following information as to materials delivered to Contractor for Processing during the prior calendar month, as applicable: (1) the weight of each load of Municipal Solid Waste/Mixed Waste delivered to Processor Facilities for Processing; (2) the diversion rate of such material; and (3) the total amount of compensation due to Contractor under this Section. Payment by City to Contractor shall be due net thirty (30) days from receipt of invoice. Late payments shall accrue interest at a rate of 1.5% per month or (if less) the maximum rate permitted by law.
- C. Contractor shall own all value and claims to California Redemption Value (CRV), California Processing and Administration Fees and any other State CRV rebates, subsidies or other fees related to the performance of Services in place at the time this Agreement is executed. Provided, however, that if new State programs, including grant subsidy or other compensation programs related to waste reduction, recycling or other resource recovery activities are implemented during the Term of this Agreement wherein Contractor or City may be eligible to receive benefits, the Parties shall negotiate in good faith the sharing of such benefits for a period of up to ninety (90) days and if the Parties are unable to reach agreement by the end of such period, then either party may commence the dispute resolution procedures in Section 13 below; provided, however, that the scope of such mediation shall be expressly limited to the allocation of benefits under any new State waste reduction, recycling or other resource recovery programs.

9. TERMINATION

- A. Termination for Default. Except as provided in Section 2 and Section 21 of this Agreement and Section 7 of Exhibit A, if Contractor fails to perform any of its material obligations under this Agreement, City shall give Contractor written notice setting forth the default. Contractor shall correct such default within thirty (30) days after receipt of such notice. If the Contractor fails to correct any default which constitutes a material breach of this Agreement within the cure period, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- B. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.



10. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

City approves with this initial Agreement execution the following subcontractors:

- A. Zanker Road Resource Management, Ltd. for the processing and composting of organic materials.
- B. Any trucking company or other entity licensed to do business in the State of California for the transfer of Processed materials from Contractor's Processing Facility to secondary processors, the Disposal Facility, and/or for sale.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

11. CHANGE IN SCOPE

In the event that City or Contractor request a Change in Scope to the Services provided under this Agreement, the Parties shall negotiate in good faith an appropriate adjustment to Contractor's compensation resulting from such Change in Scope and a Change in Scope shall only become effective if the Parties mutually agree on the scope of changes and adjusted or additional pricing associated with such a change. If the Change in Scope is requested by the City, City shall provide Contractor with a proposed scope of services and Contractor shall, within thirty (30) days, unless otherwise agreed to by the Parties in writing, a pricing proposal that reflects the change in scope and the Parties agree to meet within thirty (30) days to discuss the proposal and, as appropriate, begin negotiations; if the Change in Scope is proposed by Contractor, Contractor shall provide City with a proposed scope and pricing and the Parties agree to meet within thirty (30) days to discuss the proposal and, as appropriate, begin negotiations.

The inability of the Parties to reach agreement shall not constitute cause for Termination under Section 9 of this Agreement, nor shall the Parties' inability to reach agreement permit the City to seek another service provider for such services if such services impact the scope of Services under this Agreement. The Parties' inability to reach agreement is subject to the terms and conditions of Section 13.

12. CHANGE IN LAW

In the event of any Change in Law, including modification of the relationship of monthly Mixed Waste collection service rates and monthly source separated Food

Waste, Organic Waste and Yard Trimmings collection services rates charged to Commercial Customers, that requires changes and/or modifications in Contractor's ability to perform the Obligations under this Agreement and/or causes a significant and substantial increase in Contractor's and/or subcontractor's cost of, or a significant and substantial decrease in Contractor's and/or subcontractor's revenues from, its performance hereunder, the Parties shall negotiate in good faith an appropriate adjustment to Contractor's compensation resulting from such Change in Law for a period of up to ninety (90) days regarding modifications to this Agreement. If the Parties are unable to reach agreement by the end of such period, then either party may commence the dispute resolution procedures in Section 13 below; provided, however, that the scope of such mediation shall be expressly limited to the additional compensation required for Contractor to lawfully perform the Services under this Agreement.

City and Contractor acknowledge and agree that the Services provided under this Agreement are not subject to the Prevailing Wage requirements of California Labor Code Section 1720. If the City makes an independent determination that the Services provided hereunder become subject to Labor Code Section 1720 by some future action, and the Department of Industrial Relations has made no such determination that would constitute an eligible Change in Law pursuant to paragraph one of this Section, that action by the City shall be deemed a Change in Law and paragraph one of this Section shall apply.

Contractor is aware that SB1383 became law in 2016. Contractor agrees that the passage of this law and the regulations implemented under it will not present a Change in Law and Contractor has incorporated all known costs associated with SB1383 compliance to the rates in Exhibit B. If, however, the final implementation language deviates materially from what is known as of Effective Date of this Agreement and Contractor is required to make significant changes to the Compostable Waste Processing Facility and/or Composting Facility in response to SB 1383 that cause an increase in Contractor's and/or subcontractor's costs of more than five percent (5%), the Parties shall negotiate in good faith an appropriate adjustment to Contractor's compensation resulting from such changes for a period of up to ninety (90) days. If the Parties are unable to reach agreement by the end of such period, then either party may commence the dispute resolution procedures in Section 13 below; provided, however, that the scope of such mediation will be expressly limited to the additional compensation required for Contractor to lawfully perform the Services under this Agreement.

13. DISPUTE RESOLUTION

Mediation. In the event of any dispute, claim or controversy between the parties arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, the parties shall submit the dispute to the Judicial Arbitration and Mediation Service (JAMS) for non-binding mediation. The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals, and in promptly scheduling the mediation proceedings.



The mediation shall take place in Santa Clara County, California. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are and shall be, confidential, privileged, and inadmissible for any purpose, including impeachment, in any other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within 30 days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), either party may pursue any legal remedy available under applicable law, including litigation. This clause shall not preclude any of the parties from seeking provisional remedies from a court of appropriate jurisdiction. The mediation may continue, if the parties so agree, after the appointment of the mediator. The pendency of mediation shall not preclude a party from seeking provisional remedies from a court of appropriate jurisdiction, and the parties agree not to defend against any application for provisional relief on the ground that mediation is pending.

14. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

15. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

16. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.



17. OWNERSHIP OF WRITTEN MATERIAL

All written material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work, including, but not limited to, the release of this material to third parties.

18. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to inspect the books and records of Contractor for the sole purpose of verifying any and all charges made by Contractor to City in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records related to this Agreement in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any charges to City not so recorded shall be disallowed by City. Contractor shall bear the cost of the inspection if the inspection determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Subject to provisions of Section 11 of this Agreement, Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Subject to provisions of Section 12 of this Agreement, Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

19. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is

ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

City is currently a party to, or may in the future become a party to, contracts with third parties related to the collection, transport, and/or disposal of Material, to which Contractor and subcontractors listed in Section 10 are not a party (the "Third Party Agreements"). To the extent permitted by law, City agrees to protect, defend, hold harmless and indemnify the Contractor and listed subcontractors from liability, damages, and costs in the event that Contractor and/or listed subcontractors become a named party in a legal dispute arising out of the Third Party Agreements, to the extent that Contractor's liability, damages, and costs are a result of Contractor's performance of the Services identified in Exhibit A. Contractor shall have the right to approve of any legal counsel selected by City to defend Contractor, approval of which shall not be unreasonably withheld.

Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

20. ATTORNEY'S FEES

If any legal action or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, reasonable expert witness fees and other reasonable costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled. In the case of any judicial interpretation of this Agreement, "prevailing party" shall consist of that party whose position is more closely adopted by the court or other presiding body.

21. FORCE MAJEURE

No party shall be in default of its obligations under this Agreement in the event, and so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of god" (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, market shut down and labor



unrest by the employees of another person besides such party (including strike, work stoppage, slowdown, sick-out, picketing, or other concerted job action), or other similar cause not the fault of, and beyond the reasonable control of, the party claiming excuse. A party claiming excuse under this Section must: (1) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (2) notify the other party in writing within five (5) days after the occurrence of the event specifying the nature of the event, the expected length of time the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform. The party claiming excuse under this Section shall use its best efforts to remedy its inability to perform as soon as possible.

22. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

23. WAIVER

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

24. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Department of Public Works
1700 Walsh Avenue
Santa Clara, CA 95050
and by e-mail at environment@SantaClaraCA.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

GreenWaste Recovery, Inc.
Attention: Frank Weigel
610 East Gish Road
San Jose, CA 95112
and by e-mail at fweigel@greenwaste.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

25. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>). If any such laws change during the Term of this Contract, the provisions of Section 12 of this Agreement shall apply.

26. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

27. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

28. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

29. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

30. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

31. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

32. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.



CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated:

4/27/2020


BRIAN DOYLE
City Attorney


DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

GREENWASTE RECOVERY, INC.
a California corporation

Dated:

4/9/2020

By (Signature):



Name: Tracy Adams

Title: Co-CEO

Principal Place of
Business Address: 1500 Berger Drive, San Jose, CA 95112

Email Address: tadams@greenwaste.com

Telephone: (408) 938-4902

Fax: (408) 287-3108

"CONTRACTOR"



EXHIBIT A
SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

1. DEFINITIONS

- A. Composting or Compost (or any variation thereof). A controlled biological decomposition of organic waste yielding a safe and nuisance free compost product.
- B. Contamination. The percentage by weight of Non-Recyclable Material in a load of Recyclable Material delivered together with the percentage Moisture Content of such load.
- C. Commercial Customer. Any commercial business subscribed to Solid Waste service in the Exclusive Franchise Area.
- D. Composting Facility. The Z-Best Composting Facility located at 980 State Highway 25, Gilroy, CA 95020 that is owned and operated by Contractor's subcontractor Zanker Road Resource Management, Ltd.
- E. Compostable Waste Processing Facility. The GreenWaste Recovery Facility, located at 625 Charles Street, San Jose, CA 95112 that is owned and operated by Contractor.
- F. Disposal or Dispose (or any variation thereof). The final disposition of Residue or Solid Waste at the Disposal Facility or causing the same.
- G. Disposal Facility. Initially means the Newby Island Landfill, located at 1601 Dixon Landing Road, San Jose, CA, which is owned and operated by International Disposal Corporation of California through December 31, 2024 and beginning January 1, 2025 and through the Term of the Agreement shall mean any other permitted disposal facility selected by Contractor.
- H. E-Waste Items. Discarded electronic equipment such as, but not limited to, television sets, computer monitors, central processing units (CPU's), laptop computers, external computer hard drives, computer keyboards, computer mice, computer printers, DVDs and VCRs.
- I. Exclusive Franchise Area. All properties in the City not zoned for an "Industrial" use.
- J. Food Waste or Organic Waste. Food scraps and trimmings and other putrescible waste that results from food production, preparation, cooking, storage, consumption or handling and includes but is not limited to: meat;



fish and dairy waste; fruit and vegetable waste; grain waste; and acceptable food packaging items such as pizza boxes, paper towels, waxed cardboard and food contaminated paper products.

- K. Hazardous Waste. All substances defined as Hazardous Waste, acutely Hazardous Waste, or Extremely Hazardous Waste by §§ 25110.02, 25115 and 25117 of the California Health and Safety Code or in any future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the United States Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder. Hazardous Waste shall not include incidental Household Hazardous Waste which is commingled with the Recyclable Materials.
- L. Household Hazardous Waste. Any Hazardous Waste generated incidental to owning or maintaining a place of residence, excluding any Hazardous Waste generated in the course of operation of a business concern at a residence, in accordance with Section 25218.1 of the California Health and Safety Code.
- M. Mixed Waste. Any combination of mixed Solid Waste materials that that have been placed in waste containers by waste generators to be collected by the City's exclusively franchised Solid Waste hauler that have not been separated from the Solid Waste stream and intended for separate collection as source separated Recyclable Materials, source separated Yard Trimmings and source separated Food Waste as described in Section 5.2 of this Agreement.
- N. Mixed Waste Processing. The act of separating compostable waste and Recyclable Material from Residue.
- O. Moisture Content. The percentage of moisture of Recyclable Materials delivered as determined by using a moisture meter of the type used by China Certification & Inspection Group (CCIC).
- P. Multi-Family Dwelling (MFD) Customer. Any multi-family residential property in the EFA with four (4) or more units and multi-family residential properties under four (4) units that share Solid Waste collection services.
- Q. Non-Recyclable Materials. Those materials collected by City or City's exclusive hauler(s) and delivered to Contractor's Recyclable Materials Processing Facility that require disposal because they are:
 - i. Not Acceptable Recyclable Materials pursuant to Section D of Exhibit B, or



- ii. Are Acceptable Recyclable Materials but are:
 - a. Not free of food/liquid, or
 - b. Free of food/liquid but:
 - 1. Are smaller than 2"-2.5" and/or are not recoverable using industry-standard processing equipment or otherwise commercially reasonable methods, or
 - 2. Delivered a condition that renders them unmarketable (e.g. contaminated with paint inside packer truck, mangled from auger in truck), or
 - 3. Where no commercially reasonable market exists for their disposition.

