

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Agreement for Collection Services

**City of Oakley
and Oakley Disposal Service, Inc.
a California Corporation**

TABLE OF CONTENTS

Page

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77

ARTICLE 1. Definitions..... 2

ARTICLE 2. Exclusive Agreement 7

 2.01 Exclusive Agreement 7

 2.02 Self-Haulers 7

 2.03 Contractor Warranties..... 7

 2.04 Conditions to Effectiveness of Agreement 8

 2.05 Limitations to Scope 9

ARTICLE 3. Term of Agreement 10

 3.01 Term..... 10

 3.02 Additional Services 10

 3.03 Defense of Agreement..... 10

 3.04 Disposal or Processing of Collected Materials..... 11

 3.05 Status of Transfer Station 11

 3.06 Status of Disposal Site..... 11

 3.07 Closure of Disposal Site..... 11

 3.08 Prior Agreement Superseded 12

ARTICLE 4. Services Provided by the Contractor 13

 4.01 Collection, Recycling and Education Services and Programs..... 13

 4.02 City Right to Direct Changes 13

 4.03 Responsibility for Service Billing and Collection 14

 4.04 Service to City Facilities 14

 4.05 Service Standards 14

 4.06 Labor and Equipment 14

 4.07 Purchase, Distribution and Ownership of Carts 15

 4.08 Holiday Service 15

 4.09 Spillage and Litter 15

 4.10 Ownership of Materials..... 15

 4.11 Special Collection Services 16

 4.12 Regularly Scheduled and Temporary Bins..... 16

 4.13 Noise 16

 4.14 Property Damage..... 16

ARTICLE 5. Rates, Charges and Contractor Compensation 17

 5.01 Charges and Rates..... 17

 5.02 Collection Services 18

 5.03 Partial Month Service..... 18

 5.04 General Billing Requirements..... 18

 5.05 City Audit of Billings..... 18

ARTICLE 6. City Compensation and Other Fees 20

 6.01 City Compensation 20

78	6.02 Other Fees.....	20
79		
80	ARTICLE 7. Single Family Dwelling Collection Services.....	22
81	7.01 Single Family Dwellings (SFD) Collection Services: General.....	22
82	7.02 On-Premises Service.....	22
83	7.03 Frequency and Scheduling of Service.....	22
84	7.04 SFD Solid waste Collection Service.....	22
85	7.05 SFD Recycling Service	22
86	7.06 Green waste Collection Service	23
87	7.07 Change in Collection Schedule	23
88	7.08 SFD Bulky waste Collection Service	23
89	7.09 On-Call Recycle Cleanups.....	23
90	7.10 Holiday Tree Collection Service.....	23
91		
92	ARTICLE 8. Multiple Family Dwelling Collection Services.....	25
93	8.01 Multiple Family Dwelling (MFD) Collection Services: General.....	25
94	8.02 MFD Solid waste Collection Service	25
95	8.03 MFD Recycling Service	25
96	8.04 MFD Bulky waste Collection Service.....	25
97	8.05 On Call Recycle Cleanups.....	26
98	8.06 Holiday Tree Collection Service.....	26
99		
100	ARTICLE 9. Commercial and Industrial Collection Service	27
101	9.01 Commercial and Industrial Collection Service: General.....	27
102	9.02 Commercial Solid waste Collection Service.....	27
103	9.03 Commercial Recycling Service.....	28
104		
105	ARTICLE 10. Contractor’s Office, Personnel and Collection Equipment	29
106	10.01 Contractor’s Office.....	29
107	10.02 Contractor’s Personnel.....	29
108	10.03 Collection Equipment	30
109		
110	ARTICLE 11. Record Keeping and Reporting Requirements	32
111	11.01 Records, Reports and Compilations	32
112	11.02 Record Retention	33
113	11.03 Additional Reporting.....	33
114	11.04 Solid waste Records	34
115	11.05 CERCLA Disposal Records	34
116		
117	ARTICLE 12. Service Inquiries, Complaints and Quality of Service	35
118	12.01 Service Inquiries and Complaints.....	35
119	12.02 Quality of Service.....	35
120	12.03 City Cost Recovery	38
121	12.04 Performance Review.....	38
122		
123	ARTICLE 13. Performance Bond; Insurance; Indemnification.....	40
124	13.01 Performance Bond	40
125	13.02 Insurance.....	40
126	13.03 Indemnification.....	42

127		
128	ARTICLE 14. Default and Remedies	45
129	14.01 Events of Default.....	45
130	14.02 Right to Terminate Upon Default	46
131	14.03 Effective Date.....	47
132	14.04 Termination Cumulative.....	47
133	14.05 Excuse from Performance.....	47
134	14.06 Assurance of Performance	47
135	14.07 City Remedies for Contractor Default.....	48
136	14.08 City Right to Perform Service.....	48
137		
138	ARTICLE 15. Modifications to the Agreement.....	49
139	15.01 Modifications	49
140	15.02 Change in Law	49
141	15.03 Amendments	49
142		
143	ARTICLE 16. Miscellaneous Provisions.....	50
144	16.01 New Services and Container Inventory	50
145	16.02 Report of Accumulation of Solid waste.....	50
146	16.03 Emergency Services	50
147	16.04 Load Inspection Program.....	50
148	16.05 Independent Contractor.....	51
149	16.06 Laws to Govern.....	51
150	16.07 Consent to Jurisdiction.....	51
151	16.08 Assignment.....	51
152	16.09 Nondiscrimination	51
153	16.10 Compliance with Laws	52
154	16.11 Permits and Licenses	52
155	16.12 Point of Contact	52
156	16.13 Notices.....	52
157	16.14 Entire Agreement	52
158	16.15 Severability	53
159	16.16 Right to Require Performance	53
160	16.17 Headings.....	53
161	16.18 Exhibits	53
162	16.19 Incorporation of City's Municipal Code.....	53
163	16.20 Authority to Execute.....	53
164	16.21 Effective Date.....	53
165		
166	Exhibit A Service Specifications	
167	Exhibit B Schedule of Rates	
168	Exhibit C City Facilities and Special Collection Services	
169	Exhibit D Corporate Guarantee	

Agreement for Collection Services

170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
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This Agreement is entered into and is effective May 25, 2010 by and between the City of Oakley, a municipal corporation of the State of California (City), and Oakley Disposal Service, Inc. a California Corporation (Contractor).

This Agreement is based on the following facts:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) and subsequent additions and amendments (codified as Public Resources Code Section 40000 et seq.), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid waste collection within their jurisdictions

B. Oakley Disposal Service, Inc. is the City's current Contractor for collection, removal and disposal of Solid waste under a franchise agreement between Oakley Disposal Service, Inc. and Ironhouse Sanitary District, a California Special District dated June 1, 1993 and as amended by Amendment No. 1 to Franchise Agreement dated January 18, 2000, and as extended by letter from Oakley Disposal Service, Inc. to Ironhouse Sanitary District dated August 29, 2003, all of such above-mentioned documents being hereby referred to collectively as the "ODS/ISD Franchise Agreement".

C. Customers in the City are generally very satisfied with the services that they receive from the Contractor and continuing with the Contractor minimizes or avoids the risk of service disruptions that may come with a transition to a new company.

D. City has, since the initial consummation of the ODS/ISD Franchise Agreement, become incorporated and has assumed several of the governmental powers and duties previously exercised in its territory in Contra Costa County.

E. City was assigned the ODS/ISD Franchise Agreement as amended by City Amendment No. 2 to Franchise Agreement dated December 8, 2009, by Ironhouse Sanitary District by the Assignment of Franchise Agreement dated February 1, 2010.

F. Under this Agreement, City intends to enter into a new franchise agreement between the City of Oakley and Oakley Disposal Service, Inc.

G. The City has undertaken negotiations with the Contractor to develop this Agreement; the negotiations have resulted in a satisfactory result; the Contractor agrees to and acknowledges that it shall collect, transfer, transport, process and dispose of all Solid waste collected in the City area and the City is not instructing the Contractor how to collect or where to dispose of Solid waste, including Recyclable materials and Green waste; and this Agreement reflects the results of the negotiations and is satisfactory to the parties.

Now, therefore, the parties agree as follows:

206 **Article 1. Definitions**

207 **1.01 Definitions.** For the purpose of this Agreement, the definitions contained in this Article
208 apply unless otherwise specifically stated. If a word or phrase is not defined in this Article, the
209 definition of the word or phrase as contained in Chapter 20 of Title 4 of the Oakley Municipal
210 Code shall control. When not inconsistent with the context, words used in the present tense
211 include the future, words in the plural include the singular, and words in the singular include the
212 plural. Use of the masculine gender includes the feminine gender.

213 **Agreement** means this franchise agreement (dated May 25, 2010, including all exhibits and
214 attachments, and any amendments thereto) between the City and the Contractor for collection,
215 transfer, transportation and disposal of Solid waste and other services related to reliable Solid
216 waste collection.

217 **Americans with Disabilities Act (ADA)** means 42 United States Code 12101-12213 and 27
218 United States Code 225 and 611 and all federal rules and regulations relating to it.

