

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
MISSION TRAIL WASTE SYSTEMS, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Mission Trail Waste Systems, Inc., a California corporation, (Collector). City and Collector may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. WHEREAS, the Parties previously entered into an agreement entitled "Second Amended and Restated Exclusive Franchise Agreement for Collection, Transportation and Disposal of Refuse by and between the City of Santa Clara, California and Mission Trail Waste Systems, Inc." dated December 15, 2010 (the Prior Agreement");
- B. WHEREAS, the Parties entered into the Prior Agreement for the purpose of providing Collector the exclusive right to collect, transport and Dispose of Solid Waste in the City;
- C. WHEREAS, it is deemed to be to the mutual advantage of City and the Collector to continue to provide these services for the community;
- D. WHEREAS, the Parties desire to revise the Prior Agreement to modify the scope of services, extend the term and otherwise revise the Prior Agreement on the terms herein;
- E. WHEREAS, this Agreement supersedes the Prior Agreement with respect to events and activities after the Effective Date;
- F. 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 Collector 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 – Definitions

Exhibit C – Schedule of Compensation

Exhibit D – Insurance Requirements

Exhibit E – Reserved

Exhibit F-1 – Ethical Standards

Exhibit F-2 – Affidavit of Compliance with Ethical Standards

Exhibit G – Solid Waste Collection Vehicle Replacement Schedule

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, with respect to the subject matter hereof. 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

This Agreement supersedes the Prior Agreement with respect to events and activities after the Effective Date. This Agreement shall commence upon July 1, 2020 (the “Effective Date”), and continue in effect until June 30, 2036, unless sooner terminated in accordance with the provisions of this Agreement.

3. FIVE (5) YEAR EXTENSION

Prior to June 30, 2034, Collector and City shall meet and confer wherein Collector may request one five (5) year term extension to the original term, and upon mutual agreement, City may grant Collector’s request to extend the term. Under no circumstances will the City be obligated to extend the term.

4. SCOPE OF SERVICES AND PERFORMANCE SCHEDULE

Collector shall perform those Services specified in Exhibit A within the time stated in Exhibit A.

5. WARRANTY

Collector 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. Collector 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 Collector. If Collector fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Collector for the cost incurred by City.

6. QUALIFICATIONS OF COLLECTOR - STANDARD OF CARE

Collector represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, express and implied, contained herein, and City expressly relies upon Collector's representations regarding its skills and knowledge. Collector shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

7. NOTICE OF FAILURE TO PERFORM, PENALTIES, LIQUIDATED DAMAGES, AND REMEDIES

A. Notice of Failure to Perform. In addition to any other remedies available to City or provided under this Agreement or by law, City may give written notice to Collector for failure to perform any Services or to comply with the terms of this Agreement. In the notice, City shall also identify allowable Collector period of compliance.

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

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

Collector agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

LIQUIDATED DAMAGES		
	Item	Amount
a.	Each failure to commence service to a new Customer account within seven (7) days after order.	\$ 500.00 per incident
b.	Each failure to remove graffiti from a Cart or Bin within seven (7) days of notification by City or Customer.	\$ 500.00 per incident
c.	Each occurrence of beginning collection at property zoned for residential use before 7:00 a.m. or after 7:00 p.m. after first notification of violation.	\$ 500.00 per incident
d.	Each occurrence of discourteous behavior to a Customer.	\$ 500.00 per incident
e.	Each failure to clean up spill or leakage of oil, hydraulic fluid, coolant, or other fluid from any collection vehicle used by Collector, which causes a stain of 0.5 square feet or greater.	\$ 500.00 per incident or location

LIQUIDATED DAMAGES		
Item		Amount
f.	Each failure to provide recycling service to a Commercial Customer.	\$ 125.00 per calendar day per incident
g.	Each failure to initially respond to a Customer complaint within one (1) business day.	\$ 300.00 per incident
h.	Each failure to remedy complaints related to missed collections within one (1) business day following receipt of the complaint.	\$ 125.00 per incident
i.	Failure to collect Solid Waste, which has been properly set out for collection, from an established Customer account on the scheduled collection day and not collected within the period described in this Agreement.	\$ 125.00 per incident
j.	Failure to collect Solid Waste, which has been properly set out for collection, from an established Customer account on the scheduled collection day and not collected within the period described in this Agreement, two (2) or more times at the same Customer address during a Quarter.	\$ 500.00 per incident
k.	Failure to properly return empty Carts and Bins to proper set-out location that avoids pedestrian or vehicular traffic impediments.	\$ 125.00 per incident
l.	Failure to clean up Collector spills from Solid Waste Carts and Bins.	\$ 125.00 per incident
m.	Failure to renew Performance Bond or renew Insurance and submit Certificate of Insurance prior to expiration date.	\$ 125.00 per calendar day
n.	Failure to submit monthly or annual report(s), as required. If City determines report is not complete, the Collector shall be given forty-five (45) business days to complete report. Report shall be considered late until such time as a correct and complete report is received by City.	\$ 125.00 per calendar day
o.	Failure to maintain collection vehicles in condition specified by this Agreement.	\$ 125.00 per vehicle per calendar day
p.	Failure to maintain Carts and Bins in a condition specified by this Agreement in Section 5.G of Exhibit A.	\$ 125.00 per incident
q.	Failure to notify Customer with reason for non-collection due to improper set out within one (1) day.	\$ 125.00 per incident

LIQUIDATED DAMAGES		
Item		Amount
r.	Failure to provide Alternative Fueled Collection and/or any other supervisory vehicles specified in Section 5.E of Exhibit A.	\$ 125.00 per calendar day
s.	Failure to provide accurate proof of payment for Disposal of City's Commercial Organic Waste and Food Scraps.	\$ 125.00 per calendar day
t.	Failure by Collector to meet the reasonable and necessary Best Practice Efforts to keep Residual to a minimum.	\$ 125.00 per incident
u.	Disposal of Recyclable and Organic Waste Materials that have been separately collected by Collector at a Disposal facility without first obtaining the required permission of City.	\$ 1,000 per day 1 st and 2 nd instance, \$5,000 per day subsequent instances

D. Procedure for Assessment of Liquidated Damages. City may assess liquidated damages for each calendar day or event, as appropriate, that Collector is determined to be liable in accordance with this Agreement. Prior to assessing liquidated damages, and within two (2) business days of becoming aware of circumstances that would warrant assessment of liquidated damage, City shall provide notice to Collector that such circumstances exist, and whether the City intends to pursue assessment of liquidated damages. The notice will include a brief description of the violation or incident of non-performance. Collector may review (and make copies at its own expense) all information in the possession of City relating to the violation or incident of non-performance. Collector may, within ten (10) days after receiving the notice, request a meeting with City. Collector may present evidence in writing and through testimony of its employees and others relevant to the violation or incident of non-performance. City will provide Collector with a written explanation of its determination as to each violation or incident of non-performance prior to authorizing the assessment of liquidated damages. Within forty (40) days after Collector's receipt of any assessment of liquidated damages in excess of \$10,000, such liquidated damages will not be imposed on Collector until Collector has been given a reasonable opportunity to respond to allegations and to meet and confer with the City Manager. In such case, the decision of the City Manager shall be final and Collector shall not be subject to, or required to exhaust, any further administrative remedies.

E. Timing of Payment. City will deduct liquidated damages from monthly payment to Collector. A summary explanation of the damages that have been deducted will be provided along with the payment.

8. COMPENSATION AND PAYMENT

- A. City Billing and Payment. In consideration for Collector's complete performance of Services, City shall bill and collect, for the Collector, the specified charges established in the Schedule of Tariffs (a copy of which is attached hereto as Exhibit C and made part hereof by reference), as modified from time to time in accordance with the provisions of Exhibit C. City shall pay to Collector as the sole consideration for Collector's performance hereunder the Schedule of Tariffs for Services for the previous month adjusted for over charges and erroneous billings, less other deductions and offsets allowed under this Agreement. In addition, City shall be entitled to deduct from said Schedule of Tariffs an amount equal to ten percent (10%) of gross billings for these tariffs for administrative and billing processing costs and as compensation for the rights and privileges conferred herein, which said sum shall be and remain the property of City. Collector shall not be entitled to any payment above the maximum compensation under any circumstance, except as otherwise set forth in this Agreement, and all expenses incurred therein shall be at Collector's sole expense.
- B. Time of Payment and Disputes. During the full term of this Agreement, all amounts due hereunder shall be paid monthly by City to Collector on or before the fifteenth (15th) day of each month and shall cover Services rendered during the preceding month. Collector shall review monthly payment and all monthly service charges included in Exhibit C received from City and shall respond in writing to City of any disputed payment amounts within 60 days of receiving payment, after which payment will be considered full and complete for said services.

9. GENERAL PROVISIONS

- A. Performance Bond. This Agreement shall not become effective until Collector has secured and delivered to City a good and sufficient surety bond, to be approved by the City Attorney, in the amount of three million five hundred thousand dollars (\$3,500,000) to secure the full, true and faithful performance of all the terms, obligations and conditions of this Agreement on the part of Collector to be kept and performed and Collector agrees to secure and present said bond for approval of the City Attorney concurrently with the execution of this Agreement. Said bond shall not be subject to cancellation and shall be in full force and effect for the full term of one (1) year, and shall be renewed, or a new bond furnished subject to approval herein provided, not less than fifteen (15) days prior to the expiration of the then existing bond on file with City; it being understood and agreed that Collector shall, at all times during the term of this Agreement, maintain on file with the City Clerk good and sufficient faithful performance surety bond in accordance with the requirements of this Section. If Collector fails to have and keep in full force and effect the bond required by this

Section, City, in addition to any and all other remedies it may have, withhold all payments to or to become due said Collector until said bond requirement has been fulfilled.

- B. Force Majeure. No party shall be in default of its obligations under this Agreement and from any obligation to pay Liquidated Damages 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, pandemic, 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. In the event of labor unrest, including, but not limited to, strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by Contractor’s employees or directed at Contractor, or a subsidiary, Contractor shall not be excused from performance. In such case, Contractor shall continue to provide a reasonably satisfactory level of performance during the pendency thereof, but Contractor shall not be required to adhere strictly to the specific requirements of this Agreement regarding routes, Collection times or similar matters; provided, however, that in no event shall more than seven (7) calendar days elapse between pickups for Residential and Commercial Customers. Any labor action initiated by Contractor, including, but not limited to, a lock-out, shall not be grounds for any excuse from performance and Contractor shall perform all obligations under this Agreement during the pendency of such Contractor-initiated labor action. 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.
- C. Annexation. In the event that any community, neighborhood or other territory is hereafter annexed to City, Solid Waste services shall, if requested by City, be immediately provided to such area by Collector pursuant to this Agreement.
- D. Fees and Gratuities. Collector shall not, nor shall it permit any agent, employee or subcontractor employed by it to request, solicit, or demand either directly or indirectly, any compensation or gratuity for the collection of any material otherwise required to be collected under this Agreement. Collector shall not, nor shall it permit any agent, employee or subcontractor employed by it to accept any monetary compensation or gratuity for the

collection of any material otherwise required to be collected under this Agreement.

- E. Attorney's Fees. In the event of any claim or action or proceeding brought by either Party against the other under or in connection with the subject matter of this Agreement, the prevailing Party shall be entitled to recover from the losing Party as part of the judgment in such action all reasonable costs, expenses, and attorneys' fees, including those costs, expenses and attorneys' fees incurred in defending any counterclaim or cross-complaint brought in such action and incurred in any appeals, all in such amount as the court shall judge reasonable.

- F. Rights of City to Perform. In the event that Collector shall fail, refuse or neglect for any reason to collect and transport refuse set out or placed for collection as required by this Agreement, City may collect and transport the same, or cause the same to be collected and transported, and Collector shall be liable for the expense incurred. This right of City shall be cumulative and in addition to any and all other remedies it may have in the event of such failure, refusal or neglect of Collector. The collection and transport of refuse by City or by others on behalf of City shall not be deemed an election of remedies which shall preclude City from availing itself of additional remedies. In the event that Collector shall fail at any time to perform all or any part of this Agreement for a period of more than seventy two (72) hours, for whatever cause or reason, City Manager may, during the emergency interval, or any time thereafter with the approval of the City Council, take possession of all Collector's equipment, vehicles and disposal facilities, and employ such forces as may be deemed advisable to continue the work; and the cost of all labor, materials and equipment necessary for such work and reasonable allowance for overhead costs of operation shall be deducted and retained by City from monies then due or to become due Collector under and by virtue of this Agreement. In the event of any such use by City or other persons of Collector's equipment, vehicle and/or disposal facilities, City shall pay Collector, or its lien holder(s), reasonable rental value of such equipment, vehicles and/or disposal facilities, and keep them in good maintenance and repair, during the time the same are used by City or such other persons.

- G. Entire Agreement. This Agreement supersedes any previous agreements either oral or written by the Parties and represents the entire understanding between the Parties, with respect to the subject matter hereof; provided, however, that this Agreement shall not relieve Collector of any financial obligations that it may have under the Prior Agreement and provided that the City will complete its financial obligations for the Split Cart Pilot Program per Amendment No. 1, with such obligation completed by December 30, 2021.

10. CHANGE IN LAW OR CHANGE IN SCOPE

- A. In the event of any Change in Law or Change in Scope requested by the City that require changes and/or modifications in Collector's ability to perform the obligations under this Agreement and/or causes a significant and substantial increase in Collector's cost of, or a significant and substantial decrease in Collector's revenues from, its performance hereunder, the Parties shall negotiate in good faith an appropriate adjustment to Collector's compensation resulting from such Change in Scope or Change in Law 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 11; provided, however, that the scope of such mediation or litigation shall be expressly limited to the additional compensation reasonably justified by such Change in Law or Change in Scope.
- B. City and Collector 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 Services provided hereunder become subject to Labor Code Section 1720 by some future action, that action shall be deemed a Change in Law and paragraph one of this Section 10 shall apply.

