

City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

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Review Item 01

Title: (Agreement/Contract for Review) Contract: Collection and Disposal of Recyclables and Refuse for City Facilities

Location: Citywide

Recommendation: Accept and publish for review a Motion: 1) awarding a five-year contract to USA Waste of California, Inc. for the collection of recyclables and refuse at City-owned and leased facilities in an amount not to exceed \$7.2 million for the five-year term; and 2) authorizing the City Manager or the City Manager's designee to execute the contract specified above; and continue to October 2, 2018, for approval.

Contact: Marc Robles, Program Analyst, (916) 808-6343; Robert Adams, Procurement Services Manager, (916) 808-5524, Department of Finance

Presenter: None

Attachments:

1-Description/Analysis

2-USA Waste of California Contract

Description/Analysis

Issue Detail: Staff recommends awarding a contract to the responsive bidder, USA Waste of California, which is the City's current provider for this service. USA Waste of California, Inc. is a permitted hauler in the region. The Sacramento Recycling and Transfer Station (SRTS) facility is permitted for sufficient capacity to receive and transfer solid waste and recyclable materials generated at City-owned and City-leased facilities.

Policy Considerations: The recommendations in this report are in accordance with City Code Section 3.56, regarding purchase of supplies and services.

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (CEQA): The report concerns the ongoing purchase of supplies which does not constitute a "project" pursuant to CEQA Guidelines Section 15378(b)(2).

Sustainability: The recommended contract is consistent with the Sustainable Purchasing Policy (*AP-4003*) by encouraging recycling efforts and reducing the amount of materials placed in landfills.

Commission/Committee Action: None

Rationale for Recommendation: In May 2018, the Procurement Services Division, issued Invitation for Bids (Bid no. B18061511007) for the collection and disposal of recycled materials and refuse. One bid was received. Staff recommends awarding a contract to the responsive bidder, USA Waste of California, Inc.

Financial Considerations: The approval of the recommended purchases could result in total purchases for the collection and disposal of recycled materials and refuse in an amount not to exceed \$7.2 million. Pricing for the first year of the contract will be at the original bid price. Annual price increases are based on the Consumer Price Index plus a combination of factors including, but not limited to, an annual fuel adjustment, an annual disposal fee adjustment, and an annual recycling rate adjustment. The expenditures provided in the table below for years one through five assume the maximum annual price escalation allowed in the proposed contract and are based on the current number, size, and collection frequency of regularly scheduled solid waste and recycling containers at City facilities, as well as a projected number of on-call and special event collection services that may be utilized by City Departments.

Year 1	Year 2	Year 3	Year 4	Year 5	Total
1,252,499	1,335,253	1,424,157	1,519,720	1,622,497	\$7,154,126

Sufficient funding is available in the FY2018/19 budget for purchases made through June 30, 2019. Any purchases made after June 30, 2019, will be subject to funding availability in the adopted budget of the applicable fiscal year.

Local Business Enterprise (LBE): USA Waste of California, Inc. is an LBE firm located in the City limits.

**CITY OF SACRAMENTO
CITY FACILITIES SOLID WASTE AND RECYCLABLES
COLLECTION AND PROCESSING SERVICES AGREEMENT
BETWEEN
THE CITY OF SACRAMENTO
AND USA WASTE OF
CALIFORNIA, INC.**

This Agreement is made and entered into this 25th day of July 2018, by and between the CITY OF SACRAMENTO, a municipal corporation ("City"), and USA Waste of California, Inc. ("Contractor").

RECITALS

- A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code sections 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions.
- B. Through the Solid Waste and Recycling Division of the City's Department of General Services, the City has provided Solid Waste and Recyclables Collection services to residents, some commercial premises, and City Facilities within the City of Sacramento since the City's incorporation.
- C. On March 20, 2012, the City Council approved discontinuation of Collection services for commercial premises and City Facilities.
- D. The City Council desires, having determined through a competitive bid process for services, that Contractor be engaged to perform such services on the terms set forth in this Agreement.
- E. Contractor agrees to and acknowledges that it shall arrange for the Processing of Recyclable Materials at a facility of its choice subject to City approval, and agrees to Transport all Solid Waste Collected from City Facilities to the Approved Transfer Station for transfer and Disposal.

NOW, THEREFORE, based on the mutual promises contained herein, the Parties agree as follows:

Section 1: Definitions

Unless a different meaning is clearly required, the following words and phrases shall have the meanings respectively ascribed to them:

“Act” means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

“Agreement” means this Agreement between the City and Contractor for Solid Waste and Recyclables Collection and Processing services, including all exhibits, and any future amendments hereto.

“Applicable Law” means all Federal, State, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, Processing, or Disposal of Solid Waste, or Recyclable Materials that are in force on the Effective Date and as they may be enacted, issued or amended during the Term of this Agreement.

“Approved Disposal Location” means the Kiefer Landfill in Sacramento County.

“Approved Facility” means any or all of the Approved Disposal Location, Approved Recyclable Materials Processing Site, or the Approved Transfer Station.

“Approved Recyclable Materials Processing Site” means the Sacramento Recycling and Transfer Station on Fruitridge Road, which was selected by Contractor and approved by the City Manager or his/her designee.

“Approved Transfer Station” means the Sacramento Recycling and Transfer Station on Fruitridge Road in Sacramento, California.

“Automatic Lift Container” or “Cart” means a plastic receptacle with a hinged lid that is designed to be lifted, dumped and returned by Collection vehicles that have a compatible mechanical lifting device.

“Bin” means a Container with capacity of approximately one (1) to six (6) cubic yards, with a hinged lid, and with wheels where appropriate, that is serviced by a front loading or rear-loading Collection vehicle.

“Business Day” means any day other than Saturday or Sunday which is not a City Facility Holiday.

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

- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Effective Date of any Applicable Law, other than laws with respect to taxes based on or measured by net income, or any unincorporated business, payroll, franchise taxes levied by any tax board or employment taxes; or
- b. The order or judgment of any governmental body, on or after the Effective Date, to the extent (i) such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in Law, or of any third party for

whom the Party asserting the Change in Law is directly responsible; and (ii) the Party asserting the Change in Law, unless excused in writing from so doing by the other Party, shall make or have made, or shall cause or have cause to be made reasonable business efforts in good faith to contest such order or judgment (it being understood that contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence).

“City” means the City of Sacramento, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently exist or as such boundaries may be modified during the Term. Unless otherwise specified in this Agreement, any action authorized or required by the City may be taken by the City Council or by its designated agent.

“City Department” means a principal administrative division of the City including, but not limited to, one of the following: Community Development; Convention, Culture and Leisure, Economic Development, Finance, Fire, Information Technology, General Services, Parks and Recreation, Police, Transportation, and Utilities, which list may be modified by the City at any time over the Term.

“City Facility(ies)” means City-owned property occupied and maintained by a City Department. City Facilities are the premises listed in Exhibit B, which may change from time to time during the Term of the Agreement. City Facilities do not include (1) privately-owned premises leased to a City Department unless City chooses, for the purposes of this Agreement, to include the premises as a City Facility, and (2) City-owned property leased to a private entity or non-profit organization.

“City Facility Holiday” means New Year’s Day, Martin Luther King Jr. Day, President’s Day, Cesar Chavez Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day, which may change on an annual basis.

“Collection” (or variation thereof) means the act of Collecting Solid Waste, Recyclable Materials, or other material at the place of generation in the City.

“Commencement Date” means the date specified in Section 4 when Collection, Transportation, and Processing services required by this Agreement shall commence.

“Compactor” means a mechanical apparatus that compresses materials and/or the Container that holds the compressed materials. Compactors include Drop Box Compactors of any size serviced by Drop Box Collection vehicles.

“Complaint” means written or orally communicated statements made by members of the public or officers, employees or agents of City alleging non-performance or deficiencies in Contractor’s performance, or otherwise alleging a violation by Contractor of the provisions of this Agreement.

“Composting” or “Compost” includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost product.

“Construction and Demolition Debris” includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, buildings, or other structures.

“Containers” mean Bins, Automatic Lift Containers, Carts, Compactors, Drop Boxes, and five cubic yard trailers.

“Contractor” means USA Waste of California, Inc. a corporation organized and operating under the laws of the State of Delaware and its officers, directors, employees, agents, companies, and Subcontractors to whom by virtue of this Agreement has been granted the exclusive right and privilege to perform the services described in this Agreement.

“Contractor’s Compensation” means the monetary compensation received by Contractor in return for providing services in accordance with this Agreement as described in Section 15.

“Contractor’s Bid Package” means the bid package submitted by Contractor and received on June 20, 2018 by the City in response to the City’s 2018 Invitation for Bid for City Facilities Solid Waste and Recyclables Collection Services and certain supplemental written materials incorporated by reference.

“Designated Waste” means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste as defined in section 13173 of the California Water Code.

“Discarded Material” means Solid Waste or Recyclable Materials placed by a Generator in a Container, receptacle or at a location that is designated for Collection.

“Disposal” or “Dispose” (or variation thereof) means the final disposition of Solid Waste at a Disposal Site.

“Disposal Site” means a facility for ultimate Disposal of Solid Waste.

“Diversion” means activities that reduce or eliminate the amount of Solid Waste from Solid Waste Disposal including, but not limited to, Recycling and Composting.

“Drop Box” means a Container with a typical capacity of 6 to 50 cubic yards that is serviced by a roll-off Collection vehicle.

“Effective Date” means the date on which this Agreement is made above.

“Federal” means belonging to or pertaining to the national government of the United States; or founded on or organized under the constitution of the United States.

“Food Scraps” means food scraps such as those discarded Organic Materials that will decompose and/or putrefy, including: 1) all kitchen and table food waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of food stuffs; and, 2) paper waste contaminated with Food Scraps. Food Scraps is a subset of Organic Materials.

“Garbage” consists of dead animals, of not more than ten (10) pounds weight each, and of every accumulation of animal, vegetable, and other matter that attends the preparation, consumption, decay or dealing in, or storage of meats, fish, fowl, birds, fruits and vegetables, and any matter that will putrefy. The term “Garbage” does not include dishwasher or waste water.

“Generator” means any Person, as defined by section 40170 of the Public Resources Code, or City Facility, whose act or process produces Solid Waste or Recyclable Materials or whose act first causes Solid Waste or Recyclable Materials to become subject to regulation.