219 **Bin** means a container with capacity of one to eight cubic yards, with hinged lid and wheels/no
220 wheels serviced by a front end-loading truck.

221 **Bulky waste or bulky items** means discarded large household appliances such as washers and
222 dryers, dishwashers and other appliance without Freon (white goods), e-waste, furniture, tires,
223 carpets, mattresses and similar large items which require special handling due to their size, but
224 can be collected without special loading equipment (such as forklifts or cranes) and without
225 violating vehicle load limits. It does not include abandoned vehicles or household hazardous
226 waste (except for e-waste).

227 **California Integrated Waste Management Act of 1989 or AB 939** means California Public
228 Resources Code Section 40000 and following, and subsequent amendments to it.

229 **Cart** means a container with a hinged lid and wheels serviced by an automated or semi-
230 automated loading truck with varying capacities of approximate 20 to 100 gallons.

231 **City Manager** means the City Manager of Oakley or his or her designee.

232 **Collection, collect and collection services** means the collection of:

- 233 (a) Solid waste and its transportation to a transfer station or landfill;
- 234 (b) Recyclable material and its transportation to a processing or materials recovery facility;
235 and
- 236 (c) Green waste and its transportation to a processing facility or landfill.

237 **Commercial** means a primarily non-residential use, including retail sales; professional services;
238 wholesale operations; manufacturing and industrial operations; healthcare and educational
239 operations; and institutional, governmental and non-profit uses. It does not include a business
240 conducted in a residence with a home occupation use permit.

241 **Commercially generated Recyclable materials** means Recyclable material generated at
242 commercial property and separated by the generator for collection in a manner different from
243 Solid waste.

244 **Commingled recyclables or mixed recyclables** means more than one type of Recyclable
245 material in a bin, cart, drop box, compactor or other type of container that is separated from Solid

- 246 waste. This material includes, but is not limited to, wood, paper, plastic, metals, glass, and other
247 dry waste. Commingled recyclables excludes Mixed waste or Contaminated recyclables.
- 248 **Compactor** means a mechanical apparatus that compresses materials.
- 249 **Compost** means the product resulting from the controlled decomposition of organic wastes,
250 including Green waste, wood waste and Food waste which are not hazardous wastes.
- 251 **Construction and demolition debris** means wood, wallboard, metals, glass, paper, plastic,
252 concrete, and other recyclable and non-recyclable Solid wastes, including Mixed waste,
253 generated by residential, commercial and industrial demolition, remodeling, and construction
254 activities. (See OMC Section 4.20.324 for regulations.)
- 255 **Container** means an approved container used for the disposal and storage until collection of
256 Solid waste, Green waste or Recyclable material. It includes a cart, bin, or drop box (or roll-off
257 box, debris box).
- 258 **Contractor** means a company that has entered into a franchise agreement with the City for the
259 collection of Solid waste, Green waste and/or Recyclable materials, under Article 3.
- 260 **Disposal** means the ultimate disposition of Solid waste collected by Contractor at a landfill in
261 full regulatory compliance or other fully permitted disposal site. Disposal does not include
262 alternative daily cover (ADC) to the extent state law defines ADC as landfill diversion for the
263 purposes of AB 939.
- 264 **Diversion requirement** means the diversion of 50% or more of the Solid waste and recyclables
265 disposed of in the City, as required by AB 939 and any subsequent actions.
- 266 **Drop Box** means an open-top container with a capacity of eight to fifty cubic yards that is
267 serviced by a roll-off truck. "Handy hauler" means a small drop box with a capacity of four to
268 six cubic yards generally used by customers on a temporary basis.
- 269 **Environmental laws** mean all federal and state statutes and City ordinances and regulations
270 concerning public health, safety and the environment, including amendments to them. These
271 include (by way of example and not limitation):
- 272 • the Comprehensive Environmental Response, Compensation and Liability Act of 1980,
273 42 U.S.C. §9601 et seq;
 - 274 • the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.;
 - 275 • the federal Clean Water Act, 33 U.S.C. §1251 et seq.;
 - 276 • the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.;
 - 277 • the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.;
 - 278 • the California Hazardous Waste Control Act, California Health and Safety Code §25100
279 et seq.;
 - 280 • the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and
281 Safety Code §25300 et seq.;
 - 282 • the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.;
 - 283 • the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code
284 §25249.5 et seq.;

- 285 • Title 4, Chapter 20, of the Oakley Municipal Code.
- 286 **E-waste or electronic waste** means discarded electronic equipment such as stereos, radios,
287 speakers, televisions, computers, monitors, VCRs, printers, copiers, facsimile machines, DVDs,
288 microwaves, telephones and similar items (including cathode ray tubes and other universal
289 waste which may require special handling).
- 290 **Exempt waste** means those wastes, including hazardous waste and infectious waste, included
291 within the exemptions set forth in Oakley Municipal Code Section 4.20.206.
- 292 **Food waste** means food scraps separated from Solid waste and offered for collection by the
293 Contractor, that will decompose and/or putrefy including (i) all kitchen and table food waste, and
294 animal or vegetable waste that attends or results from the storage, preparation, cooking or
295 handling of food stuffs, and (ii) paper waste contaminated with food waste or otherwise not
296 accepted pursuant to the service specifications.
- 297 **Garbage.** See Solid waste.
- 298 **Green waste** means organic material from trees, shrubs, grass and other vegetation. Trees may
299 not be more than six inches in diameter. Green waste does not include plastic bags, bricks,
300 rocks, gravel, large quantities of dirt, concrete, sod, non-organic wastes, loose fruits and
301 vegetables, tree trunks, stumps, palm fronds, branches more than six inches in diameter or three
302 feet in length, or pet waste.
- 303 **Hazardous waste** means all substances defined as hazardous waste, acutely hazardous waste, or
304 extremely hazardous waste by the State of California in Health and Safety Code §25110.02,
305 §25115, and §25117 or in the future amendments to or re-codifications of such statutes or
306 identified and listed as hazardous waste by the United States Environmental Protection Agency,
307 pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), and
308 all future amendments thereto. However, for the purposes of this Agreement, Hazardous waste
309 shall not mean household hazardous waste which may be contained in Solid waste provided that
310 the City is in compliance with federal, state and local laws related to the diversion of household
311 hazardous waste.
- 312 **Household hazardous waste** means Hazardous waste generated at residential sites in the City,
313 including normal residential amounts of household chemicals, pesticides, motor oil, paint,
314 products containing mercury, e-waste categorized as universal waste (such as television tubes or
315 monitors), anti-freeze, and lead-acid batteries.
- 316 **Landfill** means a permitted disposal site which accepts Solid waste.
- 317 **Litter** means any quantity of improperly discarded waste materials, including paper, metal,
318 plastic, glass or other miscellaneous Solid waste thrown or deposited in the public right-of-way,
319 public property or water.
- 320 **Materials recovery facility (MRF)** means a permitted facility where Solid waste or Recyclable
321 material is sorted or separated for recycling, reuse or processing.
- 322 **Medical waste or Infectious waste** means waste which may cause disease or reasonably be
323 suspected of harboring pathogenic organisms, including waste resulting from medical clinics,
324 dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries,
325 veterinary facilities, hospitals, and similar facilities processing wastes which may include human
326 or animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps,

- 327 contaminated clothing and surgical gloves. (Reference: Health and Safety Code Sections 118215
328 and 25015 et seq., especially 25117.5).
- 329 **Mixed waste or Contaminated recyclables** means combined Recyclable materials and non-
330 Recyclable materials.
- 331 **Multi-family residential** means residential premises having multiple residences, which have
332 centralized Solid waste services. In this Agreement, premises may be classified as residential
333 (with individual billing for each residence) or multi-family residential (with a single billing for
334 each complex or group of units).
- 335 **Premises** means any land or building in the City where Solid waste is generated or accumulated.
- 336 **Processing facility** means a facility to which residential Green waste, food waste or Recyclable
337 material is brought to be processed (into compost, mulch, or soil amendment), separated,
338 recycled or reused.
- 339 **Recyclable materials** means and includes glass, paper, cardboard, wood, concrete, plastic, used
340 motor oil & filters, ferrous and non-ferrous metal, aluminum, and any other waste materials that
341 are capable of being recycled. The terms recycle, recycled and recycling each mean and refer to
342 the process of collecting, sorting, cleansing, treating, reconstituting and/or selling recycling
343 materials, and returning them to the use in the economy. It includes construction and demolition
344 debris, including asphalt and concrete. (See regulations regarding management plan for
345 construction and demolition debris, at OMC Section 4.20.324)
- 346 **Recycling center** means a facility established and licensed for the collection of Recyclable
347 materials, including but not limited to buy-back centers or drop-off locations, which are
348 supplemental to the curbside recycling program operated by Contractor.
- 349 **Refuse.** See Solid waste.
- 350
- 351 **Refuse Rate Index "RRI"** is an index developed from Bureau of Labor Statistics information
352 and actual established cost changes that are designed to more accurately reflect the change in
353 costs more reflective of the operation of a Solid waste hauling and collection company than the
354 Consumer Price Index which is designed to measure the change in costs of a household. The
355 RRI weights items like transportation/trucking costs, tipping fees and labor separately as these
356 items are likely to vary from the Consumer Price Index.
- 357 **Residence or dwelling unit** means an individual living unit having bathroom and kitchen
358 facilities in a **single-family (SFD)** or a **multi-family (MFD)** building. (See also multi-family
359 residential.) It does not include a hotel or motel or an institutional facility.
- 360 **Rubbish.** See Solid waste.
- 361 **Salvage** means the authorized and controlled accumulation of Solid waste materials for
362 subsequent use.
- 363 **Service specifications** means the detailed operational description and other data that are
364 contained in Exhibit A and that provide the baseline used by the City to measure the success of
365 specific programs described in this Agreement.
- 366 **Solid waste** and waste each mean all putrescible and non putrescible solid, semi-solid, and liquid
367 wastes, including Garbage, trash, Refuse, paper, Rubbish, ashes, commercial and industrial
368 wastes, Green waste, Construction and demolition debris, abandoned vehicles and parts thereof,
369 discarded home and industrial appliances, vegetable or animal solid and semi-solid wastes, and