11. DISPUTE RESOLUTION

- A. All questions or disputes arising between the Parties under this Agreement shall be determined initially by the City Manager, subject to the right of Collector to appeal to the City Council. Any matter decided by the City Manager against Collector will be heard by the City Council within sixty (60) days of the filing of the written appeal request with the City Clerk. The Collector shall have the opportunity to present evidence, both oral and documentary, and argument before the City Council.
- B. If the City Council decides against the Collector after an appeal, the Parties agree to submit the matter to non-binding mediation before a recognized mediator having experience with contracts like the Agreement and that is mutually acceptable to the Parties, provided that neither Party shall unreasonably withhold its acceptance. If the Parties are unable, after a period of thirty (30) days, to agree on a mediator, either Party may petition a court of competent jurisdiction to appoint such a mediator for the Parties. Each Party shall be entitled to present evidence, both oral and documentary, and argument in the mediation, and shall bear its own costs, including legal fees and the cost of experts incurred in connection with the mediation. If the mediation does not result in a resolution of the dispute that is acceptable to both Parties, either Party may elect to pursue litigation in a court of competent jurisdiction.

- C. Notwithstanding any other provision herein, either Party shall be entitled at any time to seek injunctive relief from a court of competent jurisdiction to enforce this Agreement or to prevent any act which would constitute, or result in, a breach of this Agreement.
- D. This dispute resolution Section shall not prevent City from terminating this Agreement in conformance with its termination provisions.

12. TERMINATION

- A. Termination for Default. If Collector fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Collector subject to the provisions below.
 - i. In the event Collector defaults in the performance of any of the covenants, conditions or agreements to be kept, done or performed by it under the terms hereof, City shall give Collector a written notice, either by mail, facsimile or personal service, setting forth the nature of the default and a demand that said default be cured and remedied and that Collector comply with the covenants, conditions and agreements herein contained within a reasonable time. A reasonable time as herein referred to shall mean such a period of time as will be necessarily required under all the facts and circumstances of the particular matter to cure said default, but in no event shall it be less than ten (10) days or more than forty-five (45) days after the giving of said notice. If Collector fails, neglects, or refuses within such reasonable period of time to cure or remedy said default or to comply with said terms, provisions and agreements to the satisfaction of City, then City, without further notice and without suit or other proceedings, may immediately cancel and annul the rights and privileges granted herein.
 - ii. If Collector shall at any time during the term of this Agreement become insolvent, or if proceedings in bankruptcy shall be instituted by or against Collector, or if Collector shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Collector shall be appointed in any suit or proceeding brought by or against Collector, or if Collector shall make an assignment or composition for the benefit of creditors, then and in each and every such case (and provided that such proceedings, adjudication, appointment or assignment, as the case may be, continue in effect for ninety (90) days without being vacated, removed or withdrawn) this Agreement and the rights and privileges granted thereby, at the option of City, shall immediately cease, terminate and be forfeited and canceled upon notice to Collector of exercise of this option and without suit or other proceeding, and in

no event shall this franchise become a part of the assets of the estate of said bankrupt, insolvent, or assignor.

iii. In the event of termination of this Agreement as specified in Section 11.A.i. or 11.A.ii of the Agreement (above), City shall have the right forthwith to take possession of all trucks and other equipment of Collector for the purpose of collecting and disposing of the Solid Waste which Collector agreed to do, subject to the rights of any secured creditor of Collector. City shall have the right to retain possession of said trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by City for said purpose and City shall pay Collector the reasonable rental value of such trucks and equipment during the time the same are used by City for said purpose. City shall retain all fees collected during the period that City is providing the Solid Waste collection and Disposal service.

B. Remedies Not Exclusive. The rights and remedies of City under this Agreement, including the right to make a claim under the Performance Bond deposited with City by Collector for reimbursement of any costs borne or damages incurred by City as a result of a default by Collector under this Agreement and the right to perform during an emergency, shall be in addition to any and all other rights and privileges City may have, and shall not be deemed to limit any such other rights or privileges of City under this Agreement or by virtue of any law.

C. Procurement of Services Following Termination. In the event this Agreement is terminated in whole or in part as provided in this Section, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

13. ASSIGNMENT OR TRANSFER OF INTEREST WITH CONSENT OF CITY

A. This Agreement shall not be sublet or assigned, fully or in part, by operation of law or otherwise, without the written approval of the City Council. In the event that Collector petitions City for approval to assign Collector's interest in this Agreement, City shall review the competency and financial integrity of the proposed assignee. A consent to one assignment shall not be deemed to be a consent to any subsequent assignment. Any assignment without such consent and approval shall be void and shall at the option of City, terminate this Agreement.

B. Any corporate reorganization of Collector or transfer in ownership of any of the shares of stock or ownership interests in Collector which results in a change in majority voting control of Collector shall be deemed a subletting or assignment of this Agreement, and there shall be no such reorganization

or transfer of shares or ownership without the written approval of the City Council.

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 COLLECTOR

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

16. CONFIDENTIALITY OF WRITTEN MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Collector and all other written information submitted to Collector in connection with the performance of this Agreement shall be held confidential by Collector 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 Collector which is otherwise known to Collector or becomes generally known to the related industry shall be deemed confidential.

All Customer information developed or received by or for Collector and all other written information submitted to Collector in connection with the performance of this Agreement shall be held confidential by Collector and shall not, without the prior written consent of City, be used for any purposes other than the performance of this Agreement, nor be disclosed or sold to any entity not connected with performance of this Agreement. Nothing furnished to Collector which is otherwise known to Collector or becomes generally known to the related industry shall be deemed confidential.

17. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Collector 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 Collector pursuant to this Agreement – including claims of any kind by Collector's employees or persons

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contracting with Collector 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.

- B. Collector'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 Collector, against City (either alone, or jointly with Collector), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Collector 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, Collector 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 Collector's responsibilities under the Act.

18. INSURANCE REQUIREMENTS

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

19. WAIVER

Collector 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.

20. NOTICES

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

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

And to Collector addressed as follows:

Mission Trail Waste Systems, Inc.
Attention: Louie Pellegrini
1060 Richard Avenue
Santa Clara, CA 95052
and by e-mail at lpellegrini@missiontrail.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.

21. COMPLIANCE WITH LAWS

Collector shall comply with all Applicable Laws and regulations of federal, state and local governments, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Collector'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, Collector has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

22. CONFLICTS OF INTEREST

To prevent a conflict of interest, Collector certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Collector and that no person associated with Collector has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Collector 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. Collector will advise City if a conflict arises.

23. FAIR EMPLOYMENT

Collector 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.

24. NO USE OF CITY NAME OR EMBLEM

Collector 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.

25. 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.

26. 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.

27. AMENDMENTS

It is mutually understood and agreed that no alteration or variations of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto.

28. 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.

29. SIGNATURE CLAUSE

The signatures of City's duly authorized representatives confirm City's offer of the franchise to Collector as set forth in the terms and conditions of this Agreement. The signature of the Collector's duly authorized representative confirms Collector's acceptance of the franchise as set forth in the terms and conditions of this Agreement. Acceptance of this Agreement operates as an abandonment of the Prior Agreement and the rights and privileges granted therein. This Agreement is deemed to be effective on the Effective Date, as defined above.

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

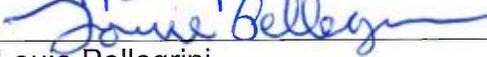
"CITY"

Mission Trail Waste Systems, Inc.
a California corporation

Dated:

4/22/2020

By (Signature):



Name:

Louie Pellegrini

Title:

President

Principal Place of

Business Address:

1060 Richard Avenue Santa Clara, CA 95052

Email Address:

lpellegrini@missiontrail.com

Telephone:

(408)727-5365

Fax:

()

"COLLECTOR"

EXHIBIT A
SCOPE OF SERVICES

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

1. GRANT OF EXCLUSIVE CONTRACT

- A. Collector shall have the sole and exclusive right and obligation via franchise to collect and transport Solid Waste from all Single-Family Customers, Multi-Family Dwelling Customers, and Commercial Customers (which includes Mixed-Use, Public and Quasi-Public establishments) located within the corporate limits of City and in the Exclusive Franchise Area, with the exception of during the term of this Agreement or any authorized extension thereof, Recyclable Material from Residential and Multi-Family Dwelling Customers.
- B. The Collector shall have the obligation to deliver all Solid Waste, including Garbage, Mixed Waste, Food Scraps, Yard Trimmings, and Organic Waste to the Designated Facilities established by this Agreement.
- C. Collection of Organic Waste by Collector from Commercial establishments shall be limited to the Commercial Customers receiving Organic Waste collection from Collector as of January 1, 2020.
- D. The Collector shall have the sole and exclusive right and obligation to Process Commercial Recyclable Material at the Processing Facility designated by Collector, and at no additional compensation above and beyond the compensation set forth in Exhibit B. Collector shall notify the City if the Designated Processing Facility to process Commercial Recyclable Material is changed.
- E. This franchise shall not include the right or duty to collect, transport or remove any Solid Waste generated by Industrial Zoned establishments and shall also not include the right or duty to collect, transport or remove Recyclable Materials from Residential and Multi-Family Dwelling premises. The right and franchise herein granted to Collector shall not restrict or preclude the City from authorizing:
 - i. A person disposing of Solid Waste from his/her own private residence to an approved Disposal facility;
 - ii. An owner or occupant of Industrial Zoned property that produces Solid Waste may Dispose of such Solid Waste or cause it to be removed and Disposed of, from the property to an approved Disposal facility as such Solid Waste is created or produced on such property. Said person may either enter into a private agreement with a

collector with a non-exclusive franchise agreement approved by the City Council to have his/her Solid Waste removed and Disposed of or he/she may remove and Dispose of such Solid Waste himself/herself, utilizing his/her own employees;

- iii. A person who is engaged in the business of gardening or tree trimming, and a person who is engaged in building construction or building demolition, and is in either case in possession of a valid business license issued by the City, is authorized to remove and Dispose of, with its own employee and vehicles, Yard Trimmings or Solid Waste, respectively, produced by such business activity itself; provided, that in all of such cases such Disposal shall be made at an approved Disposal facility;
 - iv. Any person may burn materials in fireplaces, heaters, or stoves for household heating or cooking purposes and may engage in composting of Yard Trimmings for use on that person's premises;
 - v. Public school districts and the State of California may contract for Solid Waste Services outside of this franchise agreement;
 - vi. Any collector may haul or Dispose of Recyclable Material; provided, that such collector purchases such materials or does not charge the person who generates such materials, directly or indirectly, by way of service fees, Bin or Cart rentals or otherwise, for such service;
 - vii. City from collection of holiday trees, continuing City's Solid Waste collection and Disposal services rendered as part of City's Annual Cleanup Campaign; or any such other program as the City Council finds appropriate from time to time, which is not inconsistent with the terms of this Agreement; and
 - viii. Collector shall handle, collect, transport and Dispose of all Solid Waste, and perform all of the services on its part to be performed by the provisions of the Agreement in a safe and careful manner, and in accordance with all laws, ordinances, and regulations of the United States, State of California, County of Santa Clara, and City.
- F. In order to protect the exclusive franchise granted in this Agreement, City will notify in writing the owner, if identifiable, of any Roll-off Bin, Bin or other Cart discovered in any public street or alley and being used for the illegal or unauthorized collection of Solid Waste ("Contraband") to remove such Contraband immediately and, if not so removed within twenty-four (24) hours after notice (or if the owner is not identifiable, after discovery), to direct Collector to confiscate such Contraband and store same with all hauling, Disposal and storage charges at the expense of the owner in accordance with the Schedule of Fees (Exhibit C) for ultimate disposition as

City may direct. If the Roll-off Bin, Bin or other Cart is on private property, City will pursue enforcement by issuing citations.

- G. All Solid Waste collected by Collector shall become the property of Collector immediately upon the collection thereof. Collector shall abandon ownership of collected Garbage, Mixed Waste, Organic Waste, and Yard Trimmings at such time as Collector's vehicles discharge the contents at the Designated Facilities described in Section 3.F of this Exhibit A. Collector shall retain ownership of and responsibility for proper Processing and/or Disposal of all Commercial Recyclable Material and source separated Food Scraps at its Designated Processing Facilities.

2. COLLECTOR RESPONSIBILITY

Collector agrees to perform all of its obligations under this Agreement for the term of this Agreement. Collector shall furnish all of the labor and equipment necessary for the collection and transport of all Solid Waste subject to the terms, conditions and provisions of this Agreement. Collector represents that it has the professional and technical personnel required to perform the services in conformance with such terms, conditions and provisions of this Agreement.

3. SCOPE OF SERVICE

A. Collection Schedule.

Unless otherwise authorized by the City Manager, the collection of Solid Waste hereunder shall be performed not less than one (1) time each week over routes and upon days established by Collector (Sundays and Legal Holidays excepted) and subject to the consent and approval of the City Manager. Regular collection days shall be scheduled Monday through Friday (except when delayed by Legal Holidays). Collector may arrange regular collections on Saturday in Commercial areas. Where the regular collection day falls on a Legal Holiday as herein defined, the collection shall be made on the next regular business day. All Residential collections, and collections from Commercial establishments which abut Residential districts shall not commence prior to 7:00 a.m. and shall be complete not later than 7:00 p.m. Collections from Commercial establishments designated by City as not abutting Residential districts shall not commence prior to 2:00 a.m. and shall be collected no later than 9:00 p.m.

- i. Collection on Holidays. If the day of collection on any given route falls on a Holiday or a day on which the Designated Facilities are closed, Collector may provide collection service for such route on the next workday following such holiday (including Saturdays for regularly scheduled Friday collections) or Designated Facilities closure days or shall provide such collection service on such Holiday or Designated Facilities closure days, except that Collector shall never

provide collection service (unless in case of emergency where such pickup is authorized by City) on New Year's Day, Thanksgiving Day or Christmas Day.

- ii. Collector will develop a map in Geographic Information System (GIS) format for the City showing the boundaries of each collection route and district and the day of service for all Residential, Commercial, Office, Planned Development, and Public/Quasi Public Customers. In the event that said district boundaries or route days are changed or modified, Collector shall update the map on an annual basis and notify the City of such updates. City expressly reserves the right of approval and ability to direct Collector to make specific changes or modifications to Collector's routes or collection schedules for the purpose of eliminating Customer complaints.