R. Recyclable Materials or Recyclables. Materials that have been separated by the generator from other Solid Waste, collected by City or City's exclusive hauler(s) under the Franchise Agreements in a manner that is conducive to recovery and marketing (e.g. free of food/liquid, not compromised during collection, etc.) and where a commercially reasonable market exists for their disposition to be purchased as commodities and recycled. "Recyclable Materials" may be either a mixed stream of Acceptable Recyclable Materials commingled together ("Single-Stream Recyclables") or individual Acceptable Recyclable Materials, such as cardboard, glass bottles, metal cans, newspapers, plastic containers and mixed paper which have been segregated into separate containers by the generator for the sole purpose of recycling ("Source-Separated Recyclables"). See Section D of Exhibit B for a list of accepted recyclable materials ("Acceptable Recyclable Materials") as of the Effective Date. The Parties, by mutual written agreement, may add additional materials or remove materials from Section D of Exhibit B.

S. Recyclable Material Contamination Levels. Notwithstanding anything to the contrary contained herein, materials collected as Recyclable Materials delivered by City and/or City's exclusively franchised hauler(s) to Contractor will be distinguished by four levels of Contamination at the Recyclable Materials Processing Facility, as follows:

- i. Recyclables Stream ONE. Inbound loads with less than or equal to ten percent (10%) Non-Recyclable Materials by weight, and less than twelve percent (12%) Moisture Content, shall be Processed as Recyclable Materials.
- ii. Recyclables Stream TWO. Inbound loads with greater than ten percent (10%) and less than or equal to twenty percent (20%) Non-



Recyclable Materials by weight, and less than twelve percent (12%) Moisture Content, shall be Processed as Recyclable Materials.

- iii. Recyclables Stream THREE. Inbound loads with either (i) more than twenty percent (20%) and less than or equal to thirty percent (30%) Non-Recyclable Materials by weight, and less than twelve percent (12%) Moisture Content, or (ii) less than or equal to (20%) Non-Recyclable Materials by weight, and greater than or equal to twelve percent (12%) and less than eighteen percent (18%) Moisture Content, shall be Processed as Recyclable Materials pursuant to Table 1 of Exhibit B, or as Mixed Waste/Solid Waste in Contractor's Mixed Waste Processing Facility that is co-located with the Recyclable Materials Processing Facility.
 - iv. Recyclables Stream FOUR. Inbound loads with (i) greater than thirty percent (30%) Non-Recyclable Materials by weight, or (ii) greater than or equal to eighteen percent (18%) Moisture Content by weight, shall be Processed as Mixed Waste/Solid Waste in Contractor's Mixed Waste Processing Facility that is co-located with the Recyclable Materials Processing Facility.
- T. Recyclable Materials Processing Facility. The facility for processing Residential Recyclable Materials operated by Contractor and located at 625 Charles Street, San Jose, CA 95112 and/or 575 Charles Street, San Jose, CA 95112.
 - U. Recyclables Processing. Such sorting, cleaning, packaging and sale or other disposition of Residential Recyclable Materials as is required to qualify said materials for diversion credit pursuant to the California Integrated Waste Management Act of 1989 and regulations promulgated there under, including any amendments thereto. "Recyclables Processing" includes without limitation all associated transfer, transport and marketing, as appropriate for the material in question, and disposal of any Non-Recyclable Materials.
 - V. Residential. Multi-Family Dwelling (MFD) Customers and Single Family (SFD) Customers.
 - W. Residue. The materials that remain after Processing and/or Composting has taken place that are destined for disposal at the Disposal Facility.
 - X. Single Family (SFD) Customer. Any of dwelling units in the EFA utilizing a Solid Waste cart(s), or any combination of dwelling units sharing Solid Waste carts, for the accumulation and set out of Solid Waste.
 - Y. Solid Waste. All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid



wastes, except sewage, whether combustible or non-combustible, including garbage and recoverable material, and excluding hazardous wastes. The terms "refuse" and "garbage" may be used interchangeably with the term "Solid Waste". Solid Waste includes Food Waste, Organic Waste, Non-Recyclable Materials, Recyclable Materials, Residue and Mixed Waste.

- Z. Universal Waste. Universal Waste as defined in California Code of Regulations Title 22, Division 4.5, Ch 11, Article 1, §66261.9, including, but not limited to, common household batteries, fluorescent tubes and bulbs and other mercury-containing lamps, thermostats, electronic devices, electrical switches and relays, pilot light sensors, mercury gauges, mercury added novelties, mercury thermostats and non-empty aerosol cans that contained hazardous materials.
- AA. Yard Trimmings or Green Waste or Clean Green Waste. Lawn and shrubbery clippings, weeds, leaves, tree limbs, wood and all other similar waste materials that are rejected, abandoned, or discarded by the owner or producer thereof as offensive or useless and set out or placed for collection. Source separated tree trimmings that are less than six (6) inches in diameter, shrubbery prunings, vegetative garden wastes, dead plants, weeds, leaves, grass clippings and other vegetative matter with less than one percent (1%) Contamination. Yard Trimmings or Green Waste or Clean Green Waste also means Christmas trees that are cut to lengths of not more than five (5) feet, and which are free of plastics or other contaminants. Does not include Mixed Waste, Recyclable Materials, Hazardous Waste or Universal Waste.

2. REGULATORY COMPLIANCE

Subject to the provisions of Section 12 of this Agreement, Contractor shall at all times comply with all applicable laws, permits and licenses of the United States, the State of California, County of Santa Clara, City of Santa Clara and with all applicable regulations promulgated by Federal, State, regional or local administrative and regulatory agencies, in force and as they may be enacted, issued or amended during the Term.

The Services described herein were designed to assist the City to comply with SB1383 and Contractor will provide for the program support and reporting required by SB1383 and other regulations governing the tracking and reporting of Solid Waste processing and disposal.