370 other discarded solid and semi-solid wastes. Solid waste and waste include Recyclable materials
371 that are discarded by the generators of such materials and Mixed waste which include both
372 recyclable and non-recyclable materials. Solid waste and waste does not include any of the
373 following wastes: (1) hazardous waste, as defined in Public Resources Code Section 40141; (2)
374 radioactive waste; and (3) medical waste regulated pursuant to the Medical Waste Management
375 Act. It includes all Recyclable materials that are discarded by the generator, and Mixed waste.
376 Solid waste does not include exempt waste, as defined above.

377 **Refuse** means garbage and rubbish. It does not include Green waste or Recyclable
378 material that has been separated out for recycling, recovery or reuse.

379 **Rubbish** means non-putrescible Solid wastes such as ashes, paper, cardboard, tin cans,
380 yard clippings, wood, glass, bedding, crockery, plastics, rubber byproducts or litter.

381 **Source separated** means the generator's segregation from Solid waste of materials designated
382 for separate collection for recycling, recovery or reuse.

383 **Transfer station** means a facility used to receive Solid wastes, temporarily store or process the
384 materials in the Solid wastes, or to transfer the Solid wastes directly from smaller to larger
385 vehicles for transport.

386 **Universal wastes** are Hazardous wastes that are more common and pose a lower risk to people
387 and the environment than other hazardous wastes. (see California Code of Regulations, Div. 4.5,
388 chapter 23.) They include, for example; mercury thermostats, switches and thermometers;
389 batteries; fluorescent and high-intensity lamps; non-empty aerosol cans; certain consumer
390 electronic devices; and cathode ray tubes such as those found in television and non-flat monitors.

391 **Waste generator or generator** means the person who produces the Solid waste, Recyclable
392 material or Green waste, or whose act first causes the Solid waste to become subject to
393 regulation. (Public Resources Code §§40170, 40191)

394 **White goods** means inoperative or discarded refrigerators, ranges, water heaters, freezers,
395 washers, dryers, and other similar large household appliances. (See also, bulky items.)

396 **Article 2. Exclusive Agreement**

397 **2.01 Exclusive Agreement.** The Contractor is granted an exclusive right to provide collection
398 processing and disposal services within the City for Solid waste, Recyclable materials and Green
399 waste for single family residential, multifamily residential, commercial and industrial premises
400 except for Exempt Wastes or as otherwise limited by this Agreement or by law. This Agreement
401 is based on the statutory and constitutional powers provided to the City effectuated through the
402 contractual terms of this Agreement. Contractor accepts this right and privilege and contractually
403 agrees to perform according to the terms, benefits and obligations provided for herein.

404 **2.02 Self-Haulers.** Notwithstanding the exclusive franchise granted per this Agreement,
405 persons, firms, or companies within City limits may engage in self-hauling to the extent
406 permitted by OMC § 4.20.308.

407 **2.03 Contractor Warranties.** In signing this Agreement, Contractor warrants that to the best
408 of its knowledge the following is true and accurate:

409 a. Contractor Resources. Contractor possesses the business, professional, and
410 technical expertise to collect, transport, process, and transfer the Solid waste and
411 Recyclable material generated in the City; and Contractor possesses the equipment,
412 facility, and employee resources required to perform the services specified in this
413 Agreement.

414 b. Agreement Will Not Cause Breach. To the best of Contractor’s knowledge, after
415 reasonable investigation, neither the execution or delivery of this Agreement nor the
416 performance by Contractor of its obligations hereunder: (i) conflicts with, violates, or
417 results in a breach of any law or governmental regulation applicable to Contractor; or (ii)
418 conflicts with, violates or results in a breach of any term or condition of any judgment,
419 order, or decree of any court, administrative agency or other governmental authority, or
420 any agreement or instrument to which Contractor is a party or by which Contractor or any
421 of its properties or assets are bound, or constitutes a default thereunder.

422 c. No Adverse Judicial Decisions. To the best of Contractor’s knowledge, after
423 reasonable investigation, there is no judicial decision that affects the validity of this
424 Agreement and may subject this Agreement to legal challenge.

425 d. No Legal Prohibition. To the best of Contractor’s knowledge, after reasonable
426 investigation, there is no applicable law in effect on the date Contractor signed this
427 Agreement that would prohibit the performance by the Contractor of its obligations under
428 this Agreement and the transactions contemplated hereby.

429 e. Contractor’s Investigation. Contractor has made an independent investigation
430 (satisfactory to it) of the conditions and circumstances surrounding the Agreement and
431 the work to be performed hereunder and has taken these matters into consideration in its
432 agreement to provide these services in exchange for the compensation provided for under
433 the terms of this Agreement.

434 f. Contractor Status. Contractor is duly organized, validly existing and in good
435 standing under the laws of the State of California. It is qualified to transact business in
436 the State of California and has the power to own its properties and to carry on its business
437 as now owned and operated and as required by this Agreement.

438 g. Contractor Authorization. Contractor has the authority to enter into and perform
439 its obligations under this Agreement. The board of directors of Contractor (or the
440 shareholders, if necessary) have taken all actions required by law, its articles of
441 incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The
442 persons signing this Agreement on behalf of Contractor represent and warrant that they
443 have authority to do so. This Agreement constitutes the legal, valid and binding
444 obligation of the Contractor.

445 h. Statements and Information in Contractor's Proposal. The information supplied
446 by Contractor in all written submittals made in connection with Contractor's services and
447 the negotiation and execution of this Agreement, and all written representations and
448 warranties made by Contractor throughout this Agreement are true, accurate, correct, and
449 complete in all material respects on and as of the effective date of this Agreement.

450 i. No Litigation. To the best of Contractor's knowledge, after reasonable
451 investigation, there is no action, suit, proceeding or investigation, at law or in equity,
452 before or by any court or governmental authority, commission, board, agency or
453 instrumentality decided, pending or threatened against Contractor wherein an unfavorable
454 decision, ruling or finding, in any single case or in the aggregate, would materially
455 adversely affect the performance by Contractor of its obligations hereunder or which, in
456 any way, would adversely affect the validity or enforceability of this Agreement or which
457 would have a material adverse effect on the financial condition of Contractor, or any
458 surety or entity guaranteeing Contractor's performance under this Agreement.

459 **2.04 Conditions to Effectiveness of Agreement.** The obligation of the City to permit this
460 Agreement to become effective and to perform its undertakings provided for in this Agreement is
461 subject to the satisfaction of each of the conditions set out below, each of which may be waived
462 in whole or in part by the City.

463 a. Accuracy of Representations. Representations and warranties made by Contractor
464 in Section 2.03 and throughout this Agreement are accurate, true and correct on and as of
465 the effective date of this Agreement.

466 b. Absence of Litigation. There is no litigation pending or threatened in any court
467 challenging the award of this Agreement to the Contractor or the execution of this
468 Agreement or seeking to restrain or enjoin its performance as of the effective date of this
469 Agreement.

470 c. Furnishing of Insurance and Financial Assurances. Contractor has furnished
471 satisfactory evidence of the insurance and the financial assurances required by Article 13
472 of this Agreement.

473 d. Effectiveness of City's Council's Action. City Resolution No. 53-10 approving
474 the City Manager to execute this Agreement shall, pursuant to California law providing
475 that such a resolution is subject to referendum for 30 days following approval, shall
476 become fully effective prior to the effective date of this Agreement.

477 e. Corporate Guarantee. On or before the date of signature of this Agreement the
478 Contractor shall provide a guarantee or other assurance acceptable to the City from
479 Contractor's ultimate parent company, or other parent company acceptable to the City,
480 guaranteeing or assuring performance under this Agreement by the Contractor. The
481 guarantee will be incorporated into this Agreement as Exhibit D.