B. Residential Garbage and Yard Trimmings Collection Service Requirements.

- i. Collector shall provide collection of Single-Family Residential Garbage and Yard Trimmings to all Single-Family Residential Customers. All Single-Family Residential Customers in the City shall Dispose of their Garbage and Yard Trimmings in Carts supplied by Collector in accordance with Section 5.G of this Exhibit A by setting such Carts out at curbside on the designated collection day for collection by Collector. The tariff compensation per Customer of Collector's Residential Garbage and Yard Trimming collection service shall be per Exhibit C of this Agreement, subject to annual adjustments July 1 in accordance with Exhibit C.
 - (a) Collector shall provide back yard service for Garbage and Yard Trimmings collection at no additional cost for qualifying Single Family Residential Customers with affirmed and qualified disabilities pursuant to the Americans with Disabilities Act of 1990, which may include Collector transporting Carts to and from the street adjacent to the Customer's residence. Qualifying Customers must utilize the Carts described in Section 5.G of this Exhibit A.
 - (b) Single Family Residential and Multi-Family Dwelling Customers (four or less units) that utilize wheeled automated carts, but do not subscribe to the Yard Trimmings service shall be considered to have Townhouse service.
- ii. Collector shall provide Multi-Family Dwelling Customers with Garbage collection services from Carts and Bins supplied by Collector in accordance with Section 5.G of this Exhibit A. The tariff compensation per Customer for Multi-Family Dwelling Garbage

services shall be per Exhibit C of this Agreement, subject to annual adjustments in accordance with Exhibit C.

C. Commercial Garbage, Recyclable Material, Organic Waste, and Food Scraps Collection Service Requirements.

- i. Collector shall provide Commercial Customers with Garbage and Recyclable Material collection services from Carts and Bins supplied by Collector in accordance with Section 5.G of this Exhibit A. The tariff compensation per Customer for Commercial Garbage and Recycling services shall be per Exhibit C of this Agreement, subject to annual adjustments in accordance with Exhibit C.
- ii. Collector may provide Commercial Customers with source separated Organic Waste, and/or Food Scraps collection services from Carts and Bins supplied by Collector in accordance with Section 5.G of this Exhibit A to Customers that voluntarily subscribe to such service. Commercial Organic Waste Customers are limited to those listed in Section 1.D of this Exhibit A. The tariff compensation per Customer for Commercial Organic Waste and Food Scraps Services shall be per Exhibit C of this Agreement, subject to annual adjustments in accordance with Exhibit C.
- iii. Collector shall commit sufficient resources and personnel to provide Commercial Recycling services to all non-Residential Customers (not including public schools) in the Exclusive Franchise Area. Collector is required to provide up to 96 gallons of weekly Recycling service at no charge to each non-Residential Customer covered under this Agreement. The minimum recycling service level is 96 gallons per week. For example, Collector is able to sign a Customer up for 4 cubic yards of Recycling as a standalone service without providing a separate 96-gallon Cart. Collector is encouraged to work with Customers to combine and right size Carts and Bins as needed to minimize the number of Carts and Bins and frequency of collection.
- iv. Collector will provide processing of Commercial Recyclable Material and Dispose of all Residual at its own cost and direction and included within the tariff's set forth in Exhibit C. Collector shall not be granted adjustments to the tariff's relating to any changes in the costs or revenues related to processing Commercial Recyclable Material.
- v. If a Commercial Customer requires more recycling service than 96-gallons per week, Collector shall charge Customer the corresponding tariff level for a specific Cart or Bin and service level, as set forth in Exhibit C of this Agreement, plus ten percent (10%) of the total for billing and franchise fees. Collector shall retain five

percent (5%) for billing, and remit five percent (5%) to City on a quarterly basis as reported in Exhibit H.

D. Commercial Food Scraps Processing Requirements.

- i. Collector shall have the obligation to process source separated Food Scraps from Commercial Customers. Food Scraps that are collected shall become Collector's property to process and market. Collected material that is not Food Scraps and is considered Residue shall be Disposed of as Garbage in accordance with Section 3.F of this Exhibit A. Costs for Food Scraps processing Residue to be Disposed as Garbage from the City's Commercial Food Scraps Customers shall be paid by City through December 31, 2020. Starting January 1, 2021, Collector shall be responsible for all costs associated with Food Scrap processing Residue Disposal as Garbage without further compensation by the City. Residue shall be delivered to City's Designated Facility through December 31, 2024, and to a Designated Facility of Collector's choosing thereafter. Collector will provide City with proof of payment for Residue Disposal per Exhibit H.
- ii. Collector shall perform Customer billing for Commercial Organic Waste and Food Scraps Collection and Processing services. Commercial Organic Waste and Food Scraps collection tariffs and processing costs for individual service levels are set forth in Exhibit C of this Agreement. Collector shall charge Commercial Organic Waste and Food Scraps Customers 100% of the collection tariff and fifteen percent (15%) of the processing cost for the specific Cart or Bin service level plus ten percent (10%) of the total for billing and franchise fees. Collector shall retain five percent (5%) for billing, and remit five percent (5%) to City on a quarterly basis as reported in Exhibit H.
- iii. Collector shall invoice City on a monthly basis for eighty-five percent (85%) of the Commercial Organic Waste and Food Scraps processing cost for subscribed Cart and Bin service levels, as set forth in Exhibit C of this Agreement. Invoices shall include the number of accounts subscribing to each service level, the total processing cost for each service level, the fifteen percent (15%) of the processing costs charged to Commercial Organic Waste and Food Scrap Customers for each service level, and the eighty five percent (85%) of the processing costs for Organic Waste and Food Scrap processing invoiced to the City for each service level.

E. Roll-Off Service and Billing.

- i. Collector shall provide Roll-off Bin service to Customers in the Exclusive Franchise Area. Customers are responsible for securing any applicable permits for encroachment into the public right-of-way. Effective July 1, 2020, Collector shall provide all billing services for all Roll-off Bin Customers, including post-collection costs, franchise fees, and billing charges. Collector shall charge Customer the corresponding tariff level for the specific Roll-off Bin service level, as set forth in Exhibit C of this Agreement, plus the cost of processing and/or Disposal of all Roll-off Bin contents as charged to Collector (without any markup) by Disposal Facility, plus ten percent (10%) of the total for billing and franchise fees. Collector shall retain five percent (5%) of the for billing and remit five percent (5%) to City on a quarterly basis as reported in Exhibit H. City will provide assistance in the collection of payment for excessively past-due accounts.

F. Designated Facilities.

- i. Collector shall deliver all Garbage, Mixed Waste, Organic Waste, and Yard Trimmings to facilities as designated by this Agreement, with a one-way direct-haul distance limited to a ten (10) miles radius from City Hall, located at 1500 Warburton Avenue.
- ii. City shall pay Disposal/processing costs and taxes for City Garbage, Mixed Waste and Yard Trimmings collected from Carts and Bins delivered by Collector to Designated Facilities under City's direction, and at rates secured by the City for Disposal/processing at those facilities. City shall not pay any Disposal/processing costs and taxes for any materials collected from Roll-off Bins after June 30, 2020 as Collector will collect payment for those Disposal/processing costs directly from Roll-off Customers.
- iii. Collector shall deliver all Roll-off C&D from the Exclusive Franchise Area to Zanker Material Processing Facility in San Jose, California effective July 1, 2020. The Collector will hold the contract with Zanker Material Processing Facility. City will have the option to secure processing for such Roll-off C&D.
- iv. Collector shall deliver all Commercial Recycling to its Designated Recycling Facility.
- v. Collector shall deliver all collected Food Scraps to a legally permitted Food Scraps Processing Facility. Food Scraps shall not stay on site at designated Transfer Facility for a duration longer than allowed by current operating permits prior to transferring to the Food Scraps Processing Facility. Failure to comply with this provision may result

in the levy of liquidated damages and may result in Collector being in default under this Agreement.

- vi. In the event that a shut-down from a planned facility upgrade is anticipated, Collector shall provide no fewer than three (3) months' notice to the City for any facility upgrades that may limit Collector's ability to fully perform the Services under this Agreement. City and Collector shall discuss the scope, duration and potential impact of such upgrades, including contingency plans that will maximize the ability of Collector and subcontractors to provide the Services under this Agreement that maximize waste diversion.

G. Services to City.

- i. Recycling Service at City Facilities. Collector shall provide weekly Recycling service at the City Hall Complex at 1500 Warburton Avenue only, that includes In-House Service from containers supplied by City.
- ii. Annual Cleanup Campaign. City may, during a one (1) month duration of each calendar year, conduct a cleanup campaign. During the period set aside for the cleanup campaign, all occupants of Residential dwellings within City shall, be permitted to set out at the public parkway or sidewalk line, any and all discarded materials, including furniture, appliances, clothing, and other debris which are permitted for collection by the City Council. Collector shall provide, at City's option, assistance to City during the Annual Cleanup Campaign in the form of loose Roll-off Bin type service.

City may request Collector to provide different and/or additional services during the Annual Cleanup Campaign. Upon request by City to provide cleanup campaign services, Collector shall submit a proposal that identifies the specific services to be provided, along with the associated compensation for service. Services may include, but are not limited to, providing rear-load compaction crews to collect Yard Trimmings or Solid Waste, tire collection crews, appliance collection crews, and scrap metal and Electronic Waste (E-Waste) collection. The level of assistance needed will vary from year to year and shall be determined at the discretion of City. Disposal, Recycling, and drop-off locations for Yard Trimmings and Solid Waste shall be determined by City. Collector must obtain City approval of the destination of appliances, E-Waste, and scrap metal prior to the start of the cleanup campaign. Collector shall keep revenues from the sale of appliances, E-Waste, and scrap metals, in order to offset the cost to City of providing collection services. City will submit necessary application to CalRecycle to designate Collector to serve as authorized collector of E-Waste. Collector shall submit summary

reports to City detailing the quantity of E-Waste collected. City will complete the Form 303 to CalRecycle to report the E-Waste collected.

- iii. City Events Service. Collector shall provide Solid Waste (Garbage, Recycling, and Organic Waste) collection, transportation, and processing to City events not to exceed seven (7) events per year including Earth Day/Arbor Day festival, Art and Wine Festival, Santa Clara Works, Fourth of July, Christmas Tree Lighting, Comic Con, and Silicon Valley Barbeque. These seven (7) events may be substituted by like events at the City's discretion.
 - iv. Waste Reduction Information Booth at Special Events. Collector shall set up and run a waste reduction information booth at (a) City's Earth Day/Arbor Day Festival, (b) City's Fourth of July festival, (c) and the annual Art and Wine Festival, without charge to the City or its residents.
 - v. City Roll-off Bins. Collector will provide the City with up to three thousand (3,000) cubic yards of on-call Roll-off Bin service annually, not to exceed eight (8) thirty (30) cubic yard Roll-off Bins per week (delivered by Collector by Thursday and removed by Collector by Wednesday). City will reimburse Collector for the cost of Disposal /processing. City may elect to utilize these Roll-off Bins during the Annual Cleanup Campaign.
- H. Extra Garbage Bag Collections. The last two weeks of collection each year, encompassing the Christmas holiday and the week following, Collector shall collect up to four (4) extra thirty-two (32) gallon garbage bags total in this period, two (2) per week, from each Single Family residence when set out for collection. Garbage bags shall be provided by Customer, secured sufficiently to hold contents without breaking and shall not weigh over thirty (30) pounds. Collector shall collect these bags without additional charge to City or its residences. Collector shall be responsible to monitor the quantity of bags set out at each location during this period.
- I. Extra Commercial / Residential Bin Collection. All Customers covered under this Agreement subscribing to Bin service, served by front-loading collection type vehicles, shall be provided one extra collection of the Bin and its contents each year by making an appointment with Collector, at no charge to City or the Customer. Collector shall be responsible to monitor and record the usage of this subject extra collection program for Solid Waste Bin service. The one (1) extra collection at no charge applies to only one Bin per account per year, even if the Customer subscribes to multiple Bins.
- J. Pre-Paid Stickers Program for Extra Garbage Bag Set Outs. Collector shall collect thirty-two (32) gallon Garbage bag(s) set out during weekly

Residential collections when pre-paid stickers, issued by City are attached and shall not weigh over thirty (30) pounds. Collector shall be compensated for each extra bag set out with a pre-paid City-sold sticker at tariff compensation per Exhibit C of this Agreement, subject to adjustments July 1 of each year in accordance with Exhibit C. Garbage bags shall be provided by Customer.

- K. Super Saver Twenty (20) Gallon Size Residential Cart. Collector shall collect one twenty (20) gallon Cart set out at various subscribing Residential properties as part of a reduced size (herein "super saver size") Cart program to encourage waste reduction. The twenty (20) gallon Carts shall meet all the same Cart requirements described herein. Collector shall provide said service at a reduced tariff described in Exhibit C of this Agreement.
- L. Low Income Single Family Residential Rate Reduction. Collector's Schedule of Tariffs for Single Family Residential Customers shall be reduced a total of three dollars \$3.00 per month for qualifying Single Family and Townhouse Residential households that qualify for Silicon Valley Power's Rate Assistance Program. City shall administer this program including obtaining qualifying documentation from applicants.
- M. Special Services. Collector shall offer to its Customers the following Special Services for additional service fees and charges. The services detailed in this Section shall be billed to Customer by City, unless otherwise specified below. Collector must notify City Finance Department when these Special Services are rendered so Customer can be billed. City shall pay Collector for Special Services rendered on a monthly basis. The tariffs to provide Special Services are detailed in Exhibit C of this Agreement, and shall be eligible for annual adjustment, as described in Exhibit C.

In addition to the exclusions set forth herein to the exclusive rights and privileges granted to Collector in this Agreement, nothing in this Section shall prohibit a Customer from calling upon a third party to render a specific Special Service in the event that Collector, following that Customer's request for Collector to perform a specific Special Service, is either unwilling or unable to perform that Special Service.

For Special Services not billed by City, Collector shall bill and receive fees for performance of Special Services as agreed upon in separate contracts between Collector and each Customer requesting such Special Service.

- N. On-Call Bulky-Item Program. Collector will provide an On-Call Bulky-Item Collection Program, starting January 1, 2021, to Customers in the Exclusive Franchise Area whose bulky waste have been placed within five (5) feet of the curb, swale, paved surface of the public or private roadway, closest accessible roadway, or other such location agreed to by the Collector and Customer, that will provide safe and efficient accessibility to the Collector's

collection crew and vehicle. Collector shall provide such service with a maximum two-week turn-around time, with compensation being paid directly to Collector by Customers at pricing set by Collector and as shown in Exhibit C.

Collector will provide the On-Call Bulky-Item Collection Program to all Residents if directed by the City, and subject to City and Collector meeting in good faith to agree to fair and reasonable compensation for, and schedule to implement, those services.