3. PROCESSING

- A. Facilities and Capacity Assurance. Except as provided in Section 21 of the Agreement and Section 7 of this Exhibit A below:



- i. Mixed Waste will be collected by the City or City's exclusively franchised hauler(s) and Processed at the Compostable Waste Processing Facility ("CWPF") and Composting Facility ("CF), or such other processing facilities as are approved by the City. Contractor shall ensure there is sufficient capacity at the CWPF and CF for receiving and processing of all Mixed Waste and storage of finished products.
 - i. Recyclable Materials will be collected by the City or City's exclusively franchised hauler(s) and processed at the Recyclable Materials Processing Facility ("RMPF"), or such other processing facilities as are approved by the City. Contractor shall ensure there is sufficient capacity at the RMPF for receiving and processing all Recyclable Materials and storage of finished products.
 - ii. If the option is exercised by the City pursuant to Section 5.1.C of the Agreement:
 - a. Yard Trimmings will be collected by the City or City's exclusively franchised hauler(s) at the CWPF and Processed and/or transferred to the CF, or such other processing facilities as are approved by the City, and
 - b. Contractor shall ensure there is sufficient capacity at the CWPF and CF for receiving and Processing all Yard Trimmings and storage of finished products.
- B. Mixed Waste Processing Protocol. Contractor shall ensure that Mixed Waste is processed in accordance with the following:
- i. At the CWPF, Mixed Waste will be processed to remove Recyclable Material and Residue.
 - ii. The remaining material will be delivered to the Composting Facility for composting.
 - iii. After composting, the materials will be screened to generate finished compost, mulch, and other products.
 - iv. Residuals remaining after screening will be delivered to the Disposal Facility.
- C. Recyclable Materials Processing Protocol. Contractor shall ensure that Materials are processed in accordance with the following:
- i. At the RMPF, Recyclable Materials will be Processed to remove Recyclable Material and Residue.



- ii. Recyclable Materials recovered will be baled and stored for sale.
 - iii. Residuals recovered and remaining after Processing will be delivered to the Disposal Facility.
- D. Yard Trimmings Processing Protocol. If the option is exercised pursuant to Section 5.1.C of this Agreement, Contractor shall ensure that Yard Trimmings are processed in accordance with the following:
- i. At the CWPF, Yard Trimmings will be processed to separate compostable materials from woody debris and remove Recyclable Material and Residue.
 - ii. The remaining material will be delivered to the Composting Facility for composting or grinding to generate a finished mulch product.
 - iii. After composting, the materials will be screened to generate finished compost, mulch, and other products.
 - iv. Residuals remaining after screening will be delivered to the Disposal Facility.

4. **WEIGHING REQUIREMENTS**

At a minimum, Contractor shall weigh or shall cause to be weighed all Solid Waste received pursuant to this Agreement. Contractor shall report all weights (both gross and tare) and related delivery information, including date, time, material type, route and truck number for each load. Contractor shall maintain procedures, records and internal controls to record weights of incoming material before Materials from City are commingled with material from any other source.

Recyclable Material Load Classification. Each load of Recyclable Materials delivered by City and/or City's exclusively franchised hauler(s) to Contractor's Recyclable Materials Processing Facility shall be evaluated and a Recyclable Stream classification will be assigned based on the composition of the Recyclable Material delivered in each load. Classification of each load by Contractor as it is delivered by City and/or City's exclusively franchised hauler(s) will ensure City is paid or charged correctly. Collection vehicles will be weighed as they enter Contractor's Recyclable Materials Processing Facility. Contractor's scale house operator will create a gate tag and City and/or City's exclusively franchised hauler(s) vehicles will unload in the designated area. Each load of Recyclable Materials delivered will have a Recyclables Stream Classification assigned at the scale house. After loads have been emptied, load check personnel will visually inspect the load in the presence of the City or City's exclusively franchised hauler(s)' driver. If a load has a different Recyclables Stream classification than originally assigned at the scale house or if, rather than being Processed, a load is reclassified to be Processed as Mixed Waste in accordance with Table 1 in Exhibit



B, the load checker will communicate with the scale house operator to correct the gate tag, and will take photos to document the re-classification, so that the City is paid or charged accurately. The photos will be emailed to one single email address designated by City and/or City's exclusively franchised hauler(s) within three (3) days.

Either Party may, at its own expense, conduct waste characterization audits of City Solid Waste delivered to Contractor's facilities. Such waste characterization audits shall be scheduled such as to minimize interference with Contractor operations (for example, on a Saturday) and will be conducted to identify statistically valid proportions of Food Waste, Organic Waste, Non-Recyclable Materials, Recyclable Materials, and Residue present in samples of inbound City Mixed Waste and Solid Waste. Such waste characterization audits may be requested by City at its option on a quarterly basis, with the Contractor providing for safe and dry access at the receiving facility where waste characterization activities will take place, and from which the resultant sorted Solid Waste will be accepted by the Contractor as per the requirements of this Agreement.

5. RESIDUE DISPOSAL

Residue Allocation to City. Contractor shall determine the City's pro rata share of Residue generated from Processing based on the total tons of Materials Processed and Composted from all sources and the total tons of Residue generated from all sources. Residue disposal tons under this Agreement shall be calculated and reported monthly to the County of Santa Clara under the Disposal Reporting System (DRS) by the Contractor.

Mixed Waste Residue Disposal Through December 1, 2024. For the period of January 1, 2021 through December 31, 2024, Residue from Processing Mixed Waste shall be Disposed at the Newby Island Landfill located at 1601 Dixon Landing Road, San Jose, CA or such place or places designated by the City. For this period, the cost of Residue Disposal shall be the sole obligation of the City.

Mixed Waste Residue Disposal Beginning January 21, 2025. Unless otherwise mutually agreed to between the parties in writing, for the period of January 21, 2025, through end of the Term of the Agreement, all costs associated with the disposal of Residue shall be the sole responsibility of Contractor and the Processing tip fees shall be adjusted in accordance with Exhibit B.

Residue from Recyclable Materials. Contractor shall be responsible for the disposal of all Residue generated at the Recyclable Materials Processing Facility from Recyclable Materials Processing under this Agreement at any legally permitted disposal facility selected by Contractor at Contractor's expense.