“Hazardous Waste” includes any waste material or mixture of wastes as defined in section 25117 of the California Health and Safety Code and under various Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any hazardous substance, together with any amendments of or regulations promulgated under such laws, and any other Federal, State, or local law, statute, ordinance, or regulation in effect prior to the Commencement Date or later enacted that pertains to occupational health or industrial hygiene, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

“Infectious Wastes” includes: 1) equipment, instruments, utensils, and other fomites (any object that may harbor or transmit pathogenic organisms) of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by public health agencies; 2) laboratory wastes, including pathological specimens (i.e., all tissues, specimens of blood elements, excreta and secretions obtained from patients or laboratory animals) and disposable fomites attendant thereto; 3) surgical operating room pathological specimens, including recognizable anatomical parts, human tissue, anatomical human remains and disposable materials from hospitals, clinics, outpatient areas and emergency rooms or any other Medical Waste Generator as defined in California Health and Safety Code section 117705; and, 4) substances or matter that are defined as “infectious waste” under the California Code of Regulations.

“Liabilities” means all liabilities, including:

- (1) Demands, lawsuits, claims, or actions;
- (2) Awards, judgments and damages (whether in contract or tort, including personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, and punitive damages);
- (3) Contribution or indemnity claimed by Persons other than the Parties;
- (4) Injuries, losses, debts, liens;
- (5) Costs, arising from or attributable to any operations, repair, clean-up or detoxification, or preparation or implementation of any removal, remedial, response, closure, post-closure or other plan, regardless of whether undertaken

due to government directive or action, such as remediation of surface or ground water contamination and replacement or restoration of natural resources;

- (6) Interest;
- (7) Fines, charges, penalties, forfeitures; and
- (8) Expenses such as attorneys' (including City's staff attorneys and outside attorneys) and expert witness fees, expenditures for investigation and remediation, and costs incurred in connection with defending against any of the foregoing or in enforcing indemnities provided in Section 19.
- (9) Costs arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan, regardless of whether undertaken due to government directive or action, such as remediation of surface or ground water contamination and replacement or restoration of natural resources.

"Litter" consists of Garbage, Rubbish, Waste Matter, Recyclables, junk, debris, vehicle parts, and all other materials, things or objects that are made available for collection in connection with the abatement of any public nuisance or other actions taken pursuant to the provisions of Title 13 of the Sacramento City Code.

"Occupant" means the Person who occupies a Premises.

"Organic Materials" means those Discarded Materials that will decompose and/or putrefy that Generator has separated from Solid Waste and Recyclable Materials for Collection in specially designated Containers for Organic Materials Collection. Organic Materials include Yard Trimmings and Food Scraps. No discarded material shall be considered to be Organic Materials, however, unless such material is separated from Solid Waste and Recyclable Material.

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

"Party or Parties" refers to the City and Contractor, individually or together.

"Person(s)" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Sacramento, or special purpose districts.

"Processing" (or variation thereof) means to prepare, treat, or convert through some special method.

"Processing Site" means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials for the purpose of making such materials available for reuse.

"Rate" means the dollar unit to be charged by Contractor for Collecting Solid Waste and Transporting to the Approved Transfer Station and Collecting, Transporting, Processing, and marketing Recyclable Materials.

“Rate Period” means a 12-month period, commencing October 1 and concluding September 30 for which Rates are calculated.

“Recyclable Materials” means the following types of Recyclable Materials, that are Source Separated and placed for collection in a bin or container separate from Solid Waste and Organic Materials:

- Paper Materials: Newspaper, cardboard, mixed paper, box board (i.e., shoe boxes, tissue boxes, cereal boxes), office paper, junk mail, phone books, soft cover books, magazines, catalogs, paper bags, paper packaging, egg cartons, and colored paper including incidental paper scraps and envelopes.
- Containers: Glass bottles and jars, aluminum cans, metal cans, milk containers, all #2, #4, and #5 plastic containers, all narrow-neck #1 to #7 plastic containers, aseptic packaging, milk cartons, and empty aerosol cans.
- Other: Small scrap metal under 40 pounds.

“Recycle” or “Recycling” means the process of sorting, cleansing, treating and reconstituting at a Recyclable Materials Processing Site material that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused or reconstituted products.

“Refuse” includes waste paper; cardboard, wood, Rubbish, trash, Waste Matter, and all other similar matter, that are not Source-Separated; but does not include any matter included in the definition of Garbage, Hazardous Wastes, and Infectious Wastes in this Section.

“Rubbish” consists of, chips, shoes, hats, crockery, glassware, ashes, cinders, metals, , and all other material not included under the terms “Garbage” or “Waste Matter.”

“Service Holidays” means New Year’s Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

“Solid Waste” means Garbage, Rubbish, and Refuse. Excluded from the definition of Solid Waste are Waste Matter, Construction and Demolition Debris, Hazardous Waste, Infectious Waste, Designated Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, Source Separated Specialty Materials, and radioactive waste. Notwithstanding any provision to the contrary, “Solid Waste” may include de minimis volumes or concentrations of waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment and Disposal of Household Hazardous Waste in compliance with sections 41500 and 41802 of the California Public Resources Code as they may be amended from time to time.

“Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

“Specialty Recyclable Material” means a Recyclable Material that: 1) is not specified as a Recyclable Material that Contractor is obligated to Collect pursuant to the definition of

Recyclable Materials in this Section, 2) is Source Separated from Solid Waste and Recyclable Materials, and 3) can be or will be Collected for purposes of Recycling by City employee or City contractor. Such Specialty Recyclable Materials may include, but are not limited to, scrap metal, shredded paper from document destruction services, shrink wrap plastic, pallets, e-waste (discarded consumer and business electronic equipment).

“State” means the State of California.

“Subcontractor” means a party who has entered into a contract with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations under this Agreement such as, but not limited to, Collection, Transportation, Processing, Diversion, sales or marketing of Recyclable Materials, staffing, public education, customer service, and billing.

“Term” means the Term of this Agreement, including extension periods if granted, as provided in Section 4.

“Ton” or “Tonnage” means a unit of measure for weight equivalent to 2,000 standard pounds where each pound contains 16 ounces.

“Transfer Station Tip Fee” means the per-Ton fee Contractor pays the owner or operator of the Approved Transfer Station for transfer and Disposal of Solid Waste.

“Transportation” means the act of transporting or state of being transported.

“Unpermitted Waste” means waste or other materials that the Approved Disposal Site or Approved Transfer Station may not receive under their Solid Waste facility and/or Conditional Use Permits, including:

- (1) all materials that the facility is not permitted to accept, excluding white goods with chlorinated fluorocarbons and capacitors removed, and other materials that Contractor accepts and safely handles, Recycles, or Disposes;
- (2) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be Hazardous Materials if they contain more than 1% asbestos;
- (3) Ash residue from the incineration of solid wastes, including Solid Waste, infectious waste described in Item (8) below, wood waste, sludge not meeting at a minimum Class B standards as defined by title 40 of the Code of Federal Regulations, section 503.32 (The Standards for the Use or Disposal of Sewage Sludge) and agricultural wastes;
- (4) Auto shredder “fluff” consisting of upholstery, paint, plastics, and other non-metallic substances, which remain after the shredding of automobiles;
- (5) Dead animals larger than 10 pounds;
- (6) Hazardous Materials;

- (7) Industrial solid or semi-solid wastes that pose a danger to the operation of the Landfill, including cement kiln dust, or process residues;
- (8) Infectious Wastes that have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items that as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases, where "Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in California Health and Safety Code section 117705;
- (9) Liquid wastes that are not spadable, usually containing less than 50% solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge not meeting certain quality criteria (i.e. unclassified sludge less than B that is defined in 40 CFR section 503.32), and those liquid wastes that may be Hazardous Wastes;
- (10) Radioactive wastes including those wastes defined in section 114710 of the California Health and Safety Code and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or Federal regulation;
- (11) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a wastewater treatment facility or septic tank, whether in a dry or semi-dry form not meeting certain quality criteria (i.e. unclassified sludge less than "B"); and/or,
- (12) Designated Waste if not permitted at the Landfill under Applicable Law, including Permits.

"Waste Matter" consists of natural soil, earth, sand, clay, gravel, loam, manure, stones, bricks, brickbats, plaster, or portland cement.

"Yard Trimmings" means those discarded materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard Trimmings are a subset of Organic Materials.

Section 2: Intentionally Deleted

Section 3: Representations and Warranties of Contractor

- 3.1. Corporate Status. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.
- 3.2. Corporate Authorization. Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor has authority to do so.
- 3.3. Agreement Will Not Cause Breach. To the best of Contractor's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement nor the performance of this Agreement by Contractor: a) conflicts with, violates, or results in a breach of any Applicable Law; or, b) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any Agreement or instrument to which Contractor is a Party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder.
- 3.4. No Litigation. To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor's performance under this Agreement, which has not been waived by the City in writing.
- 3.5. No Adverse Judicial Decisions. To the best of Contractor's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement and may subject this Agreement to legal challenge.
- 3.6. Ability to Perform. Contractor possesses the business, professional, and technical expertise to manage, Collect and Transport the Solid Waste to the Approved Disposal Location and to manage, Collect, Transport, and Process Recyclable Materials at the Approved Recyclables Processing Site, and Contractor possesses the equipment, facility(ies), and employee resources required to perform this Agreement.
- 3.7. Contractor's Statements. The Contractor's Bid Package and any other supplementary information submitted to the City, which the City has relied on in awarding and entering this

Agreement, do not: a) contain any untrue statement of a material fact; or, b) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

- 3.8. Contractor's Investigation. Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has taken such matters into consideration in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

Section 4: Term of Agreement

- 4.1. Commencement Date. The Commencement Date of this Agreement shall be October 1, 2018, and shall be the date Contractor commences the provision of Collection, Transportation, and Processing services described by this Agreement. During the time between the Effective Date and Commencement Date, Contractor shall perform any and all activities necessary to commence services on the Commencement Date.
- 4.2. Term. The Term of this Agreement shall be five (5) years from Commencement Date and shall end at midnight September 30, 2023, unless extended by the City pursuant to Subsection 3 below.
- 4.3. Option to Extend Term. The City, at its sole discretion, shall have the option to extend this Agreement, up to sixty (60) months after September 30, 2023, or to September 30, 2028, in one or more periods of any length, pursuant to the terms and conditions of this Agreement. If the City elects to extend this Agreement, it shall give written notice of its election, specifying the number of months by which it elects to extend the Term, to Contractor, not less than one-hundred eighty (180) calendar days prior to the initial expiration date or extended termination date of this Agreement. The Term shall be extended by the number of months specified in the City's notice upon mutual agreement by the parties.

Section 5: Conditions for Effectiveness

The effectiveness of this Agreement is subject to Contractor's satisfaction of each and all of the conditions set forth below, which may be waived in whole or in part by the City.

- 5.1. Accuracy of Representations. The representation and warranties made by Contractor in Section 3 of this Agreement are true and correct on and as of the Effective Date.
- 5.2. Absence of Litigation. There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.
- 5.3. Furnishing of Insurance. Contractor has furnished evidence of the Insurance required by Section 18 of this Agreement.
- 5.4. Verification of SWA Franchise. Contractor shall hold a valid non-exclusive commercial Solid Waste Collection franchise with the Sacramento Regional Solid Waste Authority (SWA) and provide evidence of such franchise.