O. Free Residential Disposal Events

Contractor shall accept disposal at the Transfer Station, without charge, for two (2) Sundays each calendar year, one (1) load of Solid Waste generated and hauled by each City of Santa Clara resident to the Transfer Station. The load size limit will be a combined seven (7) cubic yards of which no more than one (1) cubic yard total of concrete, asphalt, and dirt. Contractor may charge for overloaded vehicles. Dates shall be mutually agreed upon by the City and the Contractor. The City's annual calendar of events and Contractor postings at the Transfer Station will inform City residents of the procedures of calling for an appointment to drop off their waste for no charge at the Transfer Station for two (2) scheduled events per year. Two (2) weeks prior to each event, City residents must phone in and make an appointment during the two (2) week period. The first two hundred and twenty five (225) appointments will be allowed to drop off their Solid Waste on the scheduled day. The next two hundred and twenty five (225) appointments will be scheduled on the following Saturdays, consecutively, selected by the Contractor with approval by the City. Each Saturday after the initial Sunday will have a maximum of fifty (50) appointments available. Contractor shall require residents to show proof of residency in the City of Santa Clara by means of driver's license, tax bill, or utility bill. No additional reimbursement shall be paid to Contractor by City for this service. No materials generated by Commercial businesses shall be covered by these provisions. Contractor shall not be obligated to offer and conduct these subject Residential disposal events beyond the expiration date of this Agreement, or if the public portion of the Transfer Station is closed, whichever comes first.

P. Collection of Household Batteries from Residential Customers with Single Family or Townhouse Levels of Service. Collector shall provide weekly Residential curbside Household Battery Collection services to all Residential Customers paying for Single Family, Townhouse, Condominium, Duplex or Multiple Occupancies which utilize Cart service.

Cost for this service is included in the Residential tariffs in Exhibit C of this Agreement.

City shall inform Residential Customers about the curbside battery recycling program requirements. Residential Customers will be directed to tape the conductive terminals of the household batteries using tape. The taped household batteries will be contained in a sealed clear plastic bag and placed on top of the black Cart that is used for Garbage. Collector shall collect the household batteries on the assigned Garbage collection day. All batteries collected must be handled in accordance with the currently applicable California Department of Toxic Substances Control universal waste regulations. All household batteries collected must be recycled and shall not be sent to a landfill designed to take hazardous waste. Collector shall be responsible for the cost to recycle the household batteries. Collector shall include the total weight in the monthly reports required pursuant to this Agreement.

Only Category 2 batteries (dry cell batteries) shall be collected in the household battery recycling program. Dry cell batteries include sizes D, C, AA, AAA, and 9-volt; single use CZn, alkaline, and zinc air; and NiCd, NiMH, and NiFe reusable batteries. Category 1 (wet cell batteries), Category 4 (mercuric/silver oxide batteries), and Category 4 (lithium batteries) will not be accepted. Rejected loads due to contamination are subject to "Off Spec" handling fees. Collector shall report the quantity of batteries collected on a monthly basis. City shall complete and submit the Form 303 to CalRecycle that reports on the quantities collected and the disposition.

- Q. Santa Clara University End of School Year Move-Out Collection. Collector will provide a collection crew for two cleanup days during Santa Clara University's move-out cleanup campaign at no additional charge to City. Cleanup days and the required crew and equipment to be determined by mutual agreement of the Parties each year.
- R. Provision and Replacement of Carts and Bins. Collector shall replace existing Carts and Bins with clean and freshly painted replacements as often as deemed necessary by City and requested by City, but in no event more often than once every three (3) Agreement Years at no cost to City or any Customer. Upon request of City for a replacement Cart for any Customer, Collector shall provide such Cart without cost to the Customer or to City. Customer shall be billed by Collector for the replacement value of each Cart or Bin for more frequent change outs.
- S. Annual Bin Cleaning. Once per Agreement Year upon request by City or Customer, Collector shall clean or replace Bins at no charge to the City or Customer. Cleaning or replacement of Bins shall be provided in a manner that causes no reduction in services and maintains continuous access to the capacity to which the Customer subscribes. Upon request by Customer

for additional Bin cleaning, Collector may assess the Bin cleaning fee to Customer set forth in Exhibit C of this Agreement. Prior to cleaning the Bin and/or assessing the fee, Collector shall inform Customer of such fee and shall also inform Customer of the next date when the annual Bin cleaning will be available to Customer at no charge. All cleaning of Carts and Bins shall be completed in full compliance with all Applicable Laws, including any requirements of the Municipal Regional Stormwater National Pollution Discharge Elimination System Permit.

- T. Residential Cart Cleaning. Residential Customers may request one (1) Cart of any type cleaning per year at no additional charge per Residential address. All cleaning of Carts and Bins shall be completed in full compliance with all Applicable Laws, including any requirements of the Municipal Regional Stormwater National Pollution Discharge Elimination System Permit.
- U. Handling of Carts and Bins. Collector agrees to use reasonable and proper care in the handling of all Solid Waste Carts, and in the event of damage or destruction of any said Carts and Bins within seven (7) days or Carts and Bins enclosures, by reason of negligence or carelessness of Collector, Collector shall repair or replace said Carts and Bins or Carts and Bins enclosure so damaged or destroyed. Contactor shall give extra care during the loading and handling of Solid Waste so that none of said material is spilled either on private property or on streets or alleys. In the event Collector fails or neglects for any reason to clean up immediately such spillage, City Manager shall cause the same to be cleaned, and the cost of doing same shall be deducted from the next monthly payment due Collector hereunder.
- i. In the event that the contents of any Cart or Bin are not collected by Collector because of a violation of any law or rule or regulation of City, Collector shall secure a written notice on said Cart or Bin stating the reason for non-collection.
 - ii. All Carts and Bins, after emptying, shall be returned, not thrown, to the premises from which removed, within five (5) feet of the place the Cart was picked up, but not in any driveway or street, and any loose lid or cover thereto shall be placed on top of or inside said Cart.
 - iii. Any agreement between Collector and Customer for charges to push Bins back from City streets shall be separately agreed upon and billed by City for such service by the tariff set forth in Exhibit C of this Agreement.
- V. Solid Waste Overage and Correction Procedures. City and Collector agree that overflow of Solid Waste that is not properly in the Customer's Carts and Bins(s) may negatively impact public health and safety. Collector has also

agreed to conduct audits and provide outreach to ensure that Customers receive the correct service levels. In the event that Customers are found to habitually overflow their Carts and Bins(s), Collector may take the steps as listed below to correct Customer's on-going overflow of Solid Waste.

- i. Prior Arrangements for Collection. If the Customer has made prior arrangements with Collector for collection of Solid Waste Overages, Collector must collect such overages as arranged, and may charge the Customer the Solid Waste Overage fee (prior arrangement) tariff set forth in Exhibit C of this Agreement.
- ii. No Prior Arrangements. If the Customer has not made prior arrangements with Collector for collection of Solid Waste Overage, (a) Collector may collect such Solid Waste Overage at no additional charge as a courtesy, (b) Collector may not collect the Solid Waste Overage and leave a Non-Collection Notice explaining the reason for non-collection of the Solid Waste Overage, (c) Collector may collect the Solid Waste Overage (up to two lifts) and charge the Customer the Solid Waste Overage fee (no prior arrangement) tariff set forth in Exhibit C of this Agreement, or increase the capacity or frequency of collection of the existing Carts and Bins(s) to match documented service needs as provided below. In managing Solid Waste Overages, the Collector shall apply the procedures outlined in Section 3.W of this Exhibit A, below.

W. Procedures for Addressing Overages and Contamination. Collector may take the following steps to address Solid Waste overages and contamination:

- i. First and Second Occurrence. For the first and second occurrence (if within twelve (12) months of the first occurrence) for a particular Cart and/or Bin (i.e., Garbage, Commercial Recyclable Materials, Organic Waste/Food Scraps), Collector may service the Cart and/or Bin and must affix a Non-Collection Notice to the Cart and/or Bin, which contains instructions on the proper procedures for sorting Commercial Recyclable Materials or Organic Waste/Food Scraps. Following the second occurrence, Collector shall provide details of both occurrences to the City. City shall mail Customer a notice stating that upon a subsequent occurrence during the next twelve (12) months, City may direct Collector to increase the service level and adjust the Customer's monthly rate.
- ii. Third Occurrence. For the third occurrence (if within twelve (12) months of the first) of occurrence for a particular Cart and/or Bin, Collector will provide a Non-Collection Notice that contains instructions on the proper procedures for setting out Garbage, Commercial Recyclable Materials, or Organic Waste/Food Scraps

(including a photo when possible), and Collector may collect the Cart and/or Bin and may charge the Customer a fee. For any contamination or overages fees being assessed, Collector must provide digital/visual documentation to the Customer that clearly documents the Customer's on-going set-out issues. Collector shall notify City of the third occurrence and City will direct Collector to increase the service level of the Customer. Collector may charge a fee, as set forth in Exhibit C of this Agreement, on the third occurrence.

- iii. Fourth and Subsequent Occurrence. On the fourth or subsequent occurrence (if within twelve (12) months of the first) for a particular Garbage, Commercial Recyclable Materials, or Organic Waste/Food Scraps Cart and/or Bin, Collector may collect the Cart and/or Bin and may charge the Customer a fee as set forth in Exhibit C of this Agreement. Collector may also, after notifying Customer, remove the Organic Waste/Food Scraps Cart or Bin, as applicable, and discontinue providing the Organic Waste/Food Scraps collection services.

For Garbage and Commercial Recyclable Materials, Collector must provide (or have provided) digital documentation to City that clearly documents the Customer's on-going issues and written Non-Collection Notices of contamination as described above. City shall issue an Administrative Citation to Customer and/or increase the service level at the Customer's expense.

- iv. Tracking Occurrences. After twelve (12) months have passed from the last applicable occurrence, the next occurrence will be deemed a first occurrence.

- X. Contamination Monitoring. Collector has an obligation to offer the Customers the correct combination of Cart and Bin sizes and collection frequency that matches their unique service needs to reduce contamination. Collector's route collection personnel will report to Collector's supervisors if they observe potential contamination problems, and/or insufficient collection capacity.

Collector may deem Carts or Bins to be contaminated if, by visual or digital inspection, Recyclable Materials are commingled with fifteen percent (15%) by weight or volume of Garbage, Organic Waste, or Food Scraps, or if, by visual inspection, Organic Waste or Food Scraps is commingled with five percent (5%) by volume of Garbage or Recyclable Materials. Collector will use reasonable and necessary efforts to keep Residual in the City's Commercial Organic Waste and Food Scraps streams to a minimum

through Customer education. Collector will allow the City to audit Collector's reasonable and necessary efforts to reduce Residual.

- Y. Hazardous Waste. Collector shall use reasonable business efforts to ensure the delivery of Hazardous Waste to a Hazardous Waste Facility, and to screen, identify and prevent against the Disposal of Hazardous Wastes at any processing facility or Disposal facility used by Collector under this Agreement. If Collector inadvertently delivers materials to any processing facility or Disposal facility which comprise Hazardous Waste and Collector cannot or fails to remove it, Collector shall arrange for its proper Disposal in accordance with Applicable Law. Collector shall use reasonable business efforts to recover the costs of such Disposal from the Customer which generated such Hazardous Waste and failed to identify it for collection as part of the Household Hazardous Waste pickup program (if one is in operation pursuant to this Agreement, as it may be amended), if the Customer can be identified, and charge such cost to such Customer. If Collector delivers Hazardous Waste to any processing facility or Disposal facility, Collector shall promptly notify the City, the local fire department, and the Santa Clara County Health Department, providing the name, address, and telephone number of the collector and the facility or premises from which the Hazardous Waste was collected, the type and quantity of the Hazardous Waste, and the location and method of final disposition of Hazardous Waste.
- Z. Vehicle Enforcement Fees Paid by Collector. Collector shall be responsible for paying annual Vehicle Enforcement Fees levied by the Santa Clara County Department of Environmental Health for collection vehicles that are primarily used to provide services covered under this Agreement.

4. **EDUCATION AND OUTREACH SERVICES PROVIDED BY COLLECTOR**

- A. Education and Outreach Program Services. Each Agreement Year, Collector shall prepare, submit and implement an annual Education and Outreach Program Plan at its own expense. The Education and Outreach Program Plan is subject to City edits and approval, which must be obtained prior to implementation on an annual basis.
- i. The proposed Education and Outreach Program Plan must be submitted annually for City approval no later than March 1 for the next Agreement Year.
 - ii. The action plan must be designed to increase diversion and participation for Residential and Commercial Premises.

- (a) Campaigns should target certain Solid Waste materials or “problem” areas in the service area where improvements can be maximized.
 - (b) Campaigns may include the development of education and outreach materials, City-specific website language and social media platforms, involvement at City-Supported Events, and other strategies to assist the City in meeting its diversion goals.
 - (c) Targets of outreach should be based on local trends and recycling patterns based on information obtained by both the City Representative and Collector staff.
 - (d) Collector shall provide space in Collector’s public outreach materials, such as mailers, flyers and newsletters, for the City to include announcements, community information, articles, and photographs. Newsletters and written outreach materials must be submitted in draft form to City Representative for approval prior to printing and distribution. Outreach efforts must also be provided in Spanish and Mandarin available online.
 - (e) Collector must also provide program information on a City-specific webpage, and appropriate outreach through other web means, including social media. The website must have a user-friendly URL with easy to use language and functionality.
- iii. Annual Collection Service Notice. Each Agreement Year during the term, Collector shall publish and distribute separate notices to Residential and Commercial Customers as follows.
- (a) Notice shall contain at a minimum: Definitions of the materials to be collected; procedures for setting out the materials; maps of the Service Area indicating the day that the Collection Service will be provided for Residential Customers; and the City Customer service telephone number.
 - (b) The notice shall be provided in English and available in Spanish and Mandarin and shall be distributed by Collector no later than July 1, 2020 during the first Agreement Year, and no later than June 30 annually thereafter.
- iv. Service Day Tool. Collector must, at its own expense, develop and provide Residential and Townhome Customers with an online tool to display residents’ collection days when an address is typed into the tool by September 30, 2020.