482 **2.05 Limitations to Scope.** This grant to the Contractor of an exclusive agreement, right and
483 privilege to collect, transfer, transport, process and dispose of Solid waste, including Green
484 waste and Recyclable materials, shall be interpreted to be consistent with state and federal laws,
485 now and during the term of the Agreement, and the services provided hereunder shall be limited
486 by applicable state and federal laws, regulations or judicial decisions or orders with regard to the
487 matters contained in this Agreement. If future interpretations of applicable state and federal laws,
488 regulations or judicial decisions or orders limit the ability of the City to lawfully provide for the
489 scope of agreement as specifically set forth herein, the Contractor agrees that the scope and
490 extent of the Agreement will be limited to those services which may be lawfully provided for
491 under this Agreement, and that the City shall not be responsible for any lost profits claimed by
492 the Contractor arising out of further limitations of the scope or extent of services of the
493 Agreement set forth herein. In such an event, it shall be the responsibility of the Contractor to
494 minimize the financial impact to those remaining services being provided as much as possible.

495 **Article 3. Term of Agreement**

496 **3.01 Term.** The term of this Agreement shall be for a period beginning June 1, 2010 and
497 terminating on April 30, 2030. Upon written notice to the City at least 180 days prior to the
498 expiration of this term, Contractor may extend this agreement for an additional five (5) years so
499 long as it is in full compliance with all the terms and conditions of this Agreement.

500 Upon termination or expiration of this Agreement, and the option period if applicable, the City
501 may renegotiate the terms and conditions of the Agreement with the current Contractor or select
502 another means to procure or provide collection services. The City has no obligation to
503 renegotiate, renew, or extend the rights granted to Contractor hereunder.

504 **3.02 Additional Services.** The primary consideration of the City in entering into this
505 Agreement with Contractor, which extends to the Contractor the exclusive right to collect Solid
506 waste, Recyclable materials and Green waste for single family residential, multifamily
507 residential, commercial and industrial customers within the City limits is to provide for a
508 comprehensive system of Solid waste collection, diversion and reuse for all sectors of the waste
509 stream in order to comply with the diversion requirements of AB 939. City is also providing
510 both the rights and responsibilities for collection and processing of Recyclable materials to
511 Contractor in reliance on Contractor's stated commitment and ability to meet the diversion
512 requirements of AB 939. Beginning January 1, 2012 and each year thereafter, City and
513 Contractor shall examine the City's diversion rate in any year, Contractor shall propose
514 corrections to current programs or new programs which are designed to enable City to meet the
515 state mandated diversion requirements. Contractor shall implement only such additional
516 programs which Contractor and City agree may be appropriate.

517 If the actions required of Contractor under this Agreement, including the undertaking of any
518 additional programs as provided for in this section, fails to result in compliance with any of the
519 state mandated diversion requirements under AB939 and subsequent enactments, City and the
520 Contractor shall meet and confer to evaluate the existing programs and discuss modifications
521 and/or additions that will assist the City in meeting the state mandated diversion requirements
522 under AB 939. City compliance with state mandated diversion requirements shall be evaluated
523 by reference to the California Integrated Management Board's, or any regulatory agency to
524 which its applicable regulatory function has been transferred, final compliance determination for
525 the City.

526 **3.03 Defense of Agreement.** Contractor may at its election, and if it makes that election, at its
527 sole expense, defend the validity of this Agreement against all challenges to the Agreement
528 including challenges to any compensation or fees provided to City, by any entity or person not a
529 party to this Agreement. Neither the City nor the Contractor shall have any liability to each other
530 resulting from a determination that this Agreement violates any state or Federal law, statute, or
531 constitutional provision, except to the extent such determination relates to the Contractor's
532 willful misconduct or negligence. However, if the Contractor elects to not defend the validity of
533 this Agreement, the City may, upon reasonable notice, terminate the Agreement at its election,
534 and if it makes that election, it shall have no liability to the Contractor resulting from that
535 election to terminate. Contractor's sole remedy shall be to receive the Contractor's compensation
536 for services rendered by Contractor up to the date of termination, minus any monies due the City
537 provided for under this Agreement.

538 **3.04 Disposal or Processing of Collected Materials.** The Contractor shall dispose of or
539 deliver for processing all materials collected under this Agreement at a transfer station, landfill,
540 materials recovery facility or other appropriate state-licensed facility of its sole choice.

541 **3.05 Status of Transfer Station.** Any transfer station utilized must be designed and
542 constructed in accordance with all applicable state and local laws (e.g., California Environmental
543 Quality Act (CEQA), California Code of Regulations, etc.). The transfer station must maintain
544 full regulatory compliance with all permits from federal, state, regional, county and city agencies
545 necessary for it to operate as a transfer station and is in compliance with all such permits.
546 Contractor shall provide copies to the City of all notices of violation or amendments to permits
547 that could affect the Contractor's ability to perform under this Agreement.

548 Any transfer station selected by the Contractor must be authorized to accept, under its existing
549 permit, and have sufficient uncommitted capacity to accept, all Solid waste generated in the City
550 and delivered to it by, or on behalf of, the City. The Contractor shall immediately notify the City
551 of any notice of breach or default received from the transfer station. A third party letter prepared
552 by the appropriate Lead Enforcement Agency stating that as of the signature date of this
553 Agreement the disposal company continues to meet the regulatory compliance requirements of
554 this Section 3.05, must be sent to the City Manager upon request.

555 **3.06 Status of Disposal Site.** Any landfill utilized by the Contractor must be designed and
556 constructed in accordance with 23 California Code of Regulations Section 2510 et seq.
557 ("Subchapter 15"). The landfill must have all required permits from federal, state, regional,
558 county and city agencies necessary for it to operate as a Class III Sanitary Landfill and is in full
559 regulatory compliance with all such permits. The Contractor shall provide copies to the City of
560 all notices, of violations, that could affect the Contractor's ability to perform under this
561 Agreement, or amendments to permits, including any extensions.

562 Any landfill must be authorized to accept, under its existing permit, and have sufficient
563 uncommitted capacity to accept, all Solid waste delivered to it by, or on behalf of, the City. The
564 selected landfill should not maintain the co-disposal of hazardous waste with municipal Solid
565 waste. The Contractor shall immediately notify the City of any notice of breach or default
566 received from the landfill. A third party letter prepared by the appropriate Lead Enforcement
567 Agency stating that as of the signature date of this Agreement the disposal company continues to
568 meet the regulatory compliance requirements of this Section 3.06, must be sent to the City
569 Manager upon request.

570 **3.07 Closure of Disposal Site.** The closure and post-closure maintenance plans required by
571 14 California Code of Regulations Section 18260 et seq. must be submitted to and not
572 disapproved by the state and local permit enforcement agencies having jurisdiction over the
573 landfill utilized by Contractor. The disposal site owner must have submitted evidence to the
574 appropriate governing authorities of adequate provisions to finance the closure and post-closure
575 maintenance of the landfill as required by 14 California Code of Regulations Section 18260 et
576 seq. and these arrangements have also been approved by the state and local permit enforcement
577 agencies having jurisdiction. The mechanism which the disposal site owner currently plans to
578 utilize to meet the state requirement of financial assurance for closure and post closure
579 maintenance is a performance bond. Disposal site owner may change this mechanism to another
580 legally authorized mechanism if the change is approved by the California Integrated Waste
581 Management Board. Evidence of compliance with state regulations regarding closure and post-
582 closure funding and financial assurances shall be provided to the City upon request. A third
583 party letter prepared by the appropriate Lead Enforcement Agency stating that as of the signature

584 date of this Agreement the disposal site owner continues to meet the closure and post-closure
585 financial assurance requirements of this Section 3.07, must be sent to the City Manager upon
586 request.

587 **3.08 Prior Agreement Superseded.** Following assignment of the ODS/ISD Franchise
588 Agreement to the City, the parties previously were bound by an agreement for services similar to
589 those specified in this Agreement. In signing this Agreement and upon its effective date,
590 Contractor stipulates that except for any provisions of the prior agreement specified as surviving
591 the termination of the agreement (including but not limited to record keeping, insurance, and
592 indemnity), all rights and responsibilities of the parties contained in that prior agreement are
593 superseded by this Agreement.

594 **Article 4. Services Provided by the Contractor**

595 **4.01 Collection, Recycling and Education Services and Programs.** Contractor shall
596 provide the collection, recycling and education services and programs described in the service
597 specifications incorporated into this Agreement as Exhibit A.

598 At the City's request, it is Contractor's responsibility to investigate and report to City regarding
599 suspected violations of the rights provided under this Agreement, the City's Solid waste
600 ordinance, or the City's construction and demolition debris ordinance, by generators or other
601 businesses providing recycling or collection services.

602 **4.02 City Right to Direct Changes.**

603 a. Procedure for Making Changes. The City may direct Contractor to: perform
604 additional services including new diversion programs and additional public education
605 activities; eliminate programs; modify the manner in which it performs existing services;
606 and perform pilot programs and innovative services, which may entail new collection
607 methods, targeted routing, different kinds of services, different types of collection
608 vehicles, and/or new requirements for generators. Contractor shall be entitled to an
609 adjustment in its compensation in accordance with ~~Section 5.07~~ for providing such
610 additional or modified services but not for the preparation of its proposal to perform such
611 services. The City Council will adjust Contractor's rates to compensate Contractor for its
612 reasonable, net costs of providing such additional or modified services.