- 5.5. Effectiveness of City Council Action. The City Council shall have taken action approving this Agreement and all Parties shall have signed the Agreement pursuant to Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind has been issued.

Section 6: Scope of Agreement

- 6.1. Scope of Agreement. Subject to Subsection 6.2 below, the Agreement granted to Contractor shall be for Collection of all Solid Waste generated at City Facilities and transportation of such material to the Approved Transfer Station and for Collection of all Recyclable Materials at City Facilities and transportation, Processing, and marketing of such material using the Approved Recyclable Materials Processing Site, except as provided for in Subsection 6.2 below, or where otherwise precluded by Federal, State or local laws and regulations. Contractor shall be responsible for the following services:
- 6.1.1 Collecting all Solid Waste generated at City Facilities and placed by Generator for Collection.
 - 6.1.2 Offering and providing Source Separated Recyclable Materials Collection services to any and all City Facilities requesting such service from the Contractor.
 - 6.1.3 Offering Solid Waste and Recyclable Materials Collection services for all special events (e.g., fairs, festivals, etc.) and providing such service to special events that voluntarily request the service at City-approved special event Rates on the Rate schedule in Exhibit A.
 - 6.1.4 Collecting Solid Waste and Recyclable Materials from City Facilities on an on-call basis at City-approved Rates if extra service is needed beyond the regularly scheduled service.
 - 6.1.5 Providing Drop Box Solid Waste and Recyclable Materials Collection services on a temporary basis to City Facilities that need such service on a short-term basis.
 - 6.1.6 Providing a cart rental program that allows City Facilities to rent Carts from Contractor for internal use at City Facilities at City-approved Rates. Contractor shall offer long-term rentals of Recyclable Materials or Solid Waste Carts in the following sizes: 32, 64, and 96 gallons. Contractor shall maintain the Carts.
 - 6.1.7 Providing an in-office recycling program in which City Facilities store Recyclables Collection Carts within the City buildings and Contractor services the Cart from the indoor location at City-approved Rates. Contractor shall offer 32, 64, and 96-gallon Recycling Carts to City Facilities for in-office service. In-office recycling service shall be provided between the hours of 8:00 a.m. to 5:00 p.m. or the City's normal business hours if different than stated here.
 - 6.1.8 Transporting Collected Solid Waste to the City's Approved Transfer Station and Recyclable Materials to the Approved Recyclable Materials Processing Site.
 - 6.1.9 Processing and marketing Recyclable Materials Collected at City Facilities by Contractor at the Approved Recyclables Processing site.

- 6.1.10 Billing the City Department of Finance for all Collection services at Rates established by this Agreement, sending copies of individual billing statements to each City Facility or as directed by the City, and collecting payment from each City Department.
- 6.1.11 Providing customer service staff to assist City with Complaints, requests or modifications to Collection service, billing questions, etc.
- 6.1.12 Cleaning each Container, upon City request at the City-approved Rate, using either a steam cleaning system or a pressure washing system that is equivalent to steam cleaning. This cleaning shall be conducted off-site.
- 6.1.13 Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.
- 6.1.14 Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees, pass-through costs, utilities, etc.
- 6.1.15 Providing all services required by this Agreement in a thorough and professional manner so that City Facilities are provided timely, reliable, courteous and high-quality service at all times.
- 6.1.16 Performing all services in substantial accordance with the Contractor's Bid Package and in full accordance with this Agreement at all times using best industry practice for comparable operations. If the Contractor's Bid Package and Agreement conflict, the Agreement shall prevail.
- 6.1.17 Complying with Applicable Law.
- 6.1.18 Performing or providing all other services necessary to fulfill its obligations under this Agreement.

The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty of accomplishing all other aspects necessary to fulfill its obligations under this Agreement whether such requirements are enumerated elsewhere in the Agreement or not.

6.2. Limitations to Scope. This Agreement granted to Contractor shall be exclusive except as to the following materials listed in this Section. The award of this Agreement shall not preclude the categories of Solid Waste and Recyclable Materials listed below from being delivered to and Collected and Transported by others, provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from City which is otherwise required by law.

- 6.2.1 Specialty Recyclable Materials, Food Scraps, Yard Trimmings, mixed Organic Materials, shredded paper from document destruction services, and Construction and Demolition Debris that are removed from any City Facility, by City employees and/or by a City contractor;
- 6.2.2 Recyclable Materials that are source separated at City Facilities and donated to youth, civic, or charitable organizations; and Recyclable Materials that other persons collect if such collection is provided at no cost to the City or the City is compensated for the Recyclable Materials.

- 6.2.3 Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Public Resources Code sections 14500, et seq.;
 - 6.2.4 Animal waste and remains from restaurants, slaughterhouses, or butcher shops for use as tallow (typically Collected in rendering pots);
 - 6.2.5 By-products of sewage treatment, including sludge, sludge ash, grit and screenings; and,
 - 6.2.6 Hazardous Waste and Designated Waste regardless of its source.
- 6.3. Future Conditions. In the event that future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, Contractor shall have the option to terminate this agreement upon 90 days prior written notice and acknowledgement by the City.
- 6.4. Subcontracting. Contractor shall not engage any Subcontractors for Collection, Transportation, Processing, or Disposal of Solid Waste or Recyclable Materials without the prior written consent of the City.
- _____

Section 7: Collection Standards

- 7.1. Care of Private Property. Contractor shall use due care when handling Solid Waste and Recyclable Materials Containers. Containers shall not be thrown from trucks, roughly handled, damaged, or broken. Containers shall be returned to the Collection point upright, with lids properly secured. The City may levy liquidated damages for repeat occurrences in accordance with Section 31 of this Agreement. Contractor shall ensure that its employees close all gates and lock all locks opened by them in making Collections, unless otherwise directed by the City Facility representative.

City shall refer Complaints about damage to City property or other private property to Contractor representative. Contractor shall promptly repair all damage to property caused by its employees or Subcontractors. If Contractor damages City-owned Containers, City, at its option, may require Contractor to repair the damage, or the City or its agent may repair the damage and Contractor shall pay for such repair within thirty (30) days of receipt of notice.

- 7.2. Spills and Litter Abatement.

- 7.2.1 Minimization of Spills. Contractor shall use due care to prevent Solid Waste and Recyclable Materials from being spilled or scattered during the Collection or Transportation process. If any Solid Waste or Recyclable Materials are spilled during Collection, the Contractor shall promptly clean up all spilled materials.

- 7.2.2 Transfer Loads. Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure; hot load (combustion of material in the truck), accidental damage to a vehicle; or unless approved by the City.
- 7.2.3 Cleanup. During Collection, the Contractor shall be responsible for any and all spillage in the Collection of materials and Litter in the immediate vicinity of any Solid Waste or Recyclable Materials Container storage area (including the areas where Collection Containers are delivered for Collection) whether or not Contractor has caused the Litter or spills. Contractor shall immediately (before the Collection vehicle leaves the area) pick up and otherwise remove all spillage or Litter. Each Collection vehicle shall carry a broom and shovel at all times for the purpose of cleaning up Litter and spills. Cat-litter or similar absorbent material shall be used for liquid spill cleanups. If Contractor's Collection vehicle leaves the area without cleaning the spillage or Litter, Contractor shall, upon notification by the City Facility representative or City Contract Manager, provide personnel to remove the spillage/Litter and clean the spillage/Litter area within twenty-four (24) hours of said notification. Contractor shall discuss instances of repeated spillage not caused by it directly with the responsible City Facility representative and shall report such instances to City. In situations where the Contractor has already attempted to do so without success, the City will attempt to work with the responsible City Department and/or City Facility representative.
- 7.2.4 Covering of Loads. Contractor shall cover all open Drop Boxes at pick-up location prior to Transport to the Approved Transfer Station or Approved Recyclables Materials Processing Site.
- 7.3. Days and Hours of Collection. Contractor shall offer Solid Waste and Recyclable Materials Collection services five (5) days per week for all City Facilities with the exception of the City Facility occupied by the Parks Department at 2700 Front Street, which Contractor shall service up to six (6) days per week at City-approved Rates. Contractor shall provide Collection services to City Facilities on the days of week specified in the service information included in Exhibit B with the exception that Contractor may adjust the service schedule for City Facilities with Saturday and Sunday service to shift service days so Collection occurs during the weekdays (Monday through Friday). Scheduled Collection of Solid Waste and Recyclable Materials from City Facilities may occur only between the hours of 6:00 a.m. and 5:00 p.m. Monday through Friday with the exception that in-office recycling service shall be provided between the hours of 8:00 a.m. to 5:00 p.m. or the City's normal business hours if different than stated here. Contractor shall promptly resolve any Complaints of noise during the morning or evening hours of the day to the satisfaction of the City.
- 7.4. Noise. All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations.
- 7.5. Holiday Collection Schedule. For all Collection service except in-office Recycling service and special events, Contractor may not provide Collection on a Service Holiday but may instead provide the Collection on the day following the Holiday, except when the Holiday falls on a Saturday or Sunday, Collection shall occur on the first Monday following the Holiday. In the

case of in-office Recycling Collection service, Contractor shall not provide Collection on City Facility Holidays, but instead Contractor shall provide the in-office Recycling Collection service on the day following the Holiday, except when the Holiday falls on a Saturday or Sunday, Collection shall occur on the first Monday following the Holiday.

Contractor shall provide at least a two (2) week advance written notice to all City Facilities regarding the Holiday schedule changes.