- B. Outreach, Education, and Reporting Program Manager. Collector shall, at its own expense, provide for one (1) full-time Outreach, Education, and Reporting Program Manager dedicated to providing support for diversion programs, including performing recycling audits and outreach and support to Multi-Family accounts. Collector will solicit City input and approval of job description. Outreach, Education, and Reporting Program Manager shall be hired by July 1, 2020.
- i. The position shall be a one hundred percent (100%) full time employee dedicated to providing services under this Agreement for the duration of the term.
 - ii. Beginning in July 2020 and for the next twenty-four (24) months, the Outreach, Education, and Reporting Program Manager shall meet with key City staff on at least a monthly basis to review, at a minimum, program performance, current and anticipated activities, specific outreach performed to promote high participation in diversion programs, methods to monitor contamination, Residential Customer service messaging on diversion programs. Starting in January 2022, at the City's option, the frequency of meetings may be reduced to a quarterly basis.
 - iii. The Outreach, Education, and Reporting Program Manager shall oversee all of the following:
 - (a) AB 341 and AB 1826 implementation, including conducting on-site waste audits and providing written summary reports in a format approved by the City for a minimum of ten percent (10%) of all Commercial Customers per year with the primary focus on those Customers with the lowest program participation or diversion. Additionally, the on-site waste audits will be coordinated with any similar activities as may be provided by the County, and the results of the waste audits and on-going AB 341 and AB 1826 compliance reports will be provided to the City.
 - (b) Educating City staff and Customers, as appropriate, regarding AB 341, AB 1826, AB 1594, SB 1383, and other applicable State legislation.
 - (c) Right-sizing Carts for maximizing diversion at Residential Service Units.
 - (d) Developing and distributing public education and outreach material.

- (e) Advising appropriate personnel (management, employees, janitors, etc.) at Commercial Service Units on methods and recommendations to increase recycling and decrease landfilling (i.e. how to maximize diversion; and provide educational materials, posters, and labels).
 - (f) Informing and educating Customers on the full range of all services being offered, including Cart exchange and cleaning, E-Waste, U-Waste, Used Motor Oil and Filter, and Large Item or Neighborhood Cleanup Collection Service.
 - (g) Providing recommendations on Carts and Bins sizes to maximize diversion, and the potential cost savings if a business takes recommended actions to increase diversion.
 - (h) Educating personnel on how to maximize diversion, and providing educational materials, posters, labels, and memos to Collector staff and City.
 - (i) Oversee review of Commercial and Mixed-Use Development building plans for adequate enclosure space for Garbage, Recycling, and Organic Waste service within two (2) weeks of receiving such plans from the City.
- iv. The City Representative may provide feedback to Collector regarding the effectiveness of the program. Upon receiving such feedback, Collector will address the feedback within thirty (30) days with an improvement plan that is approved by the City prior to implementation.
 - v. Diversion outreach shall be arranged for in the English, Spanish, and Mandarin languages via web-based translation.
 - vi. In the event that either: (1) the Collector fails hire the Outreach, Education, and Reporting Program Manager by July 1, 2020; or, (2) in the event that such position is ever vacant, during the Term of the Agreement, for more than three (3) months after the employment relationship between the Collector and the employee is terminated, regardless of the reason, the City may, at its sole discretion, engage a third party to perform the functions of the Outreach, Education, and Reporting Program Manager until such time as the Collector hires the required personnel. The cost of such third party shall be paid by the Collector. The reimbursement of such costs by the Collector shall be limited to ten thousand dollars (\$10,000) per month, equivalent to one hundred twenty thousand dollars (\$120,000) per year.

- vii. By July 1, 2020 and by each successive July 1 during the term, Collector shall provide the City with the name and contact information of the Outreach, Education, and Reporting Program Manager.

- C. Education and Outreach Budget. Collector will spend an outreach, education, and technical assistance budget of \$25,000 per year for such efforts described in Section 4.A.iii and 4.B.iii. of this Exhibit and reported annually to the City. If efforts established by Collector via the plan in described in Sections 4.A.i and 4.A.ii (which is subject to City approval) exceed \$25,000 per year, then the City shall have discretion to choose which elements of the plan to fund via the \$25,000 budget described herein. If the approved budget exceeds \$25,000 then the City shall pay Collector the difference between \$25,000 and the City-approved budget amount. The \$25,000 budget amount only applies to development and distribution of outreach and education materials in this Section 4, and not to other materials that the Collector is required to develop and distribute per this Agreement.

- D. Additional Programs and Services. Collector shall provide additional education and outreach services and programs as requested by City at a price mutually agreed upon with written approval between Collector and the City Representative. In the event Collector and the City Representative cannot reach a mutually agreed upon price for the requested service or program, City shall have the right to procure the service of other vendors to provide the requested service.

- E. News Media Relations. Collector shall notify the City Representative by email or telephone of all requests for news media interviews related to the Collection Services program within twenty-four (24) hours of Collector's receipt of the request.
 - i. Before responding to any inquiries involving controversial issues or any issues likely to affect participation or Customer perception of services, Collector shall discuss Collector's proposed response with the City Representative.

 - ii. Copies of draft news releases, advertisements to the members of the community or Customers, or proposed trade journal articles shall be submitted to City for prior review and approval at least five (5) Work Days in advance of release, except where Collector is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case Collector shall submit such materials to City simultaneously with Collector's submittal to such regulatory agency.

- iii. Copies of articles resulting from media interviews or news releases shall be provided to the City within five (5) Work Days after publication.

5. COLLECTION EQUIPMENT AND PRACTICES

A. Description and Marking

- i. All Solid Waste collected by Collector shall be conveyed in modern collection equipment, so constructed and so loaded that there will not be any leakage or spillage of Solid Waste therefrom. Said Solid Waste, when placed in any such vehicle, and during its passage through the streets and alleys of said City to its destination, shall be covered with a rigid nonabsorbent cover so as to prevent spillage and as far as possible, access thereto by flies and other insects. All trucks or other vehicles, as well as all equipment and hand tools used by Collector in the collection of Solid Waste shall be of a type capable of handling said Solid Waste according to the requirements of this Agreement, and shall be kept clean and in a good state of repair
- ii. All collection vehicles operated by Collector shall be uniformly painted and numbered. Collector and City shall meet and confer to determine final design of collection vehicles. Collection vehicles shall be repainted in accordance with City's Rules and Regulations, with touch ups in the interim as required. Each vehicle, when repainted or replaced, shall be presented to City for inspection. Collection vehicles shall have cameras on vehicles for contamination monitoring.
- iii. Collector shall provide an adequate number of vehicles and equipment for the collection, Disposal and transportation services for which Collector is responsible under this Agreement. After phasing in new vehicles as described in Exhibit G, Collector shall ensure that primary collection vehicles are not over fifteen (15) years of age for this Agreement. Exhibit G may be modified upon mutual written agreement between the City and Collector if agreed that alternative replacement schedule would better suit the needs of the City. Replacement automated side loader and front loader collection vehicles are to be powered by Compressed Natural Gas ("CNG") fuel. If a breakdown or unforeseen circumstance requires Collector to use a vehicle that is greater than fifteen (15) years of age to adequately service the day's collection routes, Collector must notify City verbally and receive approval to send the vehicle on a collection route. For purposes of this paragraph, a vehicle's "age" shall consist of the age of the older of its chassis and body. All vehicles shall be registered with the Department of Motor Vehicles of the State of

California, shall be kept clean, safe, in good body condition, and in good repair.

- iv. Truck Signage. City shall have access and permission to post signage on the bodies of Collector's trucks to promote educational information and other City-wide programs.

- B. Compliance with Applicable Air Pollution Control Laws. Collector shall maintain all equipment and conduct all business activities in accordance with all applicable air pollution control laws. Upon request from City, Collector shall provide records of all collection vehicles in service in the City, including fuel source and engine and chassis numbers.

- C. Clean Collection Practices. Collector shall not cause or permit private property or City streets or property to be littered with debris because of Collector's activities under this Agreement. Collector shall clean up any debris in the immediate vicinity of any Carts and Bins and/or storage area that results from collection services under this Agreement. In the event of repeated litter not caused by Collector directly, Collector shall first notify the Customer and, if litter continues, Collector may request the City's assistance to rectify the situation.

- D. Communication System. Collector shall equip each vehicle and central dispatch office with a communication system to provide communication ability. Collector shall instruct collection route supervisors and drivers to be aware of and report scavenging, suspicious activity, fires, and other serious occurrences to Collector's dispatch office, or 911.

- E. Alternative Fuel Collection Vehicles. Collector shall use only Alternative Fuel Collection Vehicles and supervisor vehicles for all work associated with Agreement. Alternative Fuel Collection Vehicles and supervisor vehicles shall be commercially available vehicles powered by alternative fuel sources such as CNG, renewable diesel, hybrid Electric, full Electric or hydrogen. Future replacements of these vehicles during contract terms shall be the best available lowest emissions option at the time of purchase. Collector shall replace its supervisory vehicle fleet with Alternative Fuel vehicles as Commercially feasible during the term of this Agreement. Collector shall fuel collection vehicles with CNG and supervisor vehicles will be hybrid or renewable diesel vehicles. Collector must obtain City approval to use any other type of Alternative Fuel Vehicle for this Agreement. Collector will be subject to liquidated damages for failure to use alternative fuel for collection vehicles and supervisor vehicles used specifically for this Agreement.

- F. Electric Vehicle Pilot Project. Should electric and/or hybrid solid waste vehicles become a viable technology during the term of this Agreement, the Collector and the City shall meet and confer to discuss the implementation

of a pilot project for the purposes of procuring an electric solid waste vehicle to collect Solid Waste in the City.

G. Carts and Bins.

- i. In connection with the automated Residential curbside Garbage program, Collector has furnished to each participant in such program a suitable Cart provided in automated Cart sizes of approximately 32, 64, 96-gallon capacities as selected by Customer. Collector has also installed inserts to provide automated Cart with only 20-gallon capacity for those requesting Customers. In connection with the automated Residential curbside Yard Trimmings program, Collector also furnished to each participant in such program suitable Carts of 96-gallon minimum capacity in accordance with City's Rules and Regulations. Customer may request, and be provided by Collector at no extra charge, a second Yard Trimmings Cart or a smaller (32 or 64-gallon approximate capacity). General repair, upkeep, and replacement of all such Carts shall be the responsibility of Collector, and Collector shall maintain all such Carts in a sanitary condition.
- ii. Collector shall furnish the occupants of Commercial establishments, as well as specified properties having multiple dwelling units, with larger capacity Bins pursuant to regulations as may be prescribed from time to time by City.
- iii. General repair and upkeep of Collector supplies and Carts and Bins shall be the responsibility of Collector and Collector shall maintain all Carts and Bins in a sanitary condition. Carts and Bins shall be marked with Collector's name and in-service telephone number. Collector shall inspect, touchup, or repaint if necessary, all Carts and Bins in accordance with City's Rules and Regulations. Carts and Bins reported by City to Collector to be graffiti impacted shall be cleaned, repainted, or replaced in seven (7) business days upon receipt of written notice by City to Collector. Collector shall submit quarterly to City a list of Bins and Carts inspected and maintained for that period.
- iv. Cart and Bin lids shall be color coded in the following ways: black or dark grey for Garbage, blue for Recyclable Material, green for Organic Material, and Brown for Food Scraps. All Carts and Bins shall have non-removable instructional label for proper usage and images of the material type to be accepted in each Cart and Bin. All labeling on Carts and Bins shall be approved by the City. At any such time when labeling is being redesigned, City shall specify any additional languages necessary for Cart labeling. All Carts and Bins must be constructed and maintained to prevent leaks and litter from escaping. All Carts and Bins shall be clean prior to delivery to a Customer.

- v. Access to Carts and Bins. Collector shall make no collection from premises having no access to a street or alley, unless a specific easement is granted to City for this purpose. City can require Customer to pay for push/pull service if Customer property is not maintained in a condition to provide Collector with sufficient sightlines and access to safely enter and exit property to service Carts and Bins.

- H. Ownership of Equipment. All vehicles and equipment used in the performance of this Agreement shall be owned or leased by Collector; provided however, that any leasing, rental or security agreements shall provide that in the event of default of this Agreement, City, at its option, shall have the right to take possession of and operate said vehicles and equipment (subject to the right of the lessor or secured creditor to be paid, by City in accordance with the leasing, rental or security agreement). Collector shall implement and maintain ongoing equipment (vehicles, Carts, Bins, etc.), repair, replacement, and amortization program necessary to keep same in good, acceptable condition. Collector, upon request, shall demonstrate evidence to City of this requirement.

6. PUBLIC ACCESS TO COLLECTOR

All service inquiries and complaints shall be directed to Collector.

- A. A representative of Collector shall be available to receive the complaints during normal business hours.

- B. All service complaints will be handled by Collector in a prompt and efficient manner. In the case of a dispute between Collector and a Customer, the matter will be reviewed and a decision made by the City Representative.

- C. Collector will utilize the Customer Service Log to maintain a record of all inquiries and complaints in a manner prescribed by the City.
 - i. All calls or reports of missed collection shall be serviced, if possible, the same day received and not more than twenty-four (24) hours after receipt of said call or report.

- D. In the event a Customer requests a missed collection service two (2) or more times during a period from when the missed collection occurred to the end of the next following quarter, the City Representative will work with the Collector to determine an appropriate resolution to that situation.

- E. City shall have read-only access to Collector's Customer service software (Tower) including but not limited to access to level of service, day of service, etc. City will not have access to sensitive financial and personal information.

- F. Local Office and Regular Hours. Collector's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through Friday, except legal holidays. A representative of Collector shall be available during office hours for communication with the public at Collector's principal office except for short periods of all staff training or special events, when telephones are not staffed, Contractor shall maintain a telephone answering machine to receive messages. The representative shall, at a minimum, provide service information to the public. Collector shall also maintain a telephone number for off hour message and voice recording when the local office is closed. Collector shall have a representative or answering service available for emergency contact by City during all hours other than normal office hours.
- G. Service Complaints and Dispute Resolution. All service complaints received by City from Customers shall be directed to Collector. Collector shall record all complaints received (including date, name, address, phone number, and nature of complaint), and action taken, or other disposition. Collector shall make all such records available for inspection by the City during normal business hours, upon demand by the City. Collector agrees to use its best efforts to resolve all such complaints within the business day next following the date on which such complaint is received.