Section 5.01

Comment [v1]: This section does not currently exist. Shall we change this to read Section 5.04?

613 Contractor shall present, within 30 calendar days of the City's request, a proposal to
614 provide the additional or expanded services described in this Section 4.02. At a minimum,
615 the proposal shall contain a complete description of the following:

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

627 Contractor acknowledges and agrees that the City may permit other persons besides
628 Contractor to provide additional Solid waste collection services not otherwise
629 contemplated in this Agreement if Contractor and the City cannot agree on terms and
630 conditions of such services in 120 calendar days from the date when the City first
631 requests a proposal from the Contractor to perform such services.

632 b. Monitoring and Evaluation. Upon the City's request, the Contractor shall meet
633 with the City to describe the progress of each new program and other service issues. If
634 applicable, Contractor shall document the results of the new programs on a monthly

635 basis, including at a minimum the tonnage diverted by material type, the end use or
636 processor of the diverted materials and the cost per ton for transporting and processing
637 each type of material and other such information requested by the Contractor and/or the
638 City necessary to evaluate the performance of each program.

639 At each meeting, the City and the Contractor shall have the opportunity to revise the
640 program based on mutually agreed upon terms. The City shall have the right to terminate
641 a program if, in its sole discretion, the Contractor is not cost effectively achieving the
642 program's goals and objectives. Prior to such termination, the City shall meet and confer
643 with the Contractor for a period of up to 90 calendar days to resolve the City's concerns.
644 Thereafter, the City may utilize a third party to perform these services if the City
645 reasonably believes the third party can improve on Contractor's performance and/or cost.
646 Notwithstanding these changes, Contractor shall continue the program during the meet
647 and confer period and, thereafter, until the third party takes over the program.

648 If the City terminates a program, Contractor shall be entitled to recover any and all
649 unamortized costs that have not yet been recovered or reimbursed in the program by way
650 of an adjustment of its rates or other methodology agreed to between City and Contractor.

651 **4.03 Responsibility for Service Billing and Collection.** The Contractor is responsible for the
652 billing and collection of payments for collection services. The Contractor shall not bill for
653 collection services rendered to City facilities as described in Section 4.04. (See Article 5, Rates,
654 Charges and Contractor Compensation.)

655 **4.04 Service to City Facilities.** Contractor shall provide collection and recycling services to
656 all City facilities at no cost to City. The cost for providing such services shall be considered an
657 allowable cost in the determination of rates under Article 5. Currently, those facilities are listed
658 with service levels in Exhibit C. The collection and recycling services provided to the City at no
659 cost to City shall not include any City facilities that are run and/or managed by private
660 independent third parties. The Solid waste collection service shall be at least weekly at each
661 location. Any changes to service levels must be agreed upon by Contractor and the City prior to
662 start of service. Annually, or more frequently as needed, Contractor and the City will review the
663 waste stream at each facility to evaluate diversion programs and make changes to service levels.

664 The free City services provided for in this Section shall not include free hauling and/or disposal
665 of Construction and demolition debris from the demolition or renovation of City buildings or
666 structures. In the event the City wishes to have Contractor provide these services, Contractor
667 shall negotiate a fee for such services with the City that will compensate Contractor for the
668 reasonable value of such services.

669 **4.05 Service Standards.** Contractor shall perform all collection services under this
670 Agreement in a thorough and professional manner so that the residents and businesses are
671 provided reliable, courteous, timely and high quality collection services at all times. Collection
672 services described in this Agreement shall be performed regardless of weather conditions or
673 difficulty of collection.

674 **4.06 Labor and Equipment.** Contractor shall provide and maintain all labor, equipment,
675 tools, facilities, and personnel supervision required for the performance of Contractor's
676 obligations under this Agreement. Contractor shall at all times have sufficient backup equipment
677 and labor to fulfill Contractor's obligations under this Agreement. No compensation for
678 Contractor's services or for Contractor's supply of labor, equipment, tools, facilities or
679 supervision shall be provided or paid to Contractor by City or by any customer except as

680 expressly provided by this Agreement. (See also Article 10, Contractor's Office, Personnel and
681 Collection Equipment.)

682 **4.07 Purchase, Distribution and Ownership of Carts.** The Contractor is responsible for the
683 purchase and distribution of fully assembled and functional garbage, recycling and green waste
684 carts, bins and drop boxes. Contractor retains ownership of the carts, bins and drop boxes and
685 shall provide all necessary maintenance.

686 Each SFD and MFD customer shall be permitted one free replacement container per any twelve
687 month period to replace a stolen or damaged container or to swap a dirty container for a clean
688 one. SFD and MFD customers may also exchange one container size for a different container
689 size per any twelve month period at no charge. This limitation shall not effect Contractor's
690 obligation to repair containers which are damages due to normal collection activities.

691 **4.08 Holiday Service.** The Contractor observes December 25th and January 1st as legal
692 holidays. Contractor is not required to provide collection services or maintain office hours on the
693 designated holidays. In any week in which one of these holidays falls on a work day (Monday
694 through Saturday), SFD collection services for the holiday and each work day thereafter will be
695 delayed one work day for the remainder of the week, with normally scheduled Friday SFD
696 collection services being performed on Saturday. MFD and commercial collection services shall
697 be adjusted as necessary but must meet the minimum frequency requirements of one time per
698 week.

699 **4.09 Spillage and Litter.** The Contractor shall not litter premises in the process of providing
700 collection services or while its vehicles are on the road. The Contractor shall transport all
701 materials collected in such a manner as to prevent the spilling or blowing of such materials from
702 the Contractor's vehicle. The Contractor shall exercise all reasonable care and diligence in
703 providing collection services so as to prevent spilling or dropping of Solid waste, Green waste or
704 Recyclable materials and shall immediately, at the time of occurrence, clean up such spilled or
705 dropped waste or materials.

706 The Contractor is not responsible for cleaning up sanitary conditions caused by the carelessness
707 of the customer; however, the Contractor shall clean up any material or residue that is spilled or
708 scattered by the Contractor or its employees.

709 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the
710 Contractor's operations or equipment repair shall be covered immediately with an absorptive
711 material and removed from the street surface. When necessary, Contractor shall apply a suitable
712 cleaning agent to the street surface to provide adequate cleaning. Contractor shall notify City
713 Manager of any spills including the location, material, how it occurred and how it was cleaned
714 up.

715 Contractor shall cover all open drop boxes during transport and shall take such similar physical
716 steps as are necessary to avoid unacceptable spillage from collection vehicles.

717 **4.10 Ownership of Materials.** Once Solid waste is placed in containers and properly
718 presented for collection, ownership and the right to possession shall transfer directly from the
719 generator to Contractor by operation of this Agreement. Contractor is hereby granted the right to
720 retain, process, dispose of, and otherwise use such Solid waste, or any part thereof, in any lawful
721 fashion or for any lawful purpose desired by Contractor. Subject to the provisions of this
722 Agreement, Contractor shall have the right to retain any benefit resulting from its right to retain,
723 process, dispose of, or use the Solid waste which it collects. Solid waste, or any part thereof,
724 which is disposed of at a disposal site or facility (whether landfill, transformation facility,

725 transfer station, or materials recovery facility) shall become the property of the owner or operator
726 of the disposal site(s) or facility once deposited there by Contractor. Contractor shall be entitled
727 to retain all revenues from the sale of Recyclable materials collected by Contractor pursuant to
728 this Agreement.

729 **4.11 Special Collection Services.** Contractor shall, free of charge, collect Solid waste at up to
730 two special events for the City, such as parades or civic events, as determined by the City and
731 specified in Exhibit C. The cost for providing such services shall be considered an allowable
732 cost in the determination of rates under Article 5. Contractor shall provide an adequate number
733 and type of collection containers for the special events and shall coordinate its collection services
734 with the City.

735 Requests for donated collection services for special events and other entities can be approved and
736 fulfilled at the discretion of the Contractor.

737 **4.12 Regularly Scheduled and Temporary Bins.** Contractor shall provide regularly
738 scheduled and temporary bins/drop box service for the purpose of collection of non-hazardous
739 Solid waste to all persons requesting and paying for such service. Contractor shall deliver and
740 collect bins at the direction of the customer. Drop boxes and bins shall be kept free of graffiti
741 and maintained in good repair. Drop boxes must be dropped on the customer's property and not
742 the City right of way. Drop boxes delivered on the street in front of a customer's property
743 require authorization from the City. Encroachment permits which are the responsibility of the
744 customer are required for any box to be delivered on the streets. Drop boxes shall be delivered
745 within one working day of the receipt of a customer's request. Contractor's failure to meet these
746 requirements may result in assessment of a liquidated damage as provided in subsection 12.02 g.