Residue from Yard Trimmings. If the option is exercised pursuant to Section 5.1.C of this Agreement, Contractor shall be responsible for the disposal of all Residue generated at the CWPF and/or CF from Yard Trimmings Processing under this

Agreement at any legally permitted disposal facility selected by Contractor at Contractor's expense.

Diversion. Contractor shall attribute diversion credit to the City of Santa Clara pursuant to Table 1 in Exhibit B.

6. PROHIBITED MATERIALS

City shall prohibit the delivery of any material defined as Hazardous Waste or Designated Waste, as defined by applicable California and Federal Law, to the Processing Facility. Processor shall have the right to reject any loads that contain Hazardous or Designated Waste that Processor reasonably and in good faith believes would, upon Processing or Disposal, be a violation of local, state or federal law or regulation.

7. PLANNED FACILITY UPGRADE

Due to the length of the Term of the Agreement, the Parties acknowledge that processing at the CWPF and/or the CF facilities will require upgrades that have the potential to cause interruption(s) to Services. Additionally, equipment and machinery may be replaced by Contractor during the Term of this Agreement, necessitating planned interruption(s) in Contractor's ability to fully perform the Services under this Agreement. The Parties agree that such planned facility upgrades shall not constitute breach under Section 9 of the Agreement, provided Contractor gives City sufficient notice as set forth below and the upgrades are completed in less than or equal to a consecutive 12 month period. Except as provided below, a planned facility upgrade shall not relieve the City from its obligations under Section 5 of the Agreement.

- A. Notice for Service Interruptions, Upgrades and Maintenance. In the event that a shut-down from a planned facility upgrade is anticipated, Contractor shall provide no fewer than three (3) months' notice to the City for any facility upgrades that may limit Contractor's ability to fully perform the Services under this Agreement. City and Contractor shall discuss the scope, duration and potential impact of such upgrades, including contingency plans that will maximize the ability of Contractor and subcontractors to provide the Services under this Agreement that maximize waste diversion at the Contingency Rates in Exhibit B.
- B. Compostable Waste Processing Facility Upgrades. A planned facility upgrade at the CWPF may require a reduction or suspension in the capacity commitment at the CWPF provided in Section 3 to this Exhibit A, above. During such time, Contractor shall work with the City to maximize the processing of Mixed Waste under this Agreement, which may include transfer of unprocessed Mixed Waste to the CF at the Contingency Rates in Exhibit B.



If such a planned facility upgrade occurs prior to December 31, 2024, City reserves the right to direct its exclusive hauler to deliver Mixed Waste in excess of the tons that can be processed under this Agreement to the Disposal Facility; however, if such a planned facility upgrade occurs after January 1, 2025, Contractor shall be responsible for transferring Mixed Waste to the Disposal Facility at the Contingency Rates in Exhibit B.

- C. Composting Facility Upgrades. If a planned facility upgrade occurs at the CF, there shall be no impact to Contractor's capacity commitment at the CWPF provided under Section 3 to this Exhibit A, above; however, all, some or none of the Compostable fraction of material recovered at the Compostable Waste Processing Facility may be transferred to the Disposal Facility at the Contingency Rates in Exhibit B.
- D. Recyclables Materials Processing Facility. In the unlikely event that a planned facility upgrade at the RMPF requires a reduction or suspension in the capacity commitment at the RMPF provided in Section 3 to this Exhibit A, Contractor shall work with the City to maximize the Processing of Recyclable Materials under this Agreement, which may include Processing Recyclable Materials separately from other waste at the CWPF and/or securing capacity at other facilities if available and practicable.

If such options and capacity are not available or are impracticable for all the City's Residential Recyclable Materials, then transfer of unprocessed Recyclable Materials to the Disposal Facility may be required at the Contingency Rates in Exhibit B or Contractor and City may mutually agree to another solution.

Contractor does not anticipate a planned facility upgrade that would require a reduction or suspension in services occurring prior to December 31, 2024 as the RMPF has been recently upgraded. If a planned facility upgrade occurs after January 1, 2025 and alternative capacity cannot be secured, Contractor shall be responsible for transferring Recyclable Materials to the Disposal Facility at the Contingency Rates in Exhibit B.

8. OTHER PROVISIONS

The MRF is open Monday through Sunday and is permitted to operate twenty-four (24) hours per day, seven (7) days per week. The MRF is typically open from 4:00am - 9:00pm Monday through Friday, 5:00am - 5:00pm on Saturday, and on an as-needed basis for maintenance on Sunday, generally operates 309 days per year, and is closed on the following holidays:

- i. Thanksgiving Day
- ii. Christmas Day
- iii. New Year's Day

EXHIBIT B
SCHEDULE OF FEES

1. Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month on an invoice and in a format approved by City and subject to verification and approval by City. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

	PER TON PRICING	
Mixed Waste Processing (FOB GreenWaste MRF)	City Pays Disposal	GWR Pays Disposal
Commercial and Multi-Family Mixed Waste Processing	\$171.00	\$190.00
Single-Family and Townhomes Mixed Waste Processing	\$165.00	\$184.00
Contingency Pricing for Mixed Waste Processing (FOB GreenWaste MRF) *	City Pays Disposal	GWR Pays Disposal
Processing at GWR MRF Only (<i>Transfer Remainder to Landfill</i>)	\$120.00	\$139.00
Processing at Z-Best Only (<i>Transfer from GWR MRF</i>)	\$202.00	\$212.00
No Processing (<i>GWR Transfer to Landfill</i>)	\$55.00	\$100.00
Transfer & Disposal for Solid Waste (FOB GreenWaste MRF) ~ Beg. 2025**	City Pays Disposal	GWR Pays Disposal
Any Sector (MFD/COM and/or SFD/Townhomes)	<i>n/a</i>	\$100.00
Yard Trimmings Processing (FOB GreenWaste MRF) ~ Beg. in 2025**	City Pays Disposal	GWR Pays Disposal
Any Sector (MFD/COM and/or SFD/Townhomes)	<i>n/a</i>	\$95.00
Curbside Recyclables Processing (FOB GreenWaste MRF) ~ Beg. in 2022	City Pays Disposal	GWR Pays Disposal
Any Sector (MFD/COM and/or SFD/Townhomes)	<i>n/a</i>	See Section D of this Exhibit B.