Collector shall provide a monthly summary report in writing to the City of types and numbers of missed service, complaints, and disputes. In the event that the City determines that Collector has failed to render performance in accordance with the requirements of this Agreement, City may assess damages against Collector and reduce payment otherwise due to Collector accordingly. Collector shall in all cases be given a reasonable opportunity to remedy the defect in performance prior to such assessment of damages.

- H. Customer Information. Collector shall not market, sell, convey, donate or disclose to any person or entity any list with the names or addresses of Customers or information regarding the composition or content of Customers' waste unless authorized or required by Applicable Law, the City or a court of competent jurisdiction.

7. REPORTING, ACCOUNTING AND AUDITING

- A. Monthly Reporting Requirements. Collector shall submit a report due within forty-five (45) calendar days after the end of each calendar month:
- i. Summary of Collection Services. The number of Customers receiving service by cart, Bin, and Roll-off service showing the source and volume of Solid Waste collected on a weekly basis.
 - ii. Customer Service Log. A copy of the Customer service log, including a summary of the type and number of complaints and their resolution.

Copies of a written record of all calls related to missed pickups and responses to such calls.

- iii. Non-Collection and Violations. The monthly report must include a summary of each Service Unit receiving a Non-Collection Notice and other violations in the previous month along with a description for the Non-Collection Notice.
 - iv. Collection Overage Charges. The monthly report must include each Service Unit incurring a charge for a Solid Waste Overage in the previous month.
- B. Quarterly. Collector shall submit written quarterly reports to the City totaling the information contained in the monthly reports. Reports covering January through March are due by May 15. Reports covering April through June are due by August 15. Reports covering July through September are due by November 15. Reports covering October through December are due by February 15.
- i. Battery Collection. The quarterly report must include the amount in pounds of batteries collected in the previous quarter.
- C. Annual Reporting. Collector shall submit annual reports that cover a Calendar Year's activity (January 1 – December 31) to the City on or before March 1 of each year. Annual reports must be provided electronically in software acceptable to the City. Reports shall include:
- i. Solid Waste Data. The number of Customers by sector and the number of Garbage, Recycling, Food Scraps, Organic Waste and Yard Trimmings Carts and Bins distributed by size and Customer type (Single-Family Customers, Multi-Family Dwelling Customers, and Commercial Customers). Include average daily gross tons of Garbage, Recycling, Food Scraps, Organic Waste and Yard Trimmings collected by route. Include total number of generators that receive each type of collection service provided by Collector. Provide totals and location for Residue Disposed from Recycling, Food Scraps, and Organic Waste. Include the number of route reviews conducted for prohibited contaminants and the number of Non-Collection Notices issued to Customers.
 - ii. Public Education Summary. Public education and information activities undertaken during the year, including distribution of bill inserts, collection notification tags, community information and events, tours and other activities related to the provision of collection services. This report will discuss the impact of these activities on diversion programs including participation and include amounts collected.

- iii. Summary of Programs. An analysis of any diversion collection, processing and marketing issues or conditions (such as participation, setouts, contamination, etc.) and possible solutions, discussed separately for Single Family, Multi-Family, and Commercial programs.
- iv. Education and Outreach Budget Report. A summary of what Collector spent on outreach, education, and technical assistance as described in Section 4.C of this Exhibit A.
- v. Summary Narrative. A summary narrative of problems encountered with collection and processing activities and actions taken. Indicate type and number of Non-Collection Notices left at Customer locations. Indicate instances of property damage or injury, significant changes in operation, market factors, publicity conducted, needs for publicity. Include description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.
- vi. Diversion Rate. Collector must provide documentation acceptable to City stating and supporting the Calendar Year's diversion rate. Any tonnages diverted and Disposed from large venues and City events during the reporting period will be counted towards the calculated diversion rate.
- vii. Overweight Vehicle Reporting. The report must include a summary total of all instances of overweight collection vehicles. This summary must include the number of overweight vehicle instances expressed as a percentage of the total number of collection vehicle loads transported during the reported month.
- viii. AB 341 and 1826 Compliance Data. Collector must report the total number of Commercial and Multi-Family Dwelling Customers serviced and the number of Carts and Bins, sizes and frequency of collection for Garbage, Recyclable Materials, Food Scraps, and Organic Waste for each Commercial and Multi-Family Dwelling Customer, excluding Recyclable Materials services for Multi-Family Dwelling Customers that are provided by a difference service provider. Collector must also provide the following information separately for both AB 341 and AB 1826:
 - (a) The total number of Commercial Service Units serviced by the Collector that fall under the AB 341 or AB 1826 thresholds, and the total number of those Commercial Service Units that are not subscribed to Commercial Recycling Collection

Service or Commercial Organic Waste/Food Scraps Collection Service.

- (b) A summary of the type of follow-up outreach that was provided to those Commercial Service Units that are not subscribed to Commercial Recycling Collection Service or Commercial Organic Waste/Food Scraps Collection Service.

ix. CalRecycle Reports. Collector must prepare data that will be used the by the City for annual reports to CalRecycle, for submittal to City for review and comment, and Collector revision as needed. City will submit final report to the State. Collector must submit a draft in CalRecycle report format to the City by 5 p.m. on July 1 that fully meets state requirements.

- (a) In the event that CalRecycle requires City to report an implementation schedule to comply with AB 341, AB 1826, SB 1383 and other Applicable Laws, Collector must prepare a report and provide a draft to the City to include records of Collector's support for City's compliance as they are relevant to Collector's programs, including Collector's policies and procedures related to compliance with AB 341, AB 1826, SB 1383, and other Applicable Laws and how Recyclable Materials, Food Scraps, and Organic Wastes are collected, a description of the geographic area, routes, list of addresses served and a method for tracking contamination, copies of route audits, copies of notice of contamination, copies of notices, violations, education and enforcement actions issued, and copies of educational materials, flyers, brochures, newsletters, website, and social media. Additionally, City may have direct access to Customer service and operations software used by the Collector for the purposes of reporting to CalRecycle. Should additional compensation be needed for the implementation of services required by Applicable Laws (e.g., SB 1383), City and Collector will meet in good faith to agree to fair and reasonable compensation for, and schedule to implement those services.

D. Additional Reporting. Collector must furnish City with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

E. Collector's Financial Statement. If requested by City, Collector make available for City review annual financial statements and consolidated financial statements of Collector and Collector's Affiliated Companies, along with the related auditor's opinion, for each entity's previous fiscal year. Collector shall deliver the requested statements within ten (10) days of

City's request if the request is made for statements for a prior fiscal year, or within sixty (60) days of the end of Collector's fiscal year, if the request is made for statements concerning the then-current fiscal year. City may review the audit plan and work papers of any accountant or auditor whose opinions Collector is obligated to deliver to City in accordance with this Section. City shall hold Collector's Accounting Records and financial statements confidential as described herein.

- F. Affiliated Companies. Collector shall promptly notify City of any contracts or informal arrangements between Collector and Affiliated Companies related to providing Services under this Agreement and shall disclose such contracts or arrangements in the financial statements described herein. For purposes of this Section, "Affiliated Companies" means all businesses which are directly or indirectly related to Collector by virtue of direct or indirect ownership interests or common management or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Collector, and which assist Collector in providing services hereunder.

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EXHIBIT B DEFINITIONS

Words and Phrases for the purpose of this Agreement, certain words and terms shall be constructed as herein set forth unless it is apparent from the context that a different meaning is intended.

- A. **Applicable Laws.** All federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, rulings, permits, approvals, or other requirement of any governmental entity or regulatory or quasi-regulatory authority having jurisdiction over an aspect of the collection services, including judicial interpretations thereof, that are in force on the effective date, and as may be enacted, issued or amended thereafter, until termination or expiration of this Agreement.
- B. **Bin.** A container, one (1) to eight (8) cubic yards in capacity, with an attached, fitting lid that is serviced by a front-load vehicle.
- C. **Bulky-Item Collection Program.** A program to collect, from Residential Customers, a combination of loose Large Items not exceeding an approximately equivalent of four (4) cubic yards and three (3) individual Large Items such as a TV, couch, or water heater.
- D. **CalRecycle.** California's Department of Resources Recycling and Recovery (CalRecycle) administers and provides oversight for all of California's state-managed non-hazardous waste handling and recycling programs.
- E. **Cart.** A hard-plastic container with an attached tight fitting lid from 20-gallons to 96-gallons in capacity, that is serviced by a side-loading collection vehicle.
- F. **Collector.** The City or any Collector duly authorized by the City Council to collect, transport, and Dispose of Solid Waste under specific contract terms with the City.
- G. **Contamination.** The percentage by weight or volume of Non-Recyclable Material in Recyclable Material.
- H. **Commercial Customer.** Any Commercial business subscribed to Solid Waste service in the Exclusive Franchise Area.
- I. **Composting or Compost (or any variation thereof).** A controlled biological decomposition of organic waste yielding a safe and nuisance free compost product.
- J. **Construction and Demolition Debris (C&D).** A broad spectrum of recoverable materials associated with construction and demolition activities

including, but not limited to concrete, asphalt, dirt, lumber, roofing materials, sheet rock, Yard Trimmings, bricks, rock, and metal. C&D Debris can further be defined as Mixed C&D wherein all C&D materials are collected in the same Roll-off Bin or as Source Separated C&D wherein the individual material described above are collected in separate Roll-off Bins.

- K. County. Santa Clara County.
- L. Covered Roll-off Bin. A Roll-off Bin with manually closing lid.
- M. Customer. Any person, owner or occupant, who receives Solid Waste collection service.
- N. Designated Facilities. The facilities designated by the City used for the Disposal and or processing of Garbage, Residue, Mixed Waste and Yard Trimmings collected by the Collector in the Exclusive Franchise Area from Residential, Multi-Family, and Commercial Customers. As of the Execution Date of this Agreement, Garbage and Residual are Disposed and Yard Trimmings is processed at Newby Island Landfill, located at 1601 Dixon Landing Road, San Jose, CA. Mixed Waste is processed at the GreenWaste Recovery Materials Recovery Facility, located in San Jose.
- O. Designated Processing Facilities. Facilities designated by Collector for sorting and/or processing of Commercial Recyclable Material, Food Scraps, and Organic Waste. As of the Execution Date of this Agreement, Alameda County Industries (ACI) Materials Recovery Facility, located in San Leandro, is the Designated Processing Facility for Commercial Recyclable Materials and Sustainable Feed Enterprises (SAFE), located in Santa Clara, is the Designated Processing Facility for Food Scraps. Alternatives Designated Processing Facilities for Recycling include Tri-CED in Union City, the Newby Island Recyclery in San Jose, and GreenWaste Recovery in San Jose. Alternative Designated Processing Facilities for Food Scraps include East Bay MUD in Oakland, and the Newby Island Composting Facility in San Jose. S
- P. Disposal or Dispose (or any variation thereof). The final disposition of Residue or Solid Waste at the Designated Facility or causing the same.
- Q. Electronic Waste (E-Waste). Discarded electronics equipment such as cell phones, computers, monitors, televisions, and other items containing cathode ray tubes (CRTs).
- R. Exclusive Franchise Area. All properties in the City not zoned for an "Industrial" use, which can only be serviced by a Collector with an exclusive franchise agreement that is approved by the City Council.

- S. Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, dead animals, and those wastes under the control of the Nuclear Regulatory Commission.
- T. Food Scraps. 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; and grain waste.
- U. Garbage. All materials that are not recycled and are Disposed of or used as alternative daily cover in a landfill, or destroyed by incineration. Garbage does not include Yard Trimmings, Organic Waste, Food Scraps, Recyclable Materials, or Exempt Waste.
- V. Hazardous Waste. Any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such law or regulations may be amended from time to time.
- W. Household Batteries. Category 2 alkaline and nickel metal hydride batteries used in Residential properties.
- X. In-House Service. The collection of Recyclable Materials from centralized City-supplied receptacles used inside a building.
- Y. Legal Holiday. Limited to:
 - i. The date set aside in May for Memorial Day
 - ii. July 4th – Independence Day
 - iii. The date set aside in September for Labor Day
 - iv. The date set aside in November for Thanksgiving Day
 - v. December 25th – Christmas
 - vi. January 1st – New Year's Day
- Z. Mixed-Use Development. A development that is a combination of Commercial and Multi-Family Customers.
- AA. Mixed Waste. Any combination of mixed Solid Waste materials that that have been placed in Garbage Carts and Bins by waste generators to be collected by the City's exclusively franchised Solid Waste hauler that have not been separated from the stream and intended for separate collection as source separated Recyclable Materials, source separated Yard Trimmings and certain amounts of source separated Food Scraps and Organic Waste.

- BB. Multi-Family Dwelling (MFD) Customer. Any multi-family residential property in the Exclusive Franchise Area with five (5) or more units and multi-family residential properties under five (5) units that share Solid Waste collection services.
- CC. Non-Collection Notice. A form developed and used by Collector, as approved by City, to notify Customers of the reason for non-collection of materials set out by the Customer for collection by Collector pursuant to this Agreement.
- DD. Organic Waste. A combination of 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. Customers that are allowed to receive Organic Waste service are limited to the Commercial Customers receiving Organic Waste collection from Collector as of January 1, 2020
- EE. Planned Development. An interest in real property, excluding condominiums, community apartments, and stock cooperatives, having either or both of the following features:
- i. Any contiguous lots, parcels, or areas (hereinafter collectively referred to as "common area[s]") are owned in common by the owners of the separately owned lots, parcels, or areas. Said common area(s) may consist of areas or facilities; the beneficial use and enjoyment of said common area(s) characteristically are reserved to some or all of the owners of separately owned lots, parcels, or areas.
 - ii. Any power exists (A) to enforce any obligation in connection with membership in an owners' association or (B) to enforce any obligation pertaining to the beneficial use and enjoyment of any portion of, or any interest in, either the separately or commonly owned lots, parcels, or areas by means of a levy or assessment, which may become a lien upon the separately owned lots, parcels, or areas of defaulting owners or members. Said lien may be foreclosed in any manner provided by law for the foreclosure of mortgages or deeds of trust, with or without a power of sale.
- FF. Processing or Process. The act of separating compostable waste and recyclable material from Residue.
- GG. Recyclable Material. Magazines, newspapers, cardboard, clean cans, bottles, motor oil, scrap metal, appliances, furniture, clean office paper, and other contractually determined recyclable material, in each case not contaminated by Solid Waste.