- 7.6. Permanent Changes in Service Days. The regularly scheduled day for Collection may be changed with prior written approval from the City. Once approved, City Facilities and City Departments shall be notified in writing two (2) weeks prior to any schedule changes to Solid Waste and Recyclable Materials services. Contractor shall not permit any City Facility to go more than seven (7) calendar days without service during a Collection schedule change.
- 7.7. Load Inspection Program. Contractor shall develop and implement a program to detect and discover Hazardous Waste and shall not knowingly accept such material at the time of Collection. The load inspection program shall include the following steps: Collection vehicle drivers shall receive regular training (at least four times annually) to identify Hazardous Wastes and methods for handling these materials once spotted. All Contractor facilities shall have waste exclusion programs in place to screen for and eliminate Hazardous Waste from the materials received. Random inspections of loads Collected and visual screening shall be periodically conducted. Records of load checks and copies of the employee training records shall be maintained at Contractor's facilities. When Hazardous Waste is found in a Container, Contractor shall make reasonable attempts to remove and/or isolate the material in question, subject to Contractor's safety procedures, and notify the City Contract Manager and the City Facility representative of the City's obligation to remove and properly Dispose of the material. If the Hazardous Waste cannot be safely removed from the Container, Contractor shall not service that Container until the material has been removed in accordance with Applicable Law.
- 7.8. Tonnage Allocation Requirements. If Contractor Collects Solid Waste and Recyclable Materials from City Facilities and mixes the materials with materials Collected from locations other than City Facilities, Contractor shall be responsible for developing a method by which the Tonnage of material is fairly allocated to the City Facilities and to other Contractor customers. Within thirty (30) days of the Effective Date, the Contractor shall submit a proposed allocation method to the City Manager for review and approval. If City Manager does not approve the proposed allocation method, Contractor and City shall meet and confer to develop an alternative or modified allocation method that is acceptable to the Contractor and City. Contractor's failure to submit the allocation method for consideration or meet with the City to finalize a method, Contractor may be subject to liquidated damages in accordance with Section 31.
- 7.9. Accessibility of Containers. Contractor shall service Containers from locations specified by the City. Such service may involve unlocking and locking gates and doors, unlocking and locking Containers, pushing and/or pulling Containers to a serviceable location, operating during limited service hours, using badges and/or access cards for security purposes, and

addressing other service conditions and City policies regarding entry and access to City Facilities. Provision of in-office Recycling services may require criminal background check of Contractor's employees depending on the City Facility being served. Contractor shall provide these services at no additional charge to the City.

- 7.10. Quantities and Composition of Materials. The City does not make any guarantees or warranties related to the quantities and composition of the Solid Waste and the quantities, composition, and contamination level of the Recyclable Materials, generated by the City Facilities.

Section 8: Diversion and Recycling Requirements

Contractor shall be an active partner with the City in providing programs and services which improve the sustainability of the City. This shall include, at a minimum and not by way of limitation:

- 8.1. Offering Recycling services available to each and every City Facility specified in Exhibit B;
- 8.2. Providing periodic training and assistance to employees of the City Departments and City Facilities to improve participation in Recycling programs offered by Contractor;
- 8.3. Identifying opportunities to reduce the amount of Solid Waste and increase the amount of Recyclable Materials Collected at City Facilities through performance of daily on-route needs assessments as well as formal annual assessments performed by Contractor's management personnel in cooperation with City staff;
- 8.4. Providing ongoing education and outreach to City such as emails and/or notices informing City Departments and City Facilities of the types of Recyclable Materials that can be placed in Recyclables Containers, contamination of Recyclable Materials Containers, findings of annual on-site waste audits, etc.; and,
- 8.5. Identifying opportunities to expand the types of diversion and Recycling services (e.g. new technologies, new markets, expanded material types, etc.) provided to City Facilities.

Section 9: Waste Management Handling and Diversion Progress Report

Contractor shall prepare a semi-annual progress report and submit it to the City Contract Manager on July 31 and January 31. Upon request, Contractor shall present the progress report to the City Contract Manager, City Facilities, City Departments, and/or City Council. This report shall document the City Facilities' progress in improving its diversion services and waste management handling practices as well as identifying opportunities for improvement. The report and presentation shall include, at a minimum, and not by way of limitation:

- 9.1. Trends in relative service levels at City Facilities over the Term of the Agreement, particularly between Solid Waste and Recyclable Materials;
- 9.2. Description and photographs (if applicable) of service problems (e.g. overflowing containers, improper placement of materials, contamination of recyclables, etc.) and suggested remedies; and,

9.3. Reminders of how City Facilities are expected to participate in the program (e.g. acceptable/unacceptable materials, set-out requirements, etc.) and the availability of Contractor staff to assist the City.

Section 10: City's Right to Change Service

City reserves the right to change the number and/or location of City Facilities at its sole discretion. City further reserves the right, at its sole discretion, to adjust the service level at each City Facility (in terms of the number and size of Containers, material type Collected, the frequency of Collection, and Collection location) at any time during the Term of the Agreement. When service level changes occur, Contractor shall adjust billing amounts to reflect Rates for adjusted service levels. City Facility representatives may contact the Contractor directly and request changes in the service level and to request on-call and/or temporary Collection services as well as file Complaints with the Contractor.

City may direct Contractor to perform additional services (including new Diversion programs, additional public education activities, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services, which may entail new Collection methods, different kinds of services, and/or new requirements for City Facilities are included among the kinds of changes which City may direct. Contractor shall not be compensated for services outside the scope of this Agreement unless City approves in writing a supplemental agreement specifying the additional services and amount of compensation therefore. City shall have no obligations whatsoever under this Agreement and/or any supplemental agreement unless and until such agreement is approved by the City Manager or his/her authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.

Contractor shall present, within thirty (30) calendar days of a request to do so by City, a proposal to provide additional or expanded services outside the scope of this agreement. At a minimum, the proposal shall contain a complete description of the following:

1. Collection methodology to be employed (equipment, manpower, etc.).
2. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
3. Labor requirements (number of employees by classification).
4. Type of Containers to be utilized.
5. Provision for program publicity/education/marketing.
6. Five (5) year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.

If Contractor and City cannot agree on terms and conditions of such services in one hundred twenty (120) calendar days from the date when City first requests a proposal from Contractor to perform such services, Contractor acknowledges and agrees that City may permit Persons other than Contractor to provide such services that are outside the scope of this Agreement.

Contractor acknowledges and agrees that City may permit other Persons besides Contractor to provide additional Solid Waste and Diversion services outside the scope of this Agreement.

Section 11: Intentionally Deleted

Section 12: Solid Waste Disposal

Contractor shall Transport all Solid Waste Collected to the City's Approved Transfer Station, which is lawfully authorized to accept such Solid Waste. Contractor shall not Dispose of such Solid Waste by depositing it on any land, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

Section 13: Recyclable Materials Processing

Contractor shall Transport all Recyclable Materials it Collects from City Facilities to the Approved Recyclable Materials Processing Site (no exceptions). Contractor shall Process, or arrange for Processing of the Recyclable Materials and marketing of the recovered materials. Residue from the Recyclable Materials Processing activities shall be Disposed of by Contractor, or owner/operator of the Approved Recyclable Materials Processing Site at a Disposal Site selected by Contractor or the owner/operator of the Processing Site. All costs associated with Transporting to and Processing of Recyclable Materials at the Approved Recyclable Materials Processing Site shall be paid by Contractor. Contractor shall retain any revenues received from sale of Recyclable Materials.

Section 14: Contractor Billing and City Payment

14.1. General. Contractor shall submit invoices to the City Department of Finance for the Collection services provided to the City Facilities at City-approved Rates in accordance with the process described in Section 15 of this Agreement. Contractor shall bill the City monthly in arrears.

14.2. Payment Discounts. If the City remits payment to the Contractor in less than [redacted] days of the date of the billing statement, Contractor agrees to grant City a [redacted] percent

discount. If the discount is applicable, the payment amount due by the City shall be equal to the total billing amount multiplied by one minus the discount. For example, if the discount is 10% and the total billing amount is \$20,000, the amount due would be \$18,000 (e.g., \$20,000 x (1 - 0.10)).

14.3. Late Payment Notices. Contractor shall provide notice to the City when payment becomes more than sixty (60) days past due from the last day of the billing period. Contractor shall notify the City upon issuance of such a notice.

14.4. Monthly Billing Statements. The monthly billing submitted by Contractor to the City Department of Finance shall include the total billing amount for Collection

services provided to City Facilities; and detailed service level and billing information for each City Facility.

Section 15: Contractor's Compensation

15.1. Full and Complete Compensation. The City Department of Finance shall pay the Contractor the Rates authorized by this Agreement consistent with the level of Collection service provided to the City Facilities. Collection of payments due from City shall be the exclusive responsibility of the Contractor.

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

The Rates approved by this Agreement shall be the only amounts due to Contractor. No additional surcharges or fees may be assessed by the Contractor.

For the purposes of calculating Rate adjustments, the Rates are separated into two components: the Operating Component and Disposal Component. The value of the Operating Component and Disposal Component presented in Exhibit A reflects the Contractor's Bid Package.

15.2. Rates for Rate Period 1. The Contractor's Rates for the initial Rate Period of this Agreement (i.e., Rate Period One from October 1, 2018 to September 30, 2019) shall be the Rates approved by the City and provided in Exhibit A with an adjustment to the Disposal Component to reflect the July 1, 2018 change in the Approved Transfer Station per-Ton service fee. The Rate Period 1 Rates shall be calculated in the following manner:

15.2.1 Adjustment of the Disposal Component Change. For Solid Waste Rates, the Disposal Component shall be adjusted (i.e., increased or decreased, as the case may be) by multiplying the Disposal Component of each Rate then in effect by the Annual Disposal Component Change. The Annual Disposal Component Change shall equal the per-Ton service fee effective July 1, 2018 at the Approved Transfer Station divided by the \$64.52 per-Ton service fee used as the basis for the Rates presented in Contractor's Bid Package. The Annual Disposal Component Change shall be rounded to the nearest thousandth. In no event shall the adjustment to the Disposal Component pursuant to this Section result in an increase of over ten percent (10%) of the Disposal Component of the Rate from the prior Rate Period.

15.2.2 Calculate Adjusted Solid Waste Rates. The adjusted Solid Waste Rates shall be calculated by following the steps below for each Rate:

- a. Multiply the current Disposal Component of the Solid Waste Rate by the Annual Disposal Component Change (for Solid Waste Rates) to calculate the new Disposal Component for the coming Rate Period for Solid Waste Rates.
- b. The Solid Waste Rate for the coming Rate Period equals the sum of the Operating Component (as presented in the Contractor's Bid Package and in Exhibit A) and new Disposal Component. Rates shall be rounded to the nearest cent.

15.2.3 Calculate Adjusted Recycling Rates. The adjusted Recycling Rates shall equal 50% of the comparable Solid Waste Rate. For example, the Recycling Rate for a one-cubic yard Bin serviced once per week shall equal 50% of the Solid Waste Rate for a one-cubic yard Bin serviced once per week.

15.3. Rates for Subsequent Rate Periods. Subject to the terms herein, the Contractor shall be entitled to one adjustment to Rates annually. The Rate adjustments are to be approved with by the City Manager or his/her designee by September 1 of each year so that adjusted Rates will be effective on the first day of the Rate Period (e.g., October 1). The first adjustment is scheduled to take effect October 1, 2019 subject to City Manager approval.

15.4. Annual Rate Adjustment Methodology. Each Rate is annually adjusted as specified in this Section (commencing with Rates to take effect October 1, 2019).

15.4.1 Adjustment of the Operating Component. The Operating Component shall be adjusted (i.e., increased or decreased, as the case may be) annually by multiplying the Operating Component of each Rate then in effect by the Annual Operating Component Change. The Annual Operating Component Change shall be calculated pursuant to this Section.