747 **4.13 Noise.** All Collection operations shall be conducted as quietly as possible and shall
748 conform to applicable federal, state, county and City noise level regulations, including the
749 requirement that the noise level during the stationary compaction process not exceed seventy
750 decibels at a distance of 50 feet with the exceptions of 85 decibels for one-minute duration as
751 measured from a distance of 50 feet. The City may conduct random checks of noise emission
752 levels to ensure such compliance. Contractor shall promptly resolve any complaints of noise to
753 the satisfaction of the City Manager.

754 **4.14 Property Damage.** Contractor shall be responsible for any damage it causes to private
755 property and any damage it causes to the City's driving surfaces, whether or not paved, and
756 associated curbs, gutters and traffic control devices, resulting from or directly attributable to any
757 of its operations. Nothing in this paragraph is intended to create any new or additional liability
758 of Contractor than would otherwise arise from Contractor's use of public roads or right-of-ways.

759 **Article 5. Rates, Charges and Contractor Compensation**

760 **5.01 Charges and Rates.**

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- a. Residential. Contractor covenants and agrees to collect and dispose of all residential Refuse from the City in accordance with the rates adopted by the City Council of the City by resolution from time to time in accordance with the terms of this Agreement. Current and/or agreed to rates are those set forth in Exhibit "B" attached hereto.

- b. Commercial. Contractor covenants and agrees to collect and dispose of all commercial and other non-residential Refuse from the City. The charges for such collection and disposal will be agreed upon between the Contractor and the merchants or other persons involved, and in any event fixed on a uniform basis consistently applied considering the time spent, the frequency of collection, and the character of the Refuse removed. In case of dispute between a commercial and other non-residential customer and Contractor as to the rate charged or to be charged for any service provided hereunder, the matter shall be referred to the City Manager for investigation. The City Manager shall determine the dispute within thirty (30) days after completion of the investigation. The determination of the City Manager shall be subject to an appeal to the City Council. The appealing party shall have ten (10) days from the date of the City Manager's decision in which to file an appeal of determination with the City Council. The appeal shall be placed on the City Council's Agenda as soon as practicable. The decision by the City Council shall be conclusive.

- c. Rate Adjustment. Either Contractor or City may apply annually (or at any time upon an increase or decrease in the Contractor's costs of meeting its obligations hereunder of more than 8% due to circumstances not caused by, and beyond the control of either Party) for a rate or fee adjustment based upon substantial changes in the costs of operation, or in revenues or other factors, which may render the fees provided for in this Agreement (including the rates of Contractor pursuant to this Article 5 and the franchise fee of City pursuant to Article 6) unfair to one of the Parties to this Agreement. The Contractor may request, and the City may grant an annual rate increase in conformance with a Refuse Rate Index ("RRI"). However, either Party may periodically request that the new rates be set in a more thorough rate application. The City and Contractor shall agree upon a mutually acceptable rate setting process and methodology based upon established standards within the disposal industry. The cost of such a more thorough rate study shall be borne equally by the City and Contractor. In determining such adjustment, City shall consider comparable rates in other areas for services similar to those provided by Contractor, Contractor's cost of operations, and such other factors as may be appropriate. If the request for a rate or fee adjustment has been made by the Contractor, City shall, within thirty (30) days after submittal of Contractor's request, request all such further information from Contractor as City shall reasonably determine is needed to enable City to determine the rate adjustment. City shall make a determination in good faith as to the amount of the adjustment to be made within sixty (60) days after Contractor completes the submittal of all such information. Contractor may apply once each calendar year for an increase in the maximum Residential rates. Contractor may submit a rate application within the same calendar year if Contractor must make significant changes to its operation or experiences significant changes in costs or revenue not under its control, in which event the application shall explain and document the significant changes.

806 i. City-Initiated Changes. City may initiate a change in the maximum rate
807 at any time. If the rate change is initiated by City, Contractor shall submit its
808 completed rate application to City within 90 days of City's notice to Contractor.

809
810 ii. Contents of Applications. Rate applications shall be prepared in such
811 form, with such information and in such detail as City may require. Each
812 application for a change in the maximum rate (other than a rate change in
813 accordance with the Refuse Rate Index) shall include an audited financial
814 statement of Contractor for the base year on which the application is based. Each
815 rate application and its accompanying financial statements and information shall
816 segregate the activities of Contractor within the City from those outside the City.

817 **5.02 Collection services.** The Contractor is responsible for the billing and collection of
818 payments for all collection services. Since the responsibility of subscribing for service, per
819 OMC §4.20.302 and 4.20.318, lies with the owner of the property, the Contractor shall have the
820 ability to obtain property owner information as filed with the Contra Costa County Assessor's
821 office to the extent permitted by law.

822 The Contractor shall charge customers the service rates established by the City Council and set
823 forth in Exhibit B. The rates may be adjusted under the terms of this Agreement.

824 **5.03 Partial Month Service.** If a customer is added to or deleted from Contractor's City area
825 during a month, the Contractor's billing shall be pro-rated based on the daily service rate (the
826 daily service rate shall be the service rate established in Exhibit B divided by the number of
827 actual days in the month that service was provided to the customer).

828 **5.04 General Billing Requirements.** Contractor shall prepare mail and collect bills (and
829 issue written receipts for cash payments) for Solid waste collection services provided by
830 Contractor. Residential bills shall be for service for no more than a three-month period in
831 advance. Contractor may choose to bill monthly, but any change in the billing interval must be
832 approved by City. Each bill must clearly describe that the billed amount is for the billed period.
833 Bills for residential service shall be mailed in advance of the provision of service but no more
834 than three months in advance. Commercial bills shall be for service for a one month period billed
835 monthly in arrears. The Contractor's bills shall contain a local address, phone number, and e-mail
836 address; the customer's service level (container size, frequency of collection); and any credits
837 due the customer. City shall have the right to: 1) review and determine the bill messages; 2)
838 revise the billing format to itemize certain charges, and; 3) review the billings frequency and
839 procedures. City may also direct Contractor to insert mailers relating to service with the billings.
840 The mailers must fit in billing envelopes and not increase the required postage. The Contractor
841 will notify City about any changes to the billing insert requirements at least 60 days prior to the
842 next bill mailing. Any increased costs to City for failure to do so will be borne by the Contractor.
843 City will provide not less than 60 days notice to Contractor prior to the mailing date of any
844 proposed mailing to permit Contractor to make appropriate arrangements for inclusion of City's
845 materials. Contractor is authorized to send notices of non-payment to a customer after 30 days
846 and to suspend service after 45 days of non-payment by customer. Contractor is also authorized
847 to charge late fees on unpaid balances and other fees per Contractor's billing policies and
848 practices. Contractor shall notify City of accounts to be suspended on a monthly basis.

849 **5.05 City Audit of Billings.** Contractor shall provide yearly audited financial statements by a
850 qualified independent certified public accounting firm upon request by the City. City may at its
851 sole discretion select a qualified independent certified public accounting firm to perform up to

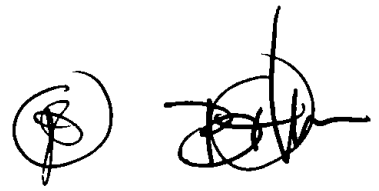
852 five billing audits during the term of the Agreement. The frequency and timing of the billing
853 audits shall be determined at City's sole discretion. City shall provide Contractor sixty days
854 notice of each change in the audit schedule. City shall determine the scope of any audits.

855 The auditor shall review the billing practices of Contractor with relation to delivery of collection
856 services. The intent of this audit is to use sampling to verify that customers are receiving the type
857 and level of service for the rates they are billed.

858 The cost of any audit that demonstrates an error rate of less than three percent shall be borne by
859 the City. The cost of any audit that demonstrates an error rate equal to or greater than three
860 percent (3%) shall be borne by the Contractor.

861 **Article 6. City Compensation and Other Fees**

862 **6.01 City Compensation.** The parties acknowledge that Contractor's heavy trucks create
863 significant wear and tear on City streets, leading to the need for more frequent repair. The exact
864 amount and nature of such street damage is difficult if not impossible to calculate. In
865 consideration of the exclusive contractual right and agreement granted by the City to Contractor
866 for provision of collection services for both residential, commercial and industrial Solid waste
867 generators, beginning with the adoption of this Agreement on May 25, 2010 and thereafter,
868 Contractor agrees to pay the City eight (8%) percent of all gross revenues received by Contractor
869 for provision of the collection services under this Agreement. This compensation has the
870 following elements: five (5%) percent for the privilege of exercising the franchise, and three
871 (3%) percent for a street impact fee and development of programs for compliance with AB 939
872 and liquidated damage payment. The street impact and development of programs fee shall be
873 increased by one-half percentage on June 1 of each year, beginning in 2011, until the total fee for
874 such impact and development reaches seven (7%) percent, after which that rate shall remain for
875 the remainder of the term of this agreement and any extension. The amount of any City
876 compensation may be adjusted from time to time by the City with consent of the Contractor.
877 Any increase or decrease in the City compensation percentage will require a rate adjustment.