**Pursuant to Section 7 of Exhibit A, Capacity Not Guaranteed Under Contingency Pricing Scenario.*

***If the City exercises its option for Yard Trimmings Processing pursuant to Section 5.1.C of this Agreement.*

- A. All per ton rates shall be adjusted annually by the annual percentage change in the Consumer Price Index to be effective July 1 of each year. The annual percentage change shall be calculated by taking the value of the Consumer Price Index for All Urban Consumers (CPI-U, Series Id. CUURS49BSA0) for San Francisco-Oakland-Hayward Metropolitan Area, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency, for the most recent month of December over the same index for the month of December of the previous year, rounded to the nearest hundredth of a percent. If the annual CPI adjustment calculation results in a negative annual percentage change, no adjustment shall be made to the rates and the rates from the previous rate period will remain effective. The first adjustment to per ton rates in the table above shall be effective July 1, 2021.



- B. The initial rates set forth in Exhibit B are inclusive of all Fees, Taxes and Governmental Charges in effect on the Effective Date. To the extent Contractor's cost of Processing, changes as a result of any adjustment in or any new Fees, Taxes and/or Governmental Charges, the then-current per-ton rates shall be adjusted commensurately, concurrent with the effective date of any adjusted or new such Fees, Taxes and/or Governmental Charges.
- C. The initial rates set forth in Exhibit B are inclusive of all Processing, Transfer, Transport, Disposal, marketing, reporting and other services and obligations to be performed by Processor hereunder, and any and all Fees, Taxes, and Charges.
- D. Compensation for Curbside Recyclables Processing
- i. Base Compensation. Contractor shall compensate, waive charges or charge City for Residential Recyclable Materials delivered by City and/or City's exclusively franchised hauler(s) to Contractor's Recyclable Materials Processing Facility for Processing under this Agreement, per inbound ton, based on the applicable classification of each load of Residential Recyclable Materials delivered by City and/or City's exclusively franchised hauler(s) and the initial rates for such Recyclable Materials are as follows: (the "Base Compensation"):

Table 1: Recyclables Stream Classifications				
Recyclables Stream Classification	Acceptable Level of Contamination	Compensation Due by Sector (Per Ton Collected and Delivered As)		Diversion Credit Applied
		Single-Family Recycling (SFD/Townhomes)	Multi-Family Recycling (MFD)	
Recyclables Stream ONE	0% - ≤10% Non-Recyclable Materials -and- <12% Moisture Content	Per ton rate for SFD Processing established pursuant to Section D.ii and Section D.iv of this Exhibit B, payable by City to Contractor.	Per ton rate for MFD Processing established pursuant to Section D.ii and annual change per Section D.iv. of this Exhibit B, payable by City to Contractor.	Diversion credit based on 100% of Contractor's then-current Curbside Diversion Rate for each Ton of Recyclable Stream ONE Delivered for Processing



Table 1: Recyclables Stream Classifications				
Recyclables Stream Classification	Acceptable Level of Contamination	Compensation Due by Sector (Per Ton Collected and Delivered As)		Diversion Credit Applied
		Single-Family Recycling (SFD/Townhomes)	Multi-Family Recycling (MFD)	
Recyclables Stream TWO	>10% - ≤20% Non-Recyclable Materials –and– <12% Moisture Content	Per ton rate for SFD Recyclables Stream ONE plus an additional \$20.00/ton payable by City to Contractor, subject annual change per Section D.iv. of this Exhibit B.	Per ton rate for MFD Recyclables Stream ONE plus an additional \$30.00/ton payable by City to Contractor, subject to annual change per Section D.iv. of this Exhibit B.	Diversion credit calculated as 80% of Contractor's then-current Curbside Diversion Rate for each Ton of Recyclables Stream TWO Delivered for Processing



Table 1: Recyclables Stream Classifications

Recyclables Stream Classification	Acceptable Level of Contamination	Compensation Due by Sector (Per Ton Collected and Delivered As)		Diversion Credit Applied
		Single-Family Recycling (SFD/Townhomes)	Multi-Family Recycling (MFD)	
Recyclables Stream THREE	<p>>20% - ≤30% Non-Recyclable Materials –and– <12% Moisture Content</p> <p>–or–</p> <p>≤20% Non-Recyclable Materials –and– ≥12% - <18% Moisture Content</p>	<p>Per ton rate for SFD Recyclables Stream ONE plus an additional \$40.00/ton payable by City to Contractor (if Processed on Curbside Line), subject to annual change per Section D.iv. of this Exhibit B.</p> <p>–or–</p> <p>The then-current per ton rate for SFD/Townhome Mixed Waste Processing payable by City to Contractor (if Processed on Mixed Waste Line), subject to annual change per Section D.iv. of this Exhibit B.</p>	<p>Per ton rate for MFD Recyclables Stream ONE plus an additional \$50.00/ton payable by City to Contractor (if Processed on Curbside Line), subject to annual change per Section D.iv. of this Exhibit B..</p> <p>–or–</p> <p>The then-current per ton rate for MFD Mixed Waste Processing payable by City to Contractor (if Processed on Mixed Waste Line), subject to annual change per Section D.iv. of this Exhibit B.</p>	<p>Diversion credit calculated as 95% of the divertible material percentage by sector for each Ton of Recyclables Stream THREE Delivered and Processed.</p> <p>–or–</p> <p>30% of the then-current SFD MSW or MFD/COM MSW diversion rate, as appropriate, for each Ton of Recyclables Stream THREE Delivered and Processed as MSW.</p>



Table 1: Recyclables Stream Classifications				
Recyclables Stream Classification	Acceptable Level of Contamination	Compensation Due by Sector (Per Ton Collected and Delivered As)		Diversion Credit Applied
		Single-Family Recycling (SFD/Townhomes)	Multi-Family Recycling (MFD)	
Recyclables Stream FOUR	>30% Non-Recyclable Materials -or- ≥18% Moisture Content	The then-current per ton rate for SFD/Townhome Mixed Waste Processing payable by City to Contractor, subject to annual change per Section D.iv. of this Exhibit B.	The then-current per ton rate for MFD Mixed Waste Processing payable by City to Contractor), subject to annual change per Section D.iv. of this Exhibit B.	25% of the then-current SFD Mixed Waste or MFD/COM Mixed Waste diversion rate, as appropriate, for each Ton of Recyclables Stream FOUR Delivered and Processed as MSW.