- a. Determine CPI Adjustment Factor. Determine the "CPI Adjustment Factor" which shall equal 94% multiplied by 100% of the average CPI value for the 12-month period ending May of the current Rate Period minus the average CPI value for 12-month period ending May of the most-recently completed Rate Period (or the 12-month period ending May 2018 when calculating Rate Period Two Rates), divided by the average CPI value for the 12-month period ending May of the most-recently completed Rate Period (or the 12-month period ending May 2018 when calculating Rates to be effective for Rate Period Two). The CPI Adjustment Factor shall be rounded to the nearest thousandth.

For the purposes of this Section, "CPI" means the All Urban Consumers Index (CPI-U) compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the following parameters when obtaining the CPI data from the U. S. Department of Labor:

- Area – Western Region
- Item – All Items
- Base Period – Current 1982-84=100
- Not seasonally adjusted
- Periodicity –Monthly

Series Identification Number – CUUR0400SA0

The average CPI value shall equal the sum of the twelve published monthly CPI values for the particular 12-month calendar period divided by twelve. For example, when calculating the average CPI value for the 12-month period ending May 2019, the average CPI value shall equal the sum of the CPI values for June 2018 through May 2019 divided by twelve.

- b. Determine Annual Fuel Adjustment Factor. Determine the Fuel Adjustment Factor which shall equal 6% multiplied by 90% of the average Fuel Index value for the 12-month period ending May of the current Rate Period minus the average Fuel Index value for 12-month period ending May of the most-recently completed Rate Period (or the 12-month period ending May 2018 when calculating Rate Period Two Rates), divided by the average Fuel Index value for the 12-month period ending May of the most-recently completed Rate Period (or the 12-month period ending May 2018 when calculating Rates to be effective for Rate Period Two). The Fuel Adjustment Factor shall be rounded to the nearest thousandth.

For the purposes of this Section, “Fuel Index” means the Annual California No 2 Diesel Retail Sales by All Sellers (Cents per Gallon) published the U.S. Energy Information Administration or, should it be discontinued, its successor index, or a suitable replacement publicly-available index agreed upon by the parties.

The average Fuel Index value shall be calculated in the same manner described in Subsection a above for the average CPI index value.

- c. Determine the Annual Operating Component Change. The Annual Operating Component Change shall equal the value of the sum of one plus the CPI Adjustment Factor plus the Fuel Adjustment Factor, or 1.05, whichever is lesser.— The Annual Operating Component Change shall be rounded to the nearest thousandth. The adjustment may result in an increase or decrease in the Operating Component, as the case may be. In no event shall the adjustment to the Operating Component pursuant to this Section result in an increase of over five percent (5%) of the Operating Component of the Rate from the prior Rate Period.

- 15.4.2. Adjustment of the Disposal Component Change. For Solid Waste Rates, the Disposal Component shall be adjusted (i.e., increased or decreased, as the case may be) by multiplying the Disposal Component of each Rate then in effect by the Annual Disposal Component Change. The Annual Disposal Component Change shall equal the current per-Ton service fee at the Approved Transfer Station divided by the prior year’s per-Ton service fee at the Approved Transfer Station. The Annual Disposal Component Change shall be rounded to the nearest thousandth. In no event shall the adjustment to the Disposal Component pursuant to this Section result in an increase of over ten percent (10%) of the Disposal Component of the Rate from the prior Rate Period.

15.4.3 Calculate Adjusted Solid Waste Rates. Calculate adjusted Solid Waste Rates by following the steps below for each Rate:

- a. Multiply the current Operating Component of the Solid Waste Rate by the Annual Operating Component Change to calculate the new Operating Component of each Solid Waste Rate for the coming Rate Period.
- b. Multiply the current Disposal Component of the Solid Waste Rate by the Annual Disposal Component Change (for Solid Waste Rates) to calculate the new Disposal Component for the coming Rate Period for Solid Waste Rates.
- c. The Solid Waste Rate for the coming Rate Period equals the sum of the new Operating Component and new Disposal Component. Rates shall be rounded to the nearest cent.

15.4.4 Calculate Adjusted Recycling Rates. The adjusted Recycling Rates shall equal 50% of the comparable Solid Waste Rate. For example, the Recycling Rate for a one-cubic yard Bin serviced once per week shall equal 50% of the Solid Waste Rate for a one- cubic yard Bin serviced once per week.

15.4.4 Example Rate Adjustment Calculation. As an example, the Rate adjustment calculation to set the Solid Waste Rate for a one cubic yard bin serviced once per week for Rate Period Two (i.e., effective October 1, 2019 through September 30, 2020) would be conducted as follows (using hypothetical values for the Rate, CPI, and Fuel Index figures):

Assumptions:

- Average CPI value for 12-month period ending May 2019 is 237.8
- Average CPI value for 12-month period ending May 2018 is 234.6
- Average Fuel Index value for 12-month period ending May 2019 is 4.123
- Average Fuel Index value for 12-month period ending May 2018 is 3.578
- Current (2018) Solid Waste Rate for a one cubic yard bin serviced once per week is \$40.00 per month, which consists of a \$36.00 Operating Component and \$4.00 Disposal Component
- Prior Year's (FY 2018/19) Disposal Fee = \$50.00 per Ton
- Current Disposal Fee (FY 2019/2020) = \$54.00 per Ton

Calculations:

$$\begin{aligned} \text{CPI Adjustment Factor} &= 94\% \times 100\% \times (\text{Average CPI value for 12-month period} \\ &\quad \text{ending May 2019} - \text{Average CPI value for 12-month period ending May 2018}) / \\ &\quad \text{Average CPI value for 12-month period ending May 2018}) \\ &= 0.94 \times 1 \times (237.8 - 234.6)/234.6 \\ &= 0.0128 \end{aligned}$$

Fuel Index Adjustment Factor = 6% x 90% x (Average Fuel Index value for 12-month period ending May 2019 - Average Fuel Index value for 12-month period ending May 2018) / Average Fuel Index value for 12-month period ending May 2012)

$$= 0.06 \times 0.90 \times (4.123 - 3.578) / 3.578$$

$$= 0.0082$$

Annual Operating Component Change = 1 + CPI Adjustment Factor + Fuel Index Adjustment Factor or 1.05, whichever is less.

$$= 1 + 0.0128 + 0.0082$$

$$= 1.021$$

Annual Disposal Component Change = Current Disposal fee / Prior Year's Disposal fee or 1.10, whichever is less.

$$= \$54.00 / \$50.00$$

$$= 1.08$$

$$\text{Adjusted Rate for October 1, 2019} = \$36.00 \times 1.021 + [\$4.00 \times 1.08] = \$41.076$$

15.5. Contractor Rate Adjustment Application Process

15.5.1 Contractor Submittal. By July 1 of each year, the Contractor shall submit to the City Manager or his/her designee a Request for Adjustment to Rates. The Request for Adjustment shall include documentation of the calculation of the CPI Adjustment Factor, Fuel Adjustment Factor, Annual Operating Component Change and Annual Disposal Fee Change, a list of the then-current Rates including the Operating Component and Disposal Component of each Rate, and a list of the Adjusted Rates including the Adjusted Operating Component and Adjusted Disposal Component of each Rate to be effective on October 1 of the coming Rate Period.

15.5.2 City Review and Approval. The City Manager, or his/her representative, will review and approve the Contractor's Request for Adjustment to Rates for compliance with this Agreement and accuracy. The City shall use its best efforts to make the adjustment effective by the commencement of each Rate Period. However, the City shall not make any retroactive adjustments to compensate for any delay in calculating the adjustment to Rates which results from the failure of the Contractor to submit its request by July 1 of each year and/or respond promptly and completely to requests of the City for information related to any of the calculations required by this Subsection or from appeals of the determination to the City which extends the process of determination.

15.6. No Other Adjustment to Rates. Adjustments to Rates outside of the mechanisms specified in Subsections 15.4 and 15.5 shall not be permitted.

Adjustment to Rates outside the mechanisms specified in Subsections 15.4 and 15.5 shall not be permitted, except as provided below.

In the event that: (i) any governmental or regulatory agency imposes a new fee or increases an existing fee; and (ii) such new or increased fee causes Contractor's total cost associated with Collection (but not Disposal) of Solid Waste or Recyclable Materials under this Agreement to increase by more than two percent (2%); and (iii) Contractor, including corporate affiliates or agents, did not invite, solicit; approve, endorse, sign a contract enabling, promote, author, co-author, lobby for the promulgation of related legislation, or in any other way support the establishment or increase to the fee; and (iv) Contractor could not reasonably avoid the fee being charged; then, Contractor may submit a request for an adjustment to Rates based solely on the impact of the new or increased fee.

Contractor shall provide City with documentation reasonably necessary to support its request and its calculations of the impact and changes. Such calculations shall include, but are not necessarily limited to: existing fee amount per Ton, new fee amount per Ton, the percentage of Contractor's cost associated with Processing, and the annual number of Tons Collected under this Agreement. Contractor's calculations shall credit City for any Rate increases granted in accordance with this Subsection. For example, if the cumulative Rate adjustments under Subsection 15.4 at the time of the calculation were five percent (5%) and the increase to the governmental fees was five percent (5%), no adjustments will be allowed.

Should Contractor be unable to readily quantify the number of Tons Collected under this Agreement due to aggregation of material from this Agreement and others in the same trucks, Contractor shall be required to acquire sample weights, in sufficient quantity to either satisfy the City or provide statistically valid results, documenting an average number of pounds of material Collected from each cubic yard of service provided under this Agreement.

Any request for adjustments under this Subsection shall be subject to City review and approval. No change in the Rates under this Subsection shall be effective until the Rate Period immediately following Contractor's request, provided such request is received by July 1 immediately preceding the new Rate Period. Nothing in this Subsection shall be construed to require the City to accept Contractor's calculations as correct. Should the City determine, in its sole discretion, that Contractor's calculations are materially inaccurate, Contractor shall reimburse the City's actual costs, up to five thousand dollars (\$5,000) incurred, to review Contractor's calculations, including, but not limited to, City staff time, accountants, and/or consultants.

The City will not make any retroactive adjustments to compensate for any delay, in calculating the adjustment to Rates which results from the failure of the Contractor to submit its request by July 1 of each year and/or respond promptly and completely to City requests for information related to any of the calculations required by this Subsection or from appeals of the determination to the City which extends the process of determination.

15.7. No Adjustment for Changes to City Facilities. No adjustments to the Rates in Exhibit A shall be in the event of changes in City Facilities described herein.