878
879 "Gross revenues" means any and all compensation receive by the Contractor from the operation
880 of the franchise agreement. "Gross revenues" shall include regular subscriber fees for all
881 services, charges for the use of extra or special services, and income of whatever kind or nature
882 received by contractor by virtue of its enjoyment of the franchise agreement, including both
883 regulated and unregulated customer payments; but shall not include revenues from the sale of
884 recycled materials. "Gross revenues" shall not include refundable deposits or bad debts for which
885 no payment was received from the customer or subscriber.

886
887 The City compensation shall be paid every three months and shall be considered late if not paid
888 by the 20th day of the month in which it becomes due. Late payments are subject to a two (2%)
889 percent late penalty for the amounts owing during the two-month payment period. Contractor
890 shall pay an additional two (2%) percent on any unpaid balance for each following 30-day period
891 that the Agreement fee remains unpaid.

892
893 The compensation provided to City under this Section 6.01 is contractual in nature and was a
894 materially bargained for term of this Agreement. Contractor and City agree that this amount is
895 fair and reasonable in the applicable commercial setting existing at the time of execution of this
896 Agreement. It is further agreed that the City is justified in receiving this compensation, whether
897 received as compensation for the contractual rights provided herein, as a franchise fee (5%), or
898 as cost reimbursement (ranging from 3 to 7%) to the City for street repair and Solid waste
899 programs.

900
901 **6.02 Other Fees.** The City shall reserve the right to set other or additional fees as it deems
902 necessary and will notify Contractor of any changes in fees to be collected as a part of the fees

903 and charges for Solid waste collection services. Such fees will be reflected by an adjustment in
904 the rates that Contractor is allowed to charge and collect from customers.
905

906 **Article 7. Single Family Dwelling Collection Services**

907 **7.01 Single Family Dwellings (SFD) Collection Services: General.** The Contractor shall
908 provide SFD collection service to all SFD customers in the City area whose residential Solid
909 waste, Recyclable materials and Green waste are properly containerized and set out within three
910 feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other
911 such location agreed to by the Contractor and customer, that will provide safe and efficient
912 accessibility to the Contractor's collection crew and vehicle.

913 **7.02 On-Premises Service.** Contractor shall provide on-premises collection of residential
914 Solid waste, Recyclable materials and Green waste to a SFD customer if all adult customers
915 residing there have disabilities that prevent them from setting their garbage or recycling cart at
916 the curb for collection and if a request for on-premises service has been made to, and approved
917 by, the City Manager in the manner required by City. On premises service shall include pickup
918 and replacement of carts within the front or side yard and return of the cart to such location. The
919 Contractor shall authorize on-premises service in appropriate circumstances. If there is a dispute
920 between the Contractor and a customer regarding this issue, the Contractor shall refer the matter
921 to the City Manager for his or her determination. No additional monies shall be due to the
922 Contractor for the provision of on-premises service to special needs or disabled customers. The
923 City may direct Contractor to provide an elective or optional on-premises service to customers
924 who request it for a fee in addition to the otherwise applicable rates and charges. This elective
925 on-premises service would be available to able-bodied customers.

926 Contractor shall provide on-premises collection service on the same work day that curbside
927 collection would otherwise be provided to the SFD customer.

928 **7.03 Frequency and Scheduling of Service.** SFD collection services shall be provided one
929 time per week on a scheduled route basis, except for bulky item collection, on-call recycling, and
930 Holiday tree collection.

931 a. Hours and Days of Collection. SFD collection services shall be provided
932 beginning no earlier than 5:00 a.m. and ending no later than 6:00 p.m., Monday through
933 Saturday. The hours or days of collection may be extended due to extraordinary
934 circumstances with the prior consent of the City Manager.

935 b. Manner of Collection. The Contractor shall provide SFD collection service with
936 as little disturbance as possible and shall leave carts in an upright position at the same
937 point they were collected without obstructing alleys, roadways, driveways, sidewalks or
938 mail boxes.

939 **7.04 SFD Solid waste Collection Service.** Contractor is not required to collect any
940 residential Solid waste that is not placed in the cart or that is commingled with Hazardous waste
941 or Medical waste. In the event of non-collection, Contractor shall affix to the cart a non-
942 collection notice explaining why collection was not made.

943 **7.05 SFD Recycling Service.**

944 a. Collection. The Contractor is not required to collect Recyclable materials if the
945 customer does not segregate the Recyclable materials from residential Solid waste. If
946 Recyclable materials are contaminated through commingling with residential Solid waste,
947 the Contractor shall, if practical, separate the residential Solid waste from the Recyclable
948 materials. The Recyclable materials shall then be collected and the Solid waste shall be

949 left in the recycling cart along with a non-collection notice. However, if the Recyclable
950 materials and Solid waste are commingled to the extent that they cannot easily be
951 separated by the Contractor or the nature of the Solid waste renders the entire recycling
952 cart contaminated, the Contractor may leave the recycling cart un-emptied along with a
953 non-collection notice.

954 b. Cardboard. Corrugated cardboard that will not fit inside the recycling cart shall
955 be placed as specified by the Contractor and picked up pursuant to an on-call recycle
956 cleanup as described in Section 7.09 below.

957 c. Changes to Work. If changes in law arise that necessitate any additions or
958 deletions to the work described here including the type of items included as Recyclable
959 materials, the parties shall negotiate any necessary cost changes and shall enter into an
960 Agreement amendment covering the modifications to the work to be performed and the
961 compensation to be paid before undertaking any changes or revisions to the work.

962 **7.06 Green waste Collection Service.** Contractor is not required to collect any Green waste
963 that is not placed in a Green waste cart. In the event of non-collection, Contractor shall affix to
964 the Green waste cart a non-collection notice.

965 **7.07 Change in Collection Schedule.** Contractor shall notify City not later than sixty (60)
966 days prior to, and residential customers not later than fourteen (14) days prior to, any change in
967 residential collection operations that results in a change in the day on which Solid waste
968 collection occurs. Contractor shall not permit any customer to go more than seven (7) days
969 without service in connection with a collection schedule change. City must give final approval
970 to the routing changes and its approval shall not be withheld unreasonably.

971 **7.08 SFD Bulky waste Collection Service.** The Contractor shall provide SFD Bulky waste
972 collection service to all SFD customers whose bulky items or extra residential Solid waste have
973 been placed in a disposable bag or container, or bundled, and placed within three feet of the curb,
974 swale, paved surface of the public roadway, closest accessible roadway, or other such location
975 agreed to by the Contractor and customer, that will provide safe and efficient accessibility to the
976 Contractor's collection crew and vehicle. Bulky waste collection service is limited to two cubic
977 yards per collection.

978 Each SFD customer is entitled to receive SFD Bulky waste collection service and/or recycle
979 cleanup service up to two (2) times per year. The collections shall be on-call. Contractor shall
980 maintain adequate vehicles and personnel to meet demand of on-call pickups within two weeks
981 of request.

982 **7.09 On-Call Recycle Cleanups.** The Contractor shall provide on-call recycle cleanup
983 service to each SFD customer whose Green waste or corrugated cardboard has been placed in a
984 manner as set forth by the Contractor in the customer guide prepared and distributed by the
985 Contractor to all customers.

986 Each SFD customer is entitled to receive on-call recycle cleanup service and/or Bulky waste
987 collection service up to two (2) times per year. A recycle cleanup service may include Green
988 waste pick ups or corrugated cardboard pick ups.

989 **7.10 Holiday Tree Collection Service.** Contractor shall provide annual Holiday tree
990 collection pick up and recycling. This service shall be provided during the first three weeks of
991 January of each year at a time and in a manner to be specified by Contractor in the annual
992 holiday schedule brochure which shall be prepared by the Contractor and distributed to all SFD

993 customers. Contractor shall provide an advance copy of the schedule to the City for its review
994 and approval.

995 **Article 8. Multiple Family Dwelling Collection Services**

996 **8.01 Multiple Family Dwelling (MFD) Collection Services: General.** The MFD collection
997 service is governed by the following terms and conditions:

998 a. Hours and Days of Collection. MFD collection services shall be provided
999 beginning no earlier than 5:00 a.m. and ending no later than 6:00 p.m., Monday through
1000 Saturday. The hours or days of collection may be extended due to extraordinary
1001 circumstances with the prior consent of the City Manager.

1002 b. Manner of Collection. The Contractor shall provide collection service with a
1003 little disturbance as possible and shall leave any container at the same point it was
1004 collected, with the lid closed, without obstructing alleys, roadways, driveways, sidewalks
1005 or mailboxes.

1006 **8.02 MFD Solid Waste Collection Service.** The Contractor shall provide MFD solid waste
1007 collection service to all MFD customers whose residential solid waste is properly contained in a
1008 container. This service shall be provided at least once every week on a scheduled route basis.
1009 The size of the container and the frequency (above the minimum) of collection shall be
1010 determined between the customer and the Contractor.

1011 **8.03 MFD Recycling Service.** This service will be governed by the following terms and
1012 conditions.