- ii. Determining Rate for Recyclables Stream ONE. Subject to Section A of this Exhibit B, the rate for Recyclables Stream ONE shall be determined monthly based on a “Composite Price” of Old Corrugated Cardboard (“OCC”) and “Mixed Paper” (i.e., all fiber that is not OCC). The Composite Price for the prior month shall be calculated by adding the actual weighted average per ton sales price of OCC transacted by Contractor from the prior month, and the actual weighted average per ton sales price for Mixed Paper transacted by Contractor from the prior month, net of average shipping costs for two (2) tons of material (one ton of OCC and one ton of Mixed Paper) from the prior month. The methodology for calculating the Composite Price may be changed if mutually agreed to by Contractor and City in writing.

$$\text{Composite Price} = [\text{Monthly OCC Revenue} / \text{Tons of OCC Sold}] + [\text{Monthly Mixed Paper Revenue} / \text{Tons of Mixed Paper Sold}] - [\text{Monthly Shipping Costs for Fiber} / \text{Tons of Fiber Sold} \times 2]$$

- iii. The rate for Recyclables Stream ONE for the prior month shall be determined using the calculated Composite Price in accordance with the table below. Such rate shall be charged (or paid) by Contractor on each ton of Recyclables Stream ONE material accepted in the prior month. The rates for Recyclables Streams TWO, THREE and FOUR shall be determined by adding the additional per ton charge indicated in Table 1 to the then-current Recyclables Stream ONE rate.



Table 2: Rates for Recyclables Stream ONE*									
Prior Month Composite Price:	≤\$50	>\$50 ≤\$100	>\$100 ≤\$150	>\$150 ≤\$200	>\$200 ≤\$250	>\$250 ≤\$300	>\$300 ≤\$350	>\$350 ≤\$400	>\$400
SFD/TWNH Rate for Recyclables Stream ONE	\$55.00	\$45.00	\$35.00	\$25.00	\$15.00	\$ 0.00	(\$10.00)	(\$20.00)	(\$30.00)
MFD/COM Rate for Recyclables Stream ONE	\$65.00	\$55.00	\$45.00	\$35.00	\$25.00	\$10.00	\$5.00	(\$10.00)	(\$20.00)

* Positive number means City pays Contractor; negative number means Contractor pays City.

- iv. Periodic Rate Adjustments. Processor shall be entitled to adjust rates from time to time as follows:

The rate for Recyclables Stream ONE shall be determined monthly in accordance with the methodology set forth above.

The per ton rate for Recyclables Stream ONE and the additional per ton rate for Recyclables Streams TWO, THREE and FOUR shall be adjusted annually by the annual percentage change in the Consumer Price Index to be effective July 1st of each year, per Section A of this Exhibit B.

- v. Rates Inclusive. The initial rates set forth in Exhibit B are inclusive of all Fees, Taxes and Governmental Charges in effect on the Effective Date of this Agreement. To the extent Contractor's cost of Processing Recyclable Materials (including Disposal of any Residue), changes as a result of any adjustment in or any new Fees, Taxes and Governmental Charges, the then-current per-ton rate for the applicable service shall be adjusted commensurately by adding or subtracting the actual per ton dollar amount of the adjustment, concurrent with the effective date of any or adjusted or new such Fees, Taxes or Governmental Charges. Subject to the adjustments provided herein for Recyclable Materials, the rates set forth herein shall be the sole compensation to Contractor hereunder, and shall be inclusive of any and all Processing, transfer, transport, disposal, marketing, reporting and other services and obligations to be performed by Contractor hereunder, and any and all Fees, Taxes, and Charges.



Table 3: Acceptable Commodities

Acceptable Commodities	
Material	Definition
Tin/Steel	Includes steel food, beverage, aerosol and paint cans. "Tin" cans fall into this category. Tin or other coatings are often applied to a steel food can.
Aluminum	Aluminum used beverage containers, post-consumer aluminum beverage cans.
Metal – Misc.	Electrical motors, hangers (<i>bundled</i>), keys, nuts and bolts, metal pipe, propane tanks (<i>empty</i>), scrap metal, tools (<i>drained of all fluids</i>), toys, doors and screens.
PET	#1 Polyethylene Terephthalate (PET, PETE). PET is clear and tough. Commonly used in soft drink bottles and many injection molded consumer product containers.
NHDPE CHDPE	#2 (Natural High Density Polyethylene). Includes milk, water and other bottles that are HDPE and are of a natural or translucent color. (Colored High Density Polyethylene). Includes juice, detergent and other bottles that are HDPE and are of a colored or opaque color.
Mixed Plastic #3-7	#3 V: Polyvinyl Chloride. Commonly used in film for meat packaging and some rigid plastic containers. Does <u>not</u> include hard PVC (e.g. pipe). #4 LDPE: Low Density Polyethylene. Commonly used in newspaper and grocery bags and butter cups lids. Only acceptable when all film plastics are bagged together. #5 PP: Polypropylene. Commonly used in yogurt containers and deli trays. #6 PS: Polystyrene. (not typically recycled including Styrofoam) Commonly used <i>in</i> plastic cups and plates and to-go containers.
Glass – Clear	Clear Glass Bottles and Containers means clear glass beverage and food containers with or without a CRV label. Examples: Whole or broken clear soda and beer bottles, fruit juice bottles, peanut butter jars, and mayonnaise jars. Does <u>not</u> include glass bakeware, Pyrex or ceramics.



Acceptable Commodities	
Material	Definition
Glass – Colored	<p>Colored Glass Bottles and Containers includes food and beverage containers – three subtypes described below:</p> <p>Green Glass Bottles and Containers means green-colored glass containers with or without a CRV label. Examples: Whole or broken green soda, beer and wine bottles.</p> <p>Brown Glass Bottles and Containers means brown-colored glass containers with or without a CRV label. Examples: Whole or broken brown soda, beer and wine bottles.</p> <p>Other Colored Glass Bottles and Containers means colored glass containers and bottles other than green or brown with or without a CRV label. Examples: Whole or broken blue or other colored bottles and containers.</p>
Glass – 3 Mix	A collection of flint, amber, and green beverage or food container glass. It may contain normal container labels and metal tops.
Mixed Paper	<p>A mixture of various grades of recyclable waste paper not limited by fiber content and includes most types of clean and dry paper including glossy, white ledger and computer papers, newspapers, magazines, catalogs, phone books, cards, laser- printed white ledger, windowed envelopes, sticky notes, and often contains corrugated and brown paper.</p> <p>At the discretion of Contractor, may include waxed/coated fiber and mixed fiber products including coffee cups, ice cream containers, gable top cartons, aseptic or tetrapak.</p> <p>Does <u>not</u> include photographs, carbon paper, tissue, napkins. Food soiled materials and materials with visible water marks are <u>not</u> accepted.</p>
News	<p>Known as ONP (old news print), ONP has two major sub-grades:</p> <p>No. 8 is sorted newspapers only.</p> <p>No. 6 may have some magazines mixed in and may be tied in bundles or gathered in brown bags.</p> <p>Food soiled materials and materials with visible water marks are <u>not</u> accepted.</p>