Section 16: Reports and Status Meetings

- 16.1. Contractor shall file with the City a quarterly report that includes the following information. The quarterly report and supporting documentation shall be in such form and detail as required by the City.
- 16.1.1 Tonnage Data. Contractor shall report the quantities of Solid Waste and Recyclable Materials Collected, Transported, Diverted, and/or Disposed on a monthly basis for each of the most-recently completed twelve (12) months.
- 16.1.2 Tonnage Allocation. Contractor shall include with its quarterly report documentation of its calculation of the Tonnage allocated to the City Facilities pursuant to the allocation methodology approved by the City Manager and shall provide supporting documentation needed to verify the accuracy of the allocation calculations for the most-recently completed three (3) months.
- 16.1.3 City Facility Service Information. Contractor shall submit records, in a format approved by the City containing such information as may be required by the City pertaining to the service level provided for each City Facility including, at a minimum, the City Facility service address, City Department, number and size of Containers, material type, service frequency, Rate, and days of Collection.
- 16.2. Contractor's failure to file the reports required by this Section shall constitute cause for termination or suspension of the Agreement pursuant to Section 29.
- 16.3. Each quarterly report shall be submitted to the City no later than thirty (30) calendar days following the end of the reportable quarter. If the quarterly reports required under Subsection 1 above are not filed by the due date, the reports shall be deemed delinquent, and the Contractor shall pay liquidated damages in accordance with Section 31.
- 16.4. Contractor shall meet with representatives of the City's Department of Finance Procurement Services Division and other City Departments to discuss Contractor's performance on a quarterly basis unless an alternative meeting schedule is agreed upon.

Section 17: Inspection Authority

- 17.1. Contractor shall, at all times, maintain accurate and complete accounts of: a) all revenues and income arising out of its operations under this Agreement; all Solid Waste and Recyclables Materials Collected, Transported, Processed, and/or Disposed of; b) the City Facilities that were the source of such Solid Waste and Recyclable Materials; and, c) the final destination of such Solid Waste and Recyclable Materials. Contractor's books, accounts and records reasonably necessary for the enforcement of this Agreement shall be made available for inspection, examination and audit during normal business hours by authorized officers, employees and agents of the City. The City shall give Contractor written

notice at least three (3) business days prior to any inspection, audit, or examination of these records.

- 17.2. Where the City determines that an audit is necessary, Contractor shall be responsible for reimbursement of audit costs, including any City or consultant services, to perform audits of accounts of all Contractor revenues and income arising out of operations under this Agreement, in an amount not to exceed \$15,000.
- 17.3. Contractor shall be responsible for reimbursement of audit costs for City staff, or consultant services, to perform detailed follow-up audits where staff determines that documentation of Tonnage allocations, as reported by Contractor, is inadequate. Where necessary, City staff will retain the services of an independent consultant to verify performance and conduct any necessary Tonnage allocation audits.

Section 18: Insurance Requirements

Contractor shall obtain and maintain throughout the Term of this Agreement, at Contractor's sole cost and expense, insurance against claims for injuries to Persons or damages to property which may arise from or in connection with the performance of work pursuant to this Agreement by Contractor, its agents, representatives, employees or contractors.

- 18.1. Minimum Scope and Limits of Insurance. Contractor shall maintain at least the following minimum insurance coverage:
 - 18.1.1 Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
 - 18.1.2 Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include hired autos and non-owned autos.
 - 18.1.3 Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.
- 18.2. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions shall be for the account of the Contractor and paid entirely by the Contractor without contribution by the City. If Contractor desires to change its deductible or self-insured retention after the Effective Date of this Agreement, it shall first obtain approval of the City's Risk Manager for these increases. Contractor shall be responsible for payment of all deductibles or self-insured retentions.
- 18.3. Other Insurance Provisions. The required insurance policies are to contain, or be endorsed to contain, the following provisions:
 - 18.3.1 General Liability and Automobile Liability Coverage.

- 18.3.2 The City, its officers, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents, and contractors.
- 18.3.3 Contractor's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents, and contractors. Any insurance or self-insurance maintained by the City, its officers, employees, agents, or contractors shall be in excess of Contractor's insurance and shall not contribute to it.
- 18.3.4 Contractor shall comply with the reporting provisions of the policies so that coverage to the City is not affected.
- 18.3.5 Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 18.3.6 All Coverage. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City.
- 18.4. Placement of Insurance. Insurance shall be placed with insurers acceptable to the City's Risk Manager. Contractor must place insurance with a current A.M. Best rating of no less than A:VII. The City Risk Manager may waive, or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the City and the general public are adequately protected.
- 18.5. Proof of Insurance. Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be mailed or personally delivered to the City's Risk Manager and the City representative stated in Section 32.
- 18.6. Modification of Insurance Requirements. The City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the City's Risk Manager, the insurance provisions in this Agreement do not provide adequate protection for the City and for members of the public, the City may require Contractor to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The City's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required. The City's Risk Manager may modify these insurance requirements only upon approval of the City Council.

Section 19: Indemnification Provisions

19.1. General. Contractor agrees to defend, with counsel agreed upon by both Parties, indemnify, and hold harmless the City and its agents, officers, servants, and employees from and against any and all Liabilities, including but not limited to Liabilities for damages or injuries to any Person or property, including injury to the City's employees, agents or officers which arise from, or are in any way connected with the acts or omissions of Contractor, or its agents, officers, employees, or anyone else for whose acts or omissions any of them may be liable, in the performance of this Agreement, or in performing the work or services therein, and all costs and expenses of investigating and defending against same; whether or not such Liabilities (i) are caused in part by a party indemnified hereunder, or (ii) are litigated, settled, or reduced to judgment; provided that Contractor's duty to indemnify and hold harmless shall not include any claims or Liabilities arising from the sole negligence or willful misconduct of the City, its agents, officers, servants and employees, except when such agents, servants, or independent contractors are under the direct supervision and control of Contractor or any subcontractor or agent of Contractor.

The foregoing indemnity is intended, in part, to operate as an agreement pursuant to 42 U.S.C. section 9607(e) and California Health and Safety Code section 25364, to insure, protect, hold harmless and indemnify the City from liability in accordance with these sections. City does not waive or surrender any other indemnity available to it under any Applicable Law.

19.2. Unpermitted Waste. Contractor shall defend, indemnify, and hold harmless at its sole cost and expense with counsel approved by the City, the City (including the Persons described in the definition of "City") in any actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or asserted against, the City which arise from or related to the escape, migration, leakage, spillage, discharge, release or emission of Unpermitted Waste or petroleum resulting from or in connection with Contractor's activities in performing the services under this Agreement, whether:

- (1) in one or more instance,
- (2) threatened or transpired,
- (3) Contractor is negligent or otherwise culpable, or
- (4) those Liabilities are litigated, settled, or reduced to judgment.

The foregoing indemnity is intended, in part, to operate as an agreement pursuant to 42 U.S.C. section 9607(e) and California Health and Safety Code section 25364, to insure, protect, hold harmless and indemnify the City from liability in accordance with these sections. City does not waive or surrender any other indemnity available to it under any Applicable Law.

Section 20: Vehicle Inspection and Tags

20.1. All vehicles and other equipment used in the Collection and subsequent Transportation, Processing, and/or Disposal of Solid Waste and Recyclable Materials from City Facilities shall be inspected as often as the City Manager or his/her designee deems necessary and at such times and places as shall be designated by the City Manager or his/her designee.

20.2. All vehicles and Containers used in the Collection, removal, Transportation, Processing, or storage of Solid Waste or Recyclable Materials from City Facilities shall be subject to inspection by the City for the purpose of determining whether or not the vehicles and Containers comply with California Code of Regulations, Title 14, sections 17341 through 17345.

Section 21: Vehicle Requirements

21.1. The bodies of vehicles used in the Collection, removal or Transportation of Solid Waste or Recyclable Materials from City Facilities shall be leak proof and have beds of metal or other impervious material which can be cleaned, and shall otherwise be of a type approved pursuant to California Code of Regulations, Title 14, section 17341.

21.2. The City is authorized to issue administrative regulations pertaining to specifications for vehicles and Containers, the cleansing and disinfection thereof, and other sanitary measures in connection therewith.

Section 22: Abandoned Containers

22.1. If Contractor abandons any Container used to provide Collection services under the Agreement, the City may remove the Container and/or Recycle or Dispose of the contents of the Container.

22.2. If the City removes a Container abandoned by Contractor and/or Disposes of or Recycles the contents of any Container abandoned by Contractor, the City may charge Contractor for City's costs incurred in such removal, Disposal, or Processing and for the City's costs of storage of the Container. Contractor shall reimburse the City for such costs within ten (10) days of the date of the City's invoice for such costs.

22.3. For the purposes of this Section, "abandoned" includes:

22.3.1 Contractor's failure to remove Containers within fourteen (14) calendar days of a City Facility's request for a change in service level that results in one or more Containers that are no longer necessary for service.

22.3.2 Contractor's failure to remove all Containers within the time period specified by the City Manager or his/her designee upon termination of this Agreement pursuant to Section 30 of this Agreement;

22.3.3 Contractor's failure to remove a Container within two (2) weeks after the expiration of this Agreement, except in the case where Contractor has been granted an extension of the Term of said Agreement or Contractor has been granted a subsequent Agreement authorizing Contractor to Collect and Transport the type or types of Solid Waste or Recyclable Materials for which the Container was used pursuant to this Agreement;

22.3.4 Contractor's failure to Dispose of the contents of a Container within five (5) calendar days after the City Manager or his/her designee issues a written notice to Contractor to Dispose of the contents.

Section 23: Collection Containers

23.1. General. Contractor shall provide and maintain a sufficient number of Containers of the appropriate size for the storage of Solid Waste and Recyclable Materials with the exception of Compactors and five-cubic-yard trailers which shall be provided, owned, and maintained by the City. Contractor shall provide Collection services to all Containers including City- owned Containers. Contractor shall offer City Facilities a wide range of Container sizes including Carts, Bins, and Drop Boxes of the sizes specified in the definition of these Containers. Containers shall be designed and constructed to be watertight and prevent the leakage of liquids. The colors of the Containers shall be reviewed and approved by the City.

To the extent that additional Containers are needed on the Commencement Date or over the Term of the Agreement to accommodate service level changes and the change in the number and needs of the City Facilities, Contractor shall provide a sufficient number of Containers of the appropriate size for the storage of Solid Waste and Recyclable Materials.

Contractor shall maintain all Contractor-supplied Containers in a safe, serviceable, and functional condition.

23.2. Cleaning, Painting, Maintenance. Subject to approval of the City Manager or his/her designee, all Contractor-provided Containers, shall prominently display the name and/or logo of Contractor. The only markings on the Containers shall be the Contractor's name and/or logo, and suitable informational lettering (e.g., service location, Container size, materials acceptable, Contractor's inventory identification number, etc.) subject to approved by the City Manager or his/her designee.