- HH. Residential. Multi-Family Dwelling (MFD) Customers and Single Family (SFD) Customers.
- II. Residue or Residual. The materials that remain after Processing and/or Composting has taken place that are destined for Disposal at the Designated Facility.
- JJ. Roll-off Bin. An open top metal Solid Waste Bin or closed-top metal Solid Waste Bin (Compactor), eight (8) to forty (40) cubic yards in capacity, that is serviced by a Roll-off truck. The term "Debris Box" may be used interchangeably with the term "Roll-off Bin".
- KK. Single Family (SFD) Customer. Any of dwelling units in the Exclusive Franchise Area 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. Includes Townhouse Customers.
- LL. 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 term "Solid Waste" may be used interchangeably with the term "Refuse".
- MM. Solid Waste Overage. Excess Solid Waste in or around a Solid Waste Carts and Bins.
- NN. Special Service. A service provided by the Collector that is not a typical weekly Solid Waste collection activity.
- OO. Townhouse Customer. Any SFD Customer in the Exclusive Franchise Area that that utilizes a Cart for Garbage collection but does not subscribe to Yard Trimmings service.
- PP. Transfer Station. The Collector's transfer station, located at 1060 Richard Avenue, with public entrance located currently at 1313 Memorex Drive, in the City.
- QQ. Work Day. Any day, Monday through Friday that is not a Legal Holiday.
- RR. Yard Trimmings. Lawn and shrubbery clippings, weeds, leaves, tree limbs, wood and all other similar waste materials a 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 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, Hazardous Waste. Any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such law or regulations may be amended from time to time. Does not include Mixed Waste, Recyclable Materials, Hazardous Waste or Universal Waste.

EXHIBIT C
COLLECTOR COMPENSATION

Collector will bill City on a monthly basis for Services provided by (and not billed directly to Customers by) Collector during the preceding month and adjusted for over charges and erroneous billings, less other deductions and offsets allowed under this Agreement. In addition, City shall be entitled to deduct from said Schedule of Tariffs an amount equal to ten percent (10%) of gross billings for these tariffs for administrative and billing processing costs and as compensation for the rights and privileges conferred herein, which said sum shall be and remain the property of City. Collector shall bill the City on an invoice and in a format approved by City and subject to verification and approval by City. City will pay Collector within thirty (30) days of City's receipt of an approved invoice.

1. SCHEDULE OF TARIFFS

Existing Tariffs through will remain in place through. The following Schedule of Tariffs are effective July 1, 2020. June 30, 2020 The Schedule of Tariffs will be increased by 9% effective July 1, 2021 and 9% effective July 1, 2022, respectively. Calculations of scheduled increases shall use the Tariffs listed the prior year Schedule of Tariffs, multiplied by the percentage increase and rounded to the nearest cent.

2. RESIDENTIAL CUSTOMERS

A.	Single Occupancy: Regular service, single collection weekly:		
	(a) One (1) thirty-two gallon capacity Small Cart	\$9.08	per month
	(b) One (1) twenty-gallon Super Saver Cart	\$6.78	per month
	(c) One (1) sixty-four capacity Medium Cart	\$17.95	per month
	(d) One (1) ninety-six gallon capacity Large Cart	\$26.73	per month
	(e) Additional thirty-two gallon capacity Cart	\$8.83	per month
B.	Duplexes, Trailer Parks and Multiple Occupancies (where Yard Trimmings collection is provided): Regular service, single collection weekly, first dwelling unit:		
	(a) One (1) thirty-two gallon capacity Small Cart	\$9.08	per month*
	(b) One (1) twenty-gallon Super Saver Cart	\$6.78	per month
	(c) One (1) sixty-four capacity Medium Cart	\$17.95	per month
	(d) One (1) ninety-six gallon capacity Large Cart	\$26.73	per month
C.	Each additional dwelling unit exceeding one (1) where there are four (4) units or less:		
	(a) One (1) thirty-two gallon capacity Small Cart	\$8.83	per month*
	(b) One (1) twenty-gallon Super Saver Cart	\$6.08	per month
D.	For each additional dwelling unit exceeding four (4):		
	(a) One (1) thirty- two-gallon capacity can, or Small Cart	\$8.44	per month
	(b) One (1) twenty-gallon Super Saver Can or Cart	\$6.08	per month*
E.	For each additional thirty-two gallon capacity Cart:		
	(a) Four (4) or less (total)	\$8.83	per month
	(b) Five (5) or more (total)	\$8.44	per month
	*Tariffs for each additional dwelling unit exceeding one (1) shall be the same as the first dwelling unit (\$8.83) where separate billing is made for said unit; otherwise, tariffs preceding asterisk apply.		
F.	Townhouses and Multiple Occupancies (where Yard Trimmings service is not provided): Regular service, single collection weekly:		
	(a) One (1) thirty-two gallon capacity Small Cart	\$9.08	per month
	(b) One (1) twenty-gallon Super Saver Cart	\$6.78	per month
	(c) One (1) sixty-four capacity Medium Cart	\$17.52	per month
	(d) One (1) ninety-six gallon capacity Large Cart	\$25.92	per month
	(e) Additional thirty-two gallon capacity Cart	\$8.44	per month
G.	All Residential Occupancy Classes:		
	(a) Pre-paid Sticker Program for extra garbage bag setouts:	\$3.61	per bag
	(b) Clean Green Service (where provided): Per each dwelling unit, single-occupancy, and multiple occupancies	\$10.96	per month

3. COMMERCIAL CUSTOMERS

A. Cart Service.

i. Garbage

CONTAINER SIZE (CAPACITY)	ONE TO SIX COLLECTIONS PER WEEK					
	ONE	TWO	THREE	FOUR	FIVE	SIX
One 32 gallon Small Cart	\$9.43	\$18.85	\$28.29	\$37.71	\$47.18	\$56.59
One 64 gallon Medium Cart	\$18.64	\$37.22	\$55.90	\$74.56	\$93.14	\$111.77
One 96 gallon Large Cart	\$27.84	\$55.68	\$83.52	\$111.33	\$139.16	\$167.01
Each additional 32 gallon capacity Cart	\$9.21	\$18.41	\$27.61	\$36.82	\$46.06	\$55.23
Notwithstanding the above, in no event will the minimum charge for service for Commercial establishments be less than \$9.43.						

ii. Recycling

Rates shown below are based on Garbage tariffs in Section 3.A.i, above, and include 5% billing charge and 5% franchise fee. The values shown below comprise the amounts that Collector may bill to customer for Commercial Recycling service.

CONTAINER SIZE (CAPACITY)	ONE TO SIX COLLECTIONS PER WEEK					
	ONE	TWO	THREE	FOUR	FIVE	SIX
Three 32 gallon Carts, or Large Cart	\$0	\$61.25	\$91.87	\$122.46	\$153.08	\$183.71
Each additional 32 gallon capacity Garbage or Yard Trimmings Cart (96-gallon Recycling Cart)	\$30.62	\$61.25	\$91.87	\$122.46	\$153.08	\$183.71

iii. Source Separated Food Scrap and Organic Waste Service

CONTAINER SIZE (CAPACITY)	ONE TO FIVE COLLECTIONS PER WEEK				
	ONE	TWO	THREE	FOUR	FIVE
First sixty-four (64) gallon container (collection tariff)	\$20.51	\$40.95	\$61.49	\$82.01	\$102.46
Each additional sixty-four (64) gallon container (collection tariff)	\$20.27	\$40.50	\$60.75	\$81.02	\$101.33
Processing cost per container	\$38.56	\$75.78	\$113.00	\$150.21	\$187.43
<p>Collector bills Customers for Food Scrap and/or Organic Waste recycling services directly. Collection charges are based on the corresponding tariff for each level of service, plus fifteen percent (15%) of the processing cost per container for each level of service, plus ten percent (10%) of the total for billing and franchise fees. For example, for a 64-gallon food container collected once per week, Collector shall bill \$20.51 plus \$5.78 (which is 15% of the processing cost of \$38.56) yielding \$26.29, plus \$2.63 (which is the 10% for billing and franchise fees) for a total of \$28.92. Collector shall retain five percent (5%) for billing and remit five percent (5%) to City on a quarterly basis, per Exhibit H. Collector shall invoice City on a monthly basis for eighty-five percent (85%) of the processing cost per container, which are not subject to franchise fees.</p>					

B. Bin Service.

i. Front Load Bin Garbage.

BIN SIZE (CAPACITY)	ONE TO FIVE COLLECTIONS PER WEEK					
	ONE	TWO	THREE	FOUR	FIVE	SIX
1 cubic yard	\$62.78	\$123.07	\$180.98	\$236.43	\$291.88	\$344.89
1½ cubic yards	\$90.49	\$179.50	\$261.61	\$339.36	\$418.66	\$493.73
2 cubic yards	\$118.17	\$231.53	\$344.89	\$448.76	\$552.14	\$660.65
3 cubic yards	\$174.79	\$339.36	\$494.72	\$640.67	\$791.71	\$939.86
4 cubic yards	\$228.28	\$446.58	\$656.60	\$848.38	\$1,046.65	\$1,214.79
6 cubic yards	\$320.57	\$631.43	\$910.68	\$1,189.91	\$1,469.15	\$1,749.31
8 cubic yards	\$408.59	\$813.38	\$1,222.01	\$1,531.38	\$1,891.64	\$2,281.97

ii. Front Load Bin Commercial Recycling Service. Rates shown below are based on Garbage tariffs in Section 3.B.i, above, and include 5% billing charge and 5% franchise fee. The values

shown below comprise the amounts that Collector may bill to customer for Commercial Recycling service.

BIN SIZE (CAPACITY)	ONE TO FIVE COLLECTIONS PER WEEK					
	ONE	TWO	THREE	FOUR	FIVE	SIX
1 cubic yard	\$69.06	\$135.38	\$199.08	\$260.07	\$321.07	\$379.38
1½ cubic yards	\$99.54	\$197.45	\$287.77	\$373.30	\$460.53	\$543.10
2 cubic yards	\$129.99	\$254.68	\$379.38	\$493.64	\$607.35	\$726.72
3 cubic yards	\$192.27	\$373.30	\$544.19	\$704.74	\$870.88	\$1,033.85
4 cubic yards	\$251.11	\$491.24	\$722.26	\$933.22	\$1,151.32	\$1,336.27
6 cubic yards	\$352.63	\$694.57	\$1,001.75	\$1,308.90	\$1,616.07	\$1,924.24
8 cubic yards	\$449.45	\$894.72	\$1,344.21	\$1,684.52	\$2,080.80	\$2,510.17

iii. Front Load Bin Source Separated Food Scrap and Organic Waste Service

BIN SIZE (CAPACITY)	ONE TO FIVE COLLECTIONS PER WEEK				
	ONE	TWO	THREE	FOUR	FIVE
One (1) cubic yard (collection tariff)	\$69.06	\$135.37	\$199.08	\$260.08	\$321.07
Processing cost per one (1) cubic yard container	\$120.15	\$237.62	\$355.09	\$472.57	\$590.05
Three (3) cubic yards (collection tariff)	\$192.27	\$373.30	\$544.19	\$704.74	\$870.89
Processing cost per three (3) cubic yard container	\$356.44	\$708.85	\$1061.27	\$1,413.70	\$1,766.12

Collector bills Customers for Food Scrap and/or Organic Waste recycling services directly. Collection charges are based on the corresponding tariff for each level of service, plus fifteen percent 15% of the processing cost per container for each level of service, plus ten percent (10%) of the total for billing and franchise fees. For example, for a 1-cubic yard food container collected once per week, Collector shall bill \$69.06 plus \$18.02 (which is 15% of the processing cost of \$120.15) yielding \$87.08, plus \$8.71 (which is the 10% for billing and franchise fees) for a total of \$95.79. Collector shall retain five percent (5%) for billing and remit five percent (5%) to City on a quarterly basis, per Exhibit H. Collector shall invoice City on a monthly basis for eighty-five percent (85%) of the processing cost per container, which are not subject to franchise fees.

c. Roll-off Bin and C&D Service.

The table below specifies Customer rates to be billed by Collector for Roll-off Bin and C&D Services, inclusive of the per cubic yard tariff compensation to Collector plus five percent (5%) for Collector billing and five percent (5%) for City franchise fee. Collector's charges to Customers will include two (2) elements: the "per pull" collection charge per cubic yard shown below, plus the actual charges incurred by Collector for recycling and/or disposal of collected contents, plus a ten percent (10%) mark-up on the recycling/disposal costs for billing services and franchise fees with five percent (5%) to Collector for billing services and five percent (5%) to City for franchise fee.

BIN SIZE (CAPACITY)	OPEN (LOOSE) CONTAINER (per cubic yard)	COMPACTED (CLOSED) CONTAINER (per cubic yard)
10 cubic yards or less	\$31.17	\$41.06
11 to 15 cubic yards	\$31.17	\$35.63
16 to 20 cubic yards	\$28.45	\$32.57
21 to 29 cubic yards	\$26.06	\$32.57
30 cubic yards	\$21.96	\$32.57
31 to 39 cubic yards	\$20.78	\$32.57
40 cubic yards & over	\$20.12	\$32.57
Demurrage charge (one-week extension without collection)	\$55.000 per week	\$55.00 per week
<p>Note: Collection of open (loose) containers at City municipal facilities are \$270.46 per collection for a Bin of any size, except for the 30 cubic yard container at the City's Street Corporation Yard which shall be \$244.61 per collection.</p>		

4. SPECIAL CHARGES

A. Annual Clean-Up Campaign.

City will pay Collector \$20.12 per Roll-off Bin per cubic yard for Roll-off Bin of any size collected and hauled for disposal at Designated Facilities, not including the 3,000 cubic yards of City Roll-off Bins described in Exhibit A, Section G.v.

B. Charges for Special Services.

Charges for Special Services are not incorporated into the tariffs for servicing specific containers. Collector shall provide special services upon request of Customer. The tariffs for Special Services are set forth in this section. Collector must report to City's Finance Department on a monthly basis of the Special Services provided. City will charge Customers for services via utility bill and reimburse Collector for Special Services provided.

Manual Front Load Push/Pull Schedule: Per collection with driver pushing Bin into position and returning to original Bin storage location based on one-way distance from original Bin storage location to collection point.