Acceptable Commodities	
Material	Definition
OCC	<p>Used boxes and sheets of corrugated board of various qualities. Corrugated is known as OCC (old corrugated container). OCC is clean cardboard made from unbleached, unwaxed paper with a fluted (corrugated) inner liner.</p> <p>Does <u>not</u> include pizza boxes. Food soiled materials and materials with visible water marks are <u>not</u> accepted.</p>
eWaste:	<p>Includes calculators, cameras, cell phones, computer mice, cords, DVD players, DVRs, fax machines, keyboards, small printers, radios, scanners, smart phones, stereos, telephones, VCRs.</p> <p>Inkjet/toner cartridges are <u>not</u> acceptable in the commingled container.</p>



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EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

1. COMMERCIAL GENERAL LIABILITY INSURANCE

- A. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$5,000,000 Each occurrence
\$5,000,000 General aggregate
\$5,000,000 Products/Completed Operations aggregate
\$5,000,000 Personal Injury

- B. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

- C. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

- i. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
- ii. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
- iii. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

2. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than five million dollars (\$5,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.



In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of five million dollars (\$5,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

3. WORKERS' COMPENSATION

- A. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
- B. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
- C. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

4. POLLUTION LIABILITY

In the event that this contract involves hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors shall provide a Contractor's Pollution Legal Liability Insurance policy with coverage limits not less than five million dollars (\$5,000,000) each claim in connection with the Work performed under this Contract. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." Any deductible must be declared to and approved by City. Such policy shall cover, at a minimum, liability for bodily injury, damage to and loss of use of property, and clean-up costs arising from sudden, accidental and gradual pollution and remediation in connection with the Work under this Agreement.

- A. The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.
- B. Products/completed operations coverage shall extend a minimum of 5 years after project completion.



- C. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors.
- D. If the insured is using subcontractors, the Policy must include work performed "by or on behalf" of the insured.
- E. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

5. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general and pollution liability policy, and each umbrella or excess policy.

- A. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
- B. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
- C. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL).
- D. Cancellation.
 - i. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-



renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- ii. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

6. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

- A. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the provision of Services will be submitted to City for review.
- B. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the provision of Services reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
- C. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.
- D. Any type of insurance or any increase of limits of liability not described in this Exhibit which Contractor requires for its own protection or in compliance with applicable statutes or regulations, and subject to Section 12 of the Agreement, shall be Contractor's responsibility and at its own expense.
- E. No liability insurance coverage provided by Contractor to comply with the terms of this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss.



Contractor waives its right of subrogation against Indemnitees. Any property insurance policies affected by Contractor shall be endorsed to delete the subrogation condition as to indemnitees or shall specifically allow Contractor to waive subrogation prior to a loss. Contractor hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.

- F. Contractor shall cooperate fully with City and Contractor's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
- G. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need arises and subject to Section 12 of the Agreement. Contractor shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
- H. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this Agreement.
- I. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.
- J. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.
- K. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
- L. Contractor agrees to obtain and provide to City evidence of Professional Liability insurance for Architects or Engineers if engaged by Contractor to perform any of the Services required under this Agreement. City shall



determine the minimum coverage and policy limits required, after consultation with Contractor.

- M. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. The Contractor's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after approval from the City Attorney's Office upon satisfactory evidence of financial capacity.
- N. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement and City shall immediately release any such withheld payments following Contractor's achievement of compliance with the insurance requirements.

7. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement, except as with respect to limits. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

8. EVIDENCE OF COMPLIANCE

- A. Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

Email to Email address: ctsantaclara@ebix.com

Or by U.S. Mail to:



EBIX Inc.
City of Santa Clara Public Works Department (Streets Division)
P.O. Box 100085 – S2
Duluth, GA 30096

9. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)
On April 9, 2020 before me, Marisol M. Moreno, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Richard Cristina
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

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**EXHIBIT D
[RESERVED]**



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**EXHIBIT E
[RESERVED]**



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EXHIBIT F-1
ETHICAL STANDARDS FOR COLLECTORS SEEKING TO ENTER INTO AN
AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
- i. If a Collector¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - a. Is convicted of a crime punishable as a felony involving dishonesty³;
 - b. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - c. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of Collector in the performance of this Agreement; and/or,
 - d. Makes any false statement(s) or representation(s) with respect to this Agreement.
 - ii. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Collector can be imputed to the Collector when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Collector, with the Collector's knowledge, approval or acquiescence, the

¹ For purposes of this Agreement, the word "Collector" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.



Collector's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
- a. If City determines that Collector no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 - b. If City determines that the Collector fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Collector's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
 - c. Provided, however, that the City shall not exercise its rights pursuant to this Section B unless the City gives written notice to Collector of its determination, including the factual basis for making its determination, and Collector fails to eliminate the cause for the determination within forty-five (45) days on those matters which may be cured within forty-five (45) days and is taking reasonable action to eliminate those matters which cannot be cured within a forty-five (45) day period.
- C. In the event the Agreement is terminated pursuant to these provisions, Collector may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Collector will have the burden of proof on the appeal. The Collector shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Collector becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any Section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Collector.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Collector to the City.



EXHIBIT F-2
AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
[CITY OF SANTA CLARA]

I, Richard Christina, being first duly sworn, depose and say that I am the President of GreenWaste Recovery, and I hereby state that I have read and understand the language, titled "*ETHICAL STANDARDS FOR COLLECTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*" (herein "Ethical Standards") set forth in Exhibit F-1 of this Agreement. I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Collector" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit F-1 of this Agreement [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit F-1 of this Agreement within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

GreenWaste Recovery
A California Corporation



Richard Cristina
President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED



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