Over the Term of the Agreement, Contractor shall replace, clean, or repaint all Containers as needed so as to present a clean appearance. If any Container is impacted by graffiti, Contractor shall remedy the situation within five (5) Business Days of notification. Contractor's failure to remedy graffiti within the specified time frame is subject to liquidated damages in accordance with Section 31.

Contractor shall steam clean or clean each Container by a pressure washing system, which is equivalent to steam cleaning, upon request by the City at its own expense ~~City approved Rates~~. This cleaning shall be not be conducted by Contractor at City Facilities. It shall be conducted at an off-site location.

23.3. Container Locations. Contractor shall place Containers only in locations approved by the City Facility representative, and shall obtain approval to relocate Containers from the City Facility representative. City reserves the right to direct Contractor to change Container locations. Contractor shall maintain a regular Collection schedule of the Solid Waste and Recyclable Material Containers from City Facilities.

23.4. Container Replacement. Contractor shall replace Solid Waste and Recyclable Materials Carts that have been stolen or damaged at no cost to the City Facility not more than once per year. Additional Cart replacements shall be charged to the City Facility at the City-approved Rate.

23.5. Container Delivery and Retrieval of City-Owned Containers. Contractor shall deliver Contractor-provided Containers on or before the Commencement Date of this Agreement unless an alternative delivery schedule is approved by the City a minimum of thirty (30) days prior to the Commencement Date.

Section 24: Personnel

24.1. Driver Qualifications. Contractor agrees that all drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

24.2. Safety Training. Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for Collection of Solid Waste and Recyclable Materials, or who are otherwise directly involved in such Collection.

Section 25: Compliance with Law

Contractor shall perform all Collection, Transportation, Processing, and Disposal operations in accordance with applicable Federal, State, and local law, including City Ordinances, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement.

Section 26: Permits and Licenses

Contractor shall obtain and maintain, at Contractor's sole cost and expense, all permits and licenses applicable to Contractor's operations under this Agreement, required by any governmental agency.

Section 27: City's Right to Perform Service

27.1. General. In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect and Transport any or all Solid Waste to the Approved Transfer Station and/or Collect, Transport, and Process Recyclable Materials at the Approved Recyclables Materials Processing Site required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste and/or Recyclable Materials should accumulate at the City Facilities to such an

extent, in such a manner, or for such a time that City Manager or his/her designee should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Contractor during the period of such emergency as determined by City Manager or his/her designee: a) to perform, or cause to be performed, such services itself with its own or other personnel at Contractor's expense; and/or, b) to take possession of any or all of Contractor's onsite Containers for the Collection, Transporting, Processing and Disposing of Solid Waste or Recyclable Materials or Organic Materials, and to use such property to Collect, Transport, Process, and Dispose of any Solid Waste or Recyclable Materials generated at City Facilities which Contractor would otherwise be obligated to Collect, Transport, Process, and/or Dispose of pursuant to this Agreement. The City agrees that it assumes complete responsibility for the proper and normal use of such onsite Containers while in its possession.

Notice of the Contractor's failure, refusal, or neglect to Collect, Transport, Process, or Dispose of Solid Waste or Recyclable Materials may be given orally by the City Manager or his/her designee by telephone to the Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent by City Manager or his/her designee to Contractor within twenty-four (24) hours of the oral notification.

Contractor further agrees that in such event:

- 27.1.1 It will fully cooperate with City to affect the transfer of possession of onsite Containers to the City for City's use.
- 27.1.2 It will, if City so requests, keep in good repair and condition all of such property and provide such other service as may be necessary to maintain said property in operational condition.
- 27.1.3 Subject to provisions of any labor agreements then in effect, City may immediately engage all or any personnel necessary or useful for the Collection, Transportation, Processing, and Disposal of Solid Waste or Recyclable Materials including, if City so desires, employees previously or then employed by Contractor. Contractor further agrees, if City so requests, to furnish the City with the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Solid Waste or Recyclable Materials Collection, Transportation, Processing, and Disposal operations and for the billing and Collection of fees for these services.

The City's exercise of its rights under this Section: a) does not constitute a taking of private property for which compensation must be paid; b) will not create any liability on the part of City to Contractor; and, c) does not exempt Contractor from the indemnity provisions of Section 19, which are meant to extend to circumstances arising under this Section, provided that Contractor is not required to indemnify City against claims and damages arising from the sole negligence of City officers, employees and agents in the operation of Collection during the time the City has taken possession of Containers.

27.2. Duration of City's Possession. City has no obligation to maintain possession of Contractor's onsite Containers and/or continue its use in Collecting, Transporting, Processing, and Disposing Solid Waste or Recyclable Materials for any period of time and may, at any time, in its sole discretion, relinquish possession to the Contractor.

The City's right to retain temporary possession of Contractor's Containers, and to provide Solid Waste or Recyclable Materials Collection services, shall continue until Contractor can demonstrate to the City's satisfaction that it is ready, willing and able to resume such services or until the City completes a formal bidding process and contracts with a replacement contractor, whichever occurs first. Under no circumstance shall the City's right to retain temporary possession exceed one hundred eighty (180) calendar days from the date of the City's notice under this Section 27.

Section 28: Possession of Property upon Termination

In the event of termination for default, the City shall have the right to take possession of any and all of Contractor's equipment used or useful in the Collection, Transportation, Processing, and Disposal of Solid Waste or Recyclable Materials and the billing and Collection of fees for these services and to use such equipment. The City shall have the right to retain the possession of such equipment until other suitable arrangements can be made for the provision of Solid Waste or Recyclable Materials Collection services, which may include the award of an agreement to another Person, as set forth in Section 27.

In the event of termination for default, Contractor shall furnish the City with immediate access to all of its business records related to serving City and billing City for Collection services.

Section 29: Default, Termination

29.1. Breach. Except as set forth in Subsection 29.3 below), in the event of: a) any material breach or default as defined in this Agreement; b) liquidated damages for collection quality or collection reliability as defined in Section 31 exceeding two percent (2%) of service opportunities annually; or, c) refusal of Contractor to comply with any obligation or duty imposed on Contractor under this Agreement or the City Code, the City and Contractor shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach within ten (10) business days of Contractor's receipt of the notice. The City shall have the right to terminate this Agreement if:

29.1.1 Following the ten (10) day period described above, the City shall have given written notice to Contractor specifying that a particular default or defaults exists which will, unless corrected, constitute a material breach of this Agreement on the part of Contractor; and,

29.1.2 Contractor fails to correct such default or fails to take reasonable steps to commence to correct such default within thirty (30) calendar days from the date of the notice given by the City under Subsection 29.1.1 above and Contractor thereafter fails to diligently continue to take reasonable steps to correct such default.

29.2. Default. Examples of a material breach and default under this Agreement include, but are

not limited to:

- 29.2.1 Misrepresentation. Any misrepresentation or disclosure made to the City by the Contractor in connection with or as an inducement to entering this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- 29.2.2 Fraud or Deceit. If the Contractor practices, or attempts to practice, any fraud or deceit upon the City.
- 29.2.3 Failure to Maintain Coverage. If the Contractor fails to provide or maintain in full force and effect the insurance, Worker's Compensation, liability, or indemnification coverage as required by this Agreement.
- 29.2.4 Failure to Maintain Non-Exclusive Commercial Franchise with Sacramento Regional Solid Waste Authority. If the Contractor fails to maintain, throughout the Term of the Agreement, a valid non-exclusive commercial franchise with Sacramento Regional Solid Waste Authority as required by Section 26.
- 29.2.5 Violations of Regulation. If the Contractor violates any permits, orders or filing of any regulatory body having jurisdiction over Contractor which violation or non-compliance materially affects the Contractor's ability to perform under this Agreement, provided that the Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Agreement shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent the Contractor is able to adequately perform during that period.
- 29.2.6 Acts or Omissions. Any other act or omission by Contractor which materially violates the terms, conditions, or requirements of this Agreement, the City Code, the Act, as it may be amended from time to time, or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notices, if Contractor should fail to commence correcting or remedying such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- 29.2.7 Assignment without Approval. Contractor transfers or assigns this Agreement without the express written prior approval of the City pursuant to Section 37.
- 29.2.9 Failure to Comply with Living Wage Ordinance. Contractor fails to comply with the Living Wage Ordinance as outlined on Page 15 of the bid document.
- 29.2.10 Failure to Comply with Employee Benefits Code. Contractor fails to comply with the Non-Discrimination in Employee Benefits Code on Page 15 of the bid document.
- 29.2.11 Termination of Service. In the event that a breach continues for more than thirty (30) calendar days after written notice from the City Manager or his/her designee

for the correction thereof, if such breach cannot be cured within such thirty (30) day period, Contractor shall not be in default under this Agreement if Contractor shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and continues such performance diligently until completed, as determined by the City.

29.3. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Contractor's performance is prevented or delayed by Force Majeure. Force Majeure means acts of nature including landslides, lightning, fires, floods (other than reasonably anticipated weather conditions for the geographic area of the Approved Facility), earthquakes, civil disturbances, acts of the public enemy, wars, blockades, public riots, explosions, or government restraint. Force Majeure does not include: adverse changes in the financial condition of either Party or in recovered materials markets; strikes, work stoppages or other labor disputes or disturbances; Change In Law with respect to any taxes based on or measured by net income; any Change in Law adopted by the City other than in compliance with mandated of state, federal or other governmental agency law, regulation or directive.

29.4. Termination. The City shall serve written notice, either personally or by registered or certified mail (postage prepaid) of the termination of this Agreement as set forth in section 32 and Contractor shall cease operation under this Agreement within ten (10) calendar days of the date of the written notice, except as agreed by the parties pursuant to Section 29.1.

Section 30: Conditions upon Termination

30.1. In the event this Agreement is terminated:

30.1.1 Contractor shall have no right or authority to engage in Solid Waste or Recyclable Materials Collection, Transportation, Processing or Disposal operations from City Facilities and shall cease providing such services.

30.1.2 Contractor shall, remain liable to the City for any and all liquidated damage payments due pursuant to Section 31 of this Agreement.

30.1.3 Contractor shall have a continuing obligation to submit to the City all reports required by Section 16 of this Agreement that relate to Solid Waste or Recycling activities performed by Contractor up to and including the date of termination.

30.2. In the event of termination for default, within the time period specified by the City Manager or his/her designee and if directed by the City Manager or his/her designee, Contractor shall remove all of Contractor's Containers from all City Facilities and shall properly Dispose or Process all Solid Waste or Recyclable Materials in such Containers. Alternatively, the City reserves the right to own the Containers in use at City Facilities at no cost to the City; and, in such case, shall provide Contractor written notice that City is exercising its rights to the Containers. Under City ownership of Containers, the City shall be responsible for arranging for Collection, Processing, and Disposal of materials in the Containers.