RATE LEVEL	ONE-WAY DISTANCE	RATE
L-1	6 to 20 feet	\$25.06
L-2	21 to 40 feet	\$32.71
L-3	41 to 60 feet	\$48.74
L-4	61 to 80 feet	\$58.15
L-5	81 to 100 feet	\$81.14
L-6	101 to 120 feet	\$106.56
L-7	121 to 140 feet	\$131.64
L-8	141 to 160 feet	\$155.29
L-9	161 to 180 feet	\$180.37
L-10	181 to 200 feet	\$202.31

(a)	Lock Bar/Lock Jam Front Load Services One-time installation fee, including one (1) lock:	\$73.82	Each
(b)	Purchase of Lock, includes delivery of lock:	\$34.82	Each
(c)	Front Load Bin Steam Cleaning (not including once per year annual cleaning):	\$88.46	Per occurrence
(d)	Roll-off Bin Steam Cleaning (not including once per year annual cleaning):	\$394.16	Per occurrence
(e)	Saturday Service Roll-off Bin:	\$428.99	Per occurrence

(f)	"Emergency" Roll-off Load Collection on Weekday (Per driver hour with one (1) hour minimum charge):	\$229.82	per hour
(g)	Relocation Roll-off Bin (Per hour with one (1) hour minimum charge):	\$229.82	per hour
(h)	Roll-off Driver Time (Per hour with one (1) hour minimum charge):	\$229.82	per hour
(i)	Counter-balance Front-Load Covered Bin (Premium charge paid by Customer – availability limited to 100 bins in total):	\$TBD \$10.00	per unit per month
(j)	Special charges for return trips, non-scheduled collections, overages and contamination:	Monthly Collection Charge for Cart or Bin size, times 12, divided by 52, times 1.5	Per occurrence
(k)	Illegal bin removal and storage fee: Payable by illegal bin owner or, if uncollectable by Collector after 90 days, City shall pay the Collector for the illegal bin removal and storage fee, with Collector submitting a bill to City to initiate payment of bin removal, storage and disposal cost.	\$249.82 plus disposal cost	Per occurrence
(l)	On-Call Bulky-Item Program (Per Exhibit A, Section 3.N)	\$125.00	Per Customer-requested service

5. PAYMENTS TO COLLECTOR

A. Tariff Billing.

i. Billing by City.

- (a) At the time Collector commences the collection of Solid Waste under this Agreement and until the termination thereof, City shall bill and collect, for the Collector, the charges established in the Schedule of Tariffs listed in Section 1 of this Exhibit C, as modified from time to time in accordance with the provisions of this Exhibit, from all owners or occupants of premises provided with the collection and transport of Solid Waste hereunder. City shall pay to Collector as the sole consideration for Collector's performance hereunder the Schedule of Tariffs for service of the previous month adjusted

for over charges and erroneous billings, less other deductions and offsets allowed under this Agreement.

- (b) City shall be entitled to deduct from said Schedule of Tariffs an amount equal to ten percent (10%) of gross billings for these tariffs for administrative and billing processing costs and as compensation for the rights and privileges conferred herein, which said sum shall be and remain the property of City. Except as otherwise set forth in this Agreement, no other or additional payment shall be sought and/or accepted by Collector either from City or any other person for any of Collector's services in carrying out the terms of this Agreement, and all expenses incurred therein shall be at Collector's sole expense.
- (c) Gross billings by City which include the Collector's Schedule of Tariffs shall be made for the sum total of charges for Residential occupants and for Commercial premises, all of which shall be computed from and in accordance with the attached Schedule of Tariffs, together with special charges for services rendered at the request of a Customer different or in addition to those described in City's costs for Disposal and other applicable City charges.

ii. Billing by Collector on Behalf of City.

- (a) Roll-Off Customers.
 - (1) Upon direction and approval by City, Collector shall bill directly for all Exclusive Franchise Roll-off Bin Customers, at no additional compensation, effective July 1, 2020.
 - (2) Collector shall bill customers directly for Exclusive Franchise Roll-off Bin Customers for Bin rental, delivery, and transportation services based on the size of the Container at the rates specified in Section 3.C of Exhibit C, (which include ten percent (10%) for billing and franchise fees) plus the direct (not marked up) cost of processing and/or Disposal of all Roll-off Bin contents as charged to Collector by Disposal Facility, plus ten percent (10%) for billing and franchise fees. Collector is permitted to charge deposits to Roll-off Bin Customers in advance of providing collection services.
 - (3) Collector shall retain five (5%) percent of the Roll-off Customer gross revenues for billing and remit five (5%)

percent to City on a quarterly basis as reported in Exhibit H.

(b) Commercial Recycling Customers.

(1) Collector shall bill Customers directly for Commercial Recycling services at the tariffs specified in Section 3.A.ii and Section 3.B.ii of this Exhibit C, (which include ten percent (10%) of the total for billing and franchise fees).

(2) Collector shall retain five percent (5%) of the Commercial Recycling Customer gross revenues for billing and remit five percent (5%) to City on a quarterly basis as reported in Exhibit H.

(c) Commercial Food Scrap and Organic Waste Customers.

(1) Collector shall bill Customers directly for Commercial Food Scraps and Organic Waste collection and processing services at the tariffs specified in Section 3.A.iii and Section 3.B.iii of this Exhibit C, plus 10% of the total for billing and franchise fees.

(2) Collector shall retain five percent (5%) of the Commercial Food Scrap and Organic Waste gross revenues (collection and 15% processing) for billing and remit five percent (5%) to City on a quarterly basis as reported in Exhibit H.

(2) Collector shall invoice City on a monthly basis for eighty-five percent (85%) of the processing cost per Container, which are not subject to franchise fees.

iii. Upon commencement of services hereunder, Collector shall review the City's list of all Commercial Customers served under this Agreement, with the charges and such other information as City might require for billing and collecting purposes. It is both the Collector's and City's responsibility that said list be brought up to date each month.

iv. In the event of any dispute as to the tariff and/or charge to be made for services rendered under this Agreement, the tariff and/or charge shall be as agreed upon between the City Manager and Collector.

B. Adjustments to Tariffs.

- i. Adjustments Effective July 1, 2020, 2021 and 2022. The tariffs set forth in the Schedule of Tariffs, included Section 1 of this Exhibit C and made a part hereof, are subject to periodic adjustment upon approval of the City Council, per the methodology set forth below. The tariffs set forth in Section 1 of this Exhibit C shall be increased (and rounded to the nearest whole cent) by 6% effective July 1, 2020; 9% effective July 1, 2021, and; 9% effective July 1, 2022.
- ii. Annual Adjustments Effective July 1, 2023 and Thereafter. Tariffs effective July 1, 2023 shall be adjusted by the same percentage as the percentage of increase, if any, in the Water and Sewer and Trash Index. The "Water and Sewer and Trash Index" (WST Index) means the "Water and sewer and trash collection services in U.S. city average" published by the Bureau of Labor Statistics, series identification number CUSR0000SEHG. The percentage increase or decrease, if any, shall be determined by the percentage increase or decrease in the index 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.
- iii. Cap on Annual Adjustment. The actual annual WST Index compensation adjustment percentage may not exceed five percent (5%) in any year or be below two percent (2%) in any year. In the event the annual WST compensation adjustment is less than two percent (2%), Collector compensation shall be adjusted by two percent (2%). In the event the annual WST Index adjustment is more than five percent (5%), the annual compensation shall be adjusted by five percent (5%).
- iv. Adjustment for Extraordinary Items. In addition to annual adjustment described above, tariffs set forth in the Schedule of Tariffs shall be subject to increase to reflect extraordinary increases in Collector's cost of providing services hereunder, such as costs mandated by governmental action or judicial decisions, new or increased franchise fees and similar items. Rate and charge increases pursuant to this Exhibit C shall take effect so as to eliminate, to the maximum extent possible, Collector's loss of revenue and/or profit resulting from the extraordinary increase in costs from the date(s) such increase first occurred.
- v. The tariffs herein include all compensation due to Collector for insurance costs incurred by Collector pursuant to this Agreement.
- vi. The tariffs set forth in Exhibit C of this Agreement shall be operative for such period of time that City continues to direct Collector to

convey all Solid Waste collected from Residential Customers and all Solid Waste collected from Commercial Customers to the City Designated Facilities. Such tariffs fully take into consideration the additional delivery and/or transportation charges to City Designated Facilities. The tariffs also take into consideration the payment of Disposal fees and taxes by the Collector and reimbursed by the City in connection with Collector's delivery of such Solid Waste to Designated Facilities, less a credit to City based upon the current or most recently effective Disposal fee amounts which Collector would otherwise be obligated to pay.

C. Time of Payment.

- i. During the full term of this Agreement, provided Collector shall have faithfully performed all of its obligations, all amounts due hereunder shall be paid monthly by City to Collector, on or before the 15th day of each month, and shall cover respectively, services rendered during the preceding month. If the due date falls on a weekend or holiday, the amount due shall be paid on or before the first Work Day thereafter. All late payments shall bear simple interest at the rate of ten percent (10%) per annum from the date due until paid in full.

EXHIBIT D
INSURANCE REQUIREMENTS

Without limiting the Collector's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Collector 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 Collector; 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 Collector 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, Collector 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 Collector 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 Collector 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, Collector and/or its subcontractors shall provide a Collector'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 cleanup costs arising from sudden, accidental and gradual pollution and remediation in connection with the Work under this Agreement. Collector will use its best efforts to have the City, Council, officers, employees and volunteers added as additional insureds under this policy. The following provisions shall apply:

- 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 3 years after project completion.
- C. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent Collectors.
- 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 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 Collector'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 Collector 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 Collector's insurance.
- C. General Aggregate. The general aggregate limits shall apply separately to Collector'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.
- E. Other Endorsements. Other endorsements may be required for policies other than the Commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit D, above.

6. ADDITIONAL INSURANCE RELATED PROVISIONS

Collector and City agree as follows:

- A. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Collector or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.
- B. Collector shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of Contract Documents. Collector shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Collector shall submit evidence that insurance policies will be in effect during requested additional period of time.
- C. City reserves the right, at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Collector thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Collector, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
- D. Any type of insurance or any increase of limits of liability not described in this Exhibit which Collector requires for its own protection or in compliance with applicable statutes or regulations, shall be Collectors' responsibility and at its own expense.

- E. No liability insurance coverage provided by Collector to comply with the terms of this Agreement shall prohibit Collector, or Collector's employees, or agents, from waiving the right of subrogation prior to a loss. Collector waives its right of subrogation against Indemnitees. Any property insurance policies affected by Collector shall be endorsed to delete the subrogation condition as to indemnitees or shall specifically allow Collector to waive subrogation prior to a loss. Collector hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.
- F. Collector 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 Collector, provide the same minimum insurance coverage required of Collector, except as with respect to limits. Collector 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. Collector agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
- G. Collector shall cooperate fully with City and Collector's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
- H. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need arises. Collector shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
- I. 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.
- J. Collector acknowledges and agrees that any actual or alleged failure on the part of City to inform Collector 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.
- K. 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.

- L. Collector 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 Collector 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.
- M. Collector agrees to obtain and provide to City evidence of Professional Liability insurance for Architects or Engineers if engaged by Collector to perform any of the Services required under this Agreement. City shall determine the minimum coverage and policy limits required, after consultation with Collector.
- N. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Collector. The Collector'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.
- O. The City reserves the right to withhold payments from the Collector in the event of material noncompliance with the insurance requirements set forth in this Agreement.

7. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Collector, 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. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Collector 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

Collector 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, Collector 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:

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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;
 - (b) Is convicted of a crime punishable as a felony involving dishonesty³;
 - (c) 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;
 - (d) 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,
 - (e) 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, Louie Pellegrini, being first duly sworn, depose and say that I am the President of Mission Trail Waste Systems, Inc., 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.

MISSION TRAIL WASTE SYSTEMS, INC.
A California Corporation



Louie Pellegrini
President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

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EXHIBIT G
SOLID WASTE COLLECTION VEHICLE REPLACEMENT SCHEDULE

31	Total quantity of new vehicles to be purchased to service these Customer routes					
#	Vehicle Type	Make	Model	Year of Chassis	Year of Body	Manufacture Date / Proposed First Day of Service
10	ASL	Autocar/Labrie	Automizer	2021	2021	18 months from Signing
11	FEL	Autocar/Heil	Sierra Odyssey	2021	2021	18 months from Signing
8	RO	AutoCar/Galbreath	Top Rail	2021	2021	18 months from Signing
1	Flat Bed	Autocar/Special	Special	2021	2021	18 months from Signing
1	Container Truck	GMC/Special	Special	2021	2021	18 months from Signing

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**EXHIBIT H
EXCLUSIVE FRANCHISE COMMERCIAL RECYCLING, ORGANIC WASTE, AND
FOOD SCRAPS REPORTING FORM**

Mail To: (Certificate and Payment) City of Santa Clara; Accounting Services 1500 Warburton Avenue, Santa Clara, CA 95050	cc: (Certificate Only) City of Santa Clara, Deputy Director of Public Works 1700 Walsh Avenue, Santa Clara, CA 95050
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Company Name: _____ Calendar Year/Reporting Quarter: _____

Name: _____ Title: _____ Phone Number: (____) _____

PART I – REPORTING QUARTER COLLECTION SUMMARY

Please include all amounts billed to the Customer for the service provided in calculation of gross billings, including but not limited to, fees charged to the Customer, overweight charges, surcharges, etc. Include all tons/volume collected during the reporting quarter including recycling services without charge or compensation or for which Customers are paid for materials.

Material	Total Tons Collected	Total Residual Tons	Residual Rate	Gross Billings
Food Scraps Collection and Processing			%	\$
Organic Waste Collection and Processing			%	\$
Commercial Recycling Collection and Processing		N/A	%	\$
Exclusive Roll-off Collection and Post-Collection Disposal or Processing			%	\$
Total Gross Billings				\$

PART II – EXCLUSIVE FRANCHISE FEE PAYMENT CALCULATION

\$ _____ x 5% = \$ _____

Total Gross Billings for Reporting Quarter

Total Exclusive Franchise Fees for Reporting Quarter

I declare under penalty of perjury that I have examined the appropriate records and believe the information to be true, correct, and complete; that I will maintain these records in my office for review by the City, and that I am authorized to make and submit this certificate to the City of Santa Clara.

Date

Declarant Signature

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