Section 31: Liquidated Damages

31.1. General. In addition to the remedies specified in Title 1 of the Sacramento City Code, including but not limited to administrative penalties, which may be imposed against any Person, firm, or entity who violates provisions of Title 13 of the Sacramento City Code, the City may impose liquidated damages described herein. The City finds, and Contractor 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 Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: a) substantial damage can result to City Facilities denied services or denied quality or reliable service; b) such breaches cause inconvenience, frustration, and deprivation of the benefits of the Agreement to City Facilities for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; c) that Collection 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, d) 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.

31.2. Service Performance Standards: Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable Solid Waste and Recyclable Materials Collection is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement 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 Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under Section 29, 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 Effective 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.

Contractor _____
Initial Here _____

City _____
Initial Here _____

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

31.2.1 Service Reliability.

31.2.1.1 For each failure to commence service to a new City Facility or to adjust service levels for existing service within seven (7) days after order, which exceed six (6) such failures in a twelve month period: \$150.00 per day beyond seven (7) days, per order.

31.2.1.2 For each failure to Collect Solid Waste or Recyclable Materials, which have been properly set out for Collection, from a City Facility on the scheduled Collection day which exceeds six (6) such failures in City in a twelve month period: \$150.00 per failure per day.

31.2.1.3 For each failure to provide off-site Container cleaning services within seven (7) days of City request consistent with the requirements of Section 6.1.12: \$50.00 per container per day.

31.2.1.4 For each failure to label Containers with Contractor name and logo within thirty (30) days of the Commencement Date or within thirty (30) days of placing a Container into service during the Term consistent with requirements of Section 23.2: \$50.00 per Container per day.

31.2.1.5 For each failure to remedy impacts of graffiti on a Container within five (5) Business Days of notification: \$100.00 per day per Container per day.

31.2.2 Service Quality.

31.2.2.1 For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or failure to place Containers upright with lids secured, which exceeds six (6) such occurrences annually: \$150.00 per occurrence.

31.2.2.2 For each occurrence of discourteous behavior: \$250.00.

31.2.2.3 For each failure to clean up Solid Waste or Recyclable Materials spilled by Contractor from Solid Waste and Recyclable Materials Containers, which exceeds six (6) such failures annually: \$150.00 per day, until cleaned up by Contractor.

31.2.2.4 For each occurrence of Collecting Solid Waste and Recyclable Materials during unauthorized hours which exceeds six (6) such occurrences annually: \$250.00 per occurrence.

31.2.2.5 For each failure to initially respond to a Complaint from the City within one (1) business day: \$100.00 per day.

31.2.3 Timeliness of Submissions to City. Reports shall be considered late, until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be:

31.2.3.1 Quarterly Reports required by Section 16: \$100.00 per day.

31.2.3.2 Semi-Annual Waste Management Handling and Diversion Report required by Section 9: \$100.00 per day.

31.2.4 Submittal and Approval of the Tonnage Allocation Method. Submittal of the Tonnage allocation method required by Section 7.8 shall be considered late, until such time a proposed method is received by City. For each calendar day the submittal is late, the daily liquidated damage amount shall be: \$100. If the City requests that Contractor meet and confer to develop an alternative or modified allocation method and Contractor fails to meet and confer within seven (7) days of the City request, the daily liquidated damage amount shall be: \$500 per day until such time as the Parties meet and agree on a method.

Liquidated damages will only be assessed after Contractor has been given the opportunity but fails to rectify, in a timely manner, the breach as described in this Agreement. City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Complaints.

Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with City. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

31.3. Amount. City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

31.4. Timing of Payment. Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If liquidated damages are not paid within the ten (10) day period, City may proceed against the performance bond required by the Agreement or order the termination of the Agreement granted by this Agreement, or both.

Section 32: Notices

Except as otherwise provided in this Agreement, all notices required by this Agreement shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the Parties as follows:

To the City's Contract Manager:

Marc Robles
City of Sacramento
Department of Finance
Procurement Services Division
915 I Street, 2nd Floor
Sacramento, CA 95814

To Contractor:

Tisha Gill
USA Waste of California, Inc.
8491 Fruitridge Road
Sacramento, CA 95826

Notice shall be deemed effective on the date personally served or, if mailed, three (3) days after the date deposited in the mail.

Section 33: Relationship of Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor and not as an officer or employee of the City nor as a partner of or joint venturer with the City. No employee or agent of Contractor shall be deemed to be an employee or agent of the City and shall not obtain any rights to retirement benefits, worker's compensation benefits, or any other benefits which accrue to the employees of the City by virtue of their employment with said agency. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste and Recyclable Materials Collection services performed under this Agreement and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents.

Contractor agrees that this Agreement is not made in the interest of, or on behalf of, any undisclosed Person, partnership, Contractor, association, organization, or corporation. Contractor has not directly or indirectly colluded, conspired, connived or agreed with any Person, partnership, Contractor, association, organization, or corporation to secure any advantage against the City.

Section 34: Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws of the United States, the State of California, the City and other states, cities or counties which may have jurisdiction over any service provided in this Agreement and with all Applicable Laws promulgated by any Federal, State, regional or local administrative and regulatory agency, now in force and as they may be enacted, issued or amended during the Term of this Agreement.

Section 35: Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California and the United States.

Section 36: Jurisdiction

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject

matter of any such litigation in such courts, and consent to service of process issued by such courts.

Section 37: Assignment

37.1. This Agreement shall not be assigned without the City's express written consent, given or withheld in City's sole discretion. Any such assignment without City consent shall be void. For purposes of this section, "assign" or "assignment" includes, but is not limited to: the sale, exchange or other transfer of this Agreement or the management thereof to a third party; corporate merger or reorganization at any level; or, the conveyance of a majority of the Contractor's stock (including that of parent companies or corporate affiliates) to a new controlling interest; any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in change of ownership or control of Contractor; any assignment by operation of law, including insolvency or bankruptcy, making assignment for benefit of creditors, writ of attachment of an execution, being levied against this Agreement, appointment of a receiver taking possession of any of Contractor's property, or transfer occurring in the event of a probate proceeding; any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect or any such transfer or change of ownership or change of control of Contractor. "Ownership" (or "Own or any variation thereof) for purposes of this Section means ownership as defined in the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, provided that (1) 10 percent shall be substituted for 50 percent in Section 318(a)((2)(C) and in Section 318(a)((3)(C) thereof; and (2) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this section, and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership represents, whichever is greater.

37.2. Contractor shall promptly notify the City Manager or his/her designee in writing in advance of any proposed assignment, sale, or transfer, and request consideration of such assignment.

37.3. In the event the City Council approves of any assignment, sale, or transfer, said approval shall not relieve Contractor of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect.

37.4. Contractor shall undertake to pay City its reasonable expenses for investigation costs and attorneys' fees necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment.

Section 38: Binding on Successors

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

Section 39: Waiver

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

The subsequent acceptance by either Party of any monies, which become due hereunder, shall not be deemed a waiver of any preexisting or concurrent breach or violation by the other Party of any provision of this Agreement.

Section 40: Contractor's Investigation

Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

Section 41: Equal Employment Opportunity

During the performance of this Agreement, Contractor for itself, its assignees and successors in interest, agrees as follows:

- 41.1. Compliance with Regulations: Contractor shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), herein Collectively referred to as the "Regulations."
- 41.2. Nondiscrimination: Contractor, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap, or sexual orientation in selection and retention of Subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- 41.3. Solicitations for Subcontractors, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiations made by Contractor for work to be performed under any subcontract, including all procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by Contractor of Contractor's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap, or sexual orientation, living wage, and drug-free workplace.
- 41.4. Information and Reports: Contractor shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the City, and shall set forth what efforts it has made to obtain the information.

41.5. Sanctions for Noncompliance: In the event of noncompliance by Contractor with the nondiscrimination provisions of this Agreement, the City shall impose such sanctions as it may determine to be appropriate including, but not limited to:

5.1 Withholding of payments to Contractor under this Agreement until Contractor complies; and/or

5.2 Cancellation, termination, or suspension of the Agreement, in whole or in part.

41.6. Incorporation of Provisions: Contractor shall include the provisions of Subsections 1 through 5 above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, Contractor may request City to enter such litigation to protect the interests of City.

Section 42: The Living Wage Ordinance

This Agreement is subject to the provisions of Sacramento City Code Chapter 3.58, Living Wage. The requirements of Sacramento City Code Chapter 3.58 can be viewed at:.

<http://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements>

The Contractor is required to sign the Declaration of Compliance (Living Wage Ordinance) to assure compliance with these requirements.

Section 43: Non-Discrimination in Employee Benefits

This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 can be viewed at:.

<http://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements>

Contractor is required to sign the Declaration of Compliance (Equal Benefits Ordinance) to assure compliance with these requirements.

Section 44: Considering Criminal Conviction Information in the Employment Application Process

This Agreement is subject to the requirements of Sacramento City Code Chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process. A summary of the requirements of Sacramento City Code Chapter 3.62, entitled "Ban-The-Box Requirements," can be viewed at:

<http://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements>.

CONTRACTOR agrees to require its subcontractors to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62, and include these requirements in all subcontracts covered by Sacramento City Code Chapter 3.62.

Section 45: Emergency/Declared Disaster Requirements

In the event of an emergency or if a City Facility is declared a disaster area by Sacramento County, State or Federal government, this Agreement may be subjected to unusual usage. The Contractor shall service the City during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The Rates approved under this Agreement shall apply to serving the City's needs regardless of the circumstances.

Section 46: Entire Agreement

This Agreement, including the Exhibits, and each of the following documents (if applicable) listed below, which are incorporated herein by reference, represents the full and entire Agreement between the Parties with respect to the matters covered herein.

- Invitation to Bid
- Bid Instructions and Requirements
- Technical Specifications
- Special Provisions
- Contractor's Rate Proposal Bid Form
- Certificate(s) of Insurance
- Workers' Compensation Certificate

Section 47: Interpretation

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

Section 48: Amendment

This Agreement may not be modified or amended in any respect except by a written agreement duly approved and signed by the Parties.

Section 49: Severability

If any nonmaterial provision of this Agreement is, for any reason, deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO

A Municipal Corporation

By: _____

Print name: Howard Chan

Title: City Manager

For: _____

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

CONTRACTOR:

NAME OF FIRM

Federal I.D. No.

State I.D. No

Sacramento Business Operations
Tax Certificate No.

TYPE OF BUSINESS ENTITY (*check one*):

____ Individual/Sole Proprietor

____ Partnership

____ Corporation (require two signatures)

____ Corporation (*may require two signatures*)

____ Limited Liability Company

____ Other (*please specify: _____*)

Signature of Authorized Person

Print Name and Title

Additional Signature (*if required*)

Print Name and Title