1013 a. Conditions of Service. The Contractor shall provide MFD recycling service to all
1014 MFD customers whose Recyclable materials are properly containerized and set out. The
1015 Contractor is not required to collect Recyclable materials if the customer does not
1016 segregate the Recyclable materials from residential Solid waste. If Recyclable materials
1017 are contaminated through commingling with Solid waste, the Contractor shall, if
1018 practical, separate the Solid waste from the Recyclable materials. The Recyclable
1019 materials shall then be collected and the Solid waste shall be left in the recycling
1020 container along with a non-collection notice. However, if the Recyclable materials and
1021 Solid waste are commingled to the extent that they cannot easily be separated by the
1022 Contractor or the nature of the residential Solid waste renders the entire recycling
1023 container contaminated, the Contractor may leave the container un-emptied along with a
1024 non-collection notice.

1025 b. Frequency of Service. This service shall be provided a minimum of every other
1026 week on a scheduled route basis.

1027 c. Changes to Work. If changes in law arise that necessitate any additions or
1028 deletions to the work, including the type of items included as Recyclable materials, the
1029 Contractor shall modify its operations to appropriately address the change in law. The
1030 parties shall attempt to negotiate any reasonable and necessary cost changes and shall
1031 enter into an Agreement amendment covering the modifications to the work to be
1032 performed and the modification to the rates and charges of Article 5.

1033
1034 **8.04 MFD Bulky Waste Collection Service.** Multifamily residents subscribing individually
1035 for service will receive two (2) on-call bulky waste cleanups and/or recycle cleanup services as
1036 described under Residential Services. Contractor provides large item pick-up for a fee as

1037 described in Exhibit B. Bin service customers cannot request individual cleanups. All other
1038 guidelines apply as described in Residential Services.

1039 **8.05 On-Call Recycle Cleanups.** Multifamily residents subscribing individually for service
1040 will receive the same information as residential customers described in Residential Services for
1041 on-call recycle cleanups. Green waste exempt customers will not be eligible for Green waste
1042 cleanups. Those residents of multifamily complexes not subscribing to individual service will
1043 receive (2) cardboard on-call cleanups only.

1044 **8.06 Holiday Tree Collection Service.** Contractor shall provide annual Holiday tree
1045 collection pick up and recycling. This service shall be provided during the first three weeks of
1046 January of each year at a time and in a manner to be specified by Contractor in the annual
1047 holiday schedule brochure which shall be prepared by the Contractor and distributed to all MFD
1048 customers. The brochure will also include a description of pick up services (such as cardboard or
1049 holiday tree roll-off bins) available to MFD customers for fee. Contractor shall provide advance
1050 copy of the schedule to the City for its review and approval.

1051 **Article 9. Commercial and Industrial Collection Service**

1052 **9.01 Commercial and Industrial Collection Service: General.** The Contractor shall
1053 provide commercial collection services to all commercial and industrial customers. This service
1054 is governed by the following terms and conditions:

1055 a. Provision of Service. Contractor shall provide commercial Solid waste and
1056 recycling service to all commercial customers.

1057 b. Hours of Collection. Commercial collection service except for debris box service
1058 shall not occur between the hours of 6:00 p.m. and 4:00 a.m. within 300 feet of an
1059 inhabited dwelling unit. In order to reasonably accommodate nearby residents with noise
1060 complaints, Contractor shall adjust its collection times for specific business customers if
1061 the scheduled collection time is before 7:00 a.m. as long as the scheduled collection time
1062 can be adjusted without posing a safety risk.

1063 c. Manner of Collection. The Contractor shall provide commercial collection service
1064 with as little disturbance as possible and shall leave any container at the same point it was
1065 originally located without obstructing alleys, roadways, driveways, sidewalks or mail
1066 boxes. Bin lids must be left in the closed position when garbage enclosure is not roofed.

1067 **9.02 Commercial Solid waste Collection Service.**

1068 a. Conditions of Service. The Contractor shall provide commercial Solid waste
1069 collection service to all commercial and industrial customers whose Solid waste is
1070 properly contained in containers.

1071 b. Size and Frequency of Service. Contractor shall provide Solid waste collection
1072 service as deemed necessary and as determined between the Contractor and the customer,
1073 but such service shall be received no less than one (1) time per week. Collection service
1074 scheduled to fall on a holiday may be rescheduled as determined between the customer
1075 and the Contractor as long as the minimum frequency requirement is met. The frequency
1076 (above the minimum) of collection shall be determined between the customer and the
1077 Contractor.

1078 The Contractor shall provide containers as part of the commercial collection service rates
1079 set forth in Exhibit B. The kind, size and number of containers furnished to particular
1080 customers shall be as determined mutually by the customer and company. Containers
1081 which are front loading bins, shall have lids. All containers with a capacity of one cubic
1082 yard or more shall meet applicable regulations for container safety and shall have
1083 reflective markings, shall be maintained in good repair with neatly and uniformly painted
1084 surfaces and shall prominently display the name and telephone number of Contractor.
1085 Containers shall be clearly marked and identified as belonging to Contractor. Contractor
1086 shall not be obligated to provide customers with compactor units, but will be obligated to
1087 charge the rates set by the City for the collection of compacted Solid waste.

1088 The kind, size and number of containers and frequency of collection shall be sufficient to
1089 provide that no Solid waste need be placed outside the container.

1090 c. Non-Collection. Contractor is not required to collect any commercial Solid waste
1091 that is not placed in a container unless the Solid waste is outside the container as a result
1092 of overflow. If Solid waste is not collected, the Contractor shall affix a non-collection
1093 notice to the container.

1094

1095 **9.03 Commercial Recycling Service.** This service will be governed by the following terms
1096 and conditions:

1097 a. Conditions of Service. The Contractor shall provide commercial recycling service
1098 to all commercial customers whose Recyclable materials are properly containerized and
1099 set out. The Contractor is not required to collect Recyclable materials if the customer
1100 does not segregate the Recyclable materials from commercial Solid waste. If Recyclable
1101 materials are contaminated through commingling with Solid waste, the Contractor shall,
1102 if practical, separate the Solid waste from the Recyclable materials. The Recyclable
1103 materials shall then be collected and the Solid waste shall be left in the container along
1104 with a non-collection notice. However, if the Recyclable materials and Solid waste are
1105 commingled to the extent that they cannot easily be separated by the Contractor or the
1106 nature of the commercial Solid waste renders the entire recycling container contaminated,
1107 the Contractor may leave the container un-emptied along with a non-collection notice.

1108 b. Size and Frequency of Service. The Contractor shall provide this service as
1109 deemed necessary and as determined between the Contractor and the customer, but such
1110 service shall be received no less than every other week. Collection service scheduled to
1111 fall on a holiday may be rescheduled as determined between the customer and the
1112 Contractor as long as the minimum frequency requirement is met. Service may be
1113 provided by bin, cart or drop box at the option of the customer. The size of the container
1114 and the frequency (above the minimum) of collection shall be determined between the
1115 customer and the Contractor. The Contractor shall provide containers as part of the
1116 commercial collection service rates.

1117 c. Changes to Work. If changes in law arise that necessitate any additions or
1118 deletions to the work described here, including the type of items included as Recyclable
1119 materials, the parties shall negotiate any necessary cost changes and shall enter into an
1120 Agreement amendment covering the modifications to the work to be performed and the
1121 compensation to be paid before undertaking any changes or revisions to the work.

1122 **Article 10. Contractor’s Office, Personnel and Collection**
1123 **Equipment**

1124 **10.01 Contractor’s Office.**

1125 a. Location; Telephone Service. Contractor shall designate a location in the City
1126 where bills may be paid by customers and a listed telephone number for the City of
1127 Oakley which does not involve a toll call for Oakley residents. Said billing payment
1128 location shall be open during normal business hours on all work days. The main office
1129 shall be open during normal business hours on all work days. The average hold time on
1130 customer calls should not exceed 60 seconds. The Contractor shall provide either a
1131 telephone answering service or mechanical device to receive customer inquiries during
1132 those times when the office is closed. Call back messages left on a business day before
1133 noon shall be returned by the end of the same day. Calls received after noon or after
1134 normal business hours shall be addressed before noon of the next business day.

1135 Contractor shall maintain the capability of responding to telephone calls.

1136 Contractor shall install telephone equipment sufficient to handle the volume of calls
1137 typically experienced on the busiest days and such telephone equipment shall be capable
1138 of recording the responsiveness to each call.

1139 b. Emergency Contact. The Contractor shall provide the City Manager with an
1140 emergency phone number where the Contractor can be reached outside of the required
1141 office hours.

1142 **10.02 Contractor’s Personnel.**

1143 a. Qualified Personnel. The Contractor shall employ and assign qualified personnel
1144 to perform the services under this Agreement. The Contractor is responsible for ensuring
1145 that its employees comply with all applicable laws and regulations and meet all federal,
1146 state and local requirements related to their employment and position.

1147 Contractor shall provide suitable operations, health and safety training for all of its
1148 employees who use or operate equipment or who are otherwise directly involved in
1149 collection or other related operations.

1150 Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical,
1151 management and other personnel as may be necessary to provide the services required by
1152 this Agreement in a satisfactory, safe, economical and efficient manner. If additional
1153 personnel are required to meet the service specifications of this Agreement, Contractor
1154 shall provide such additional personnel.

1155 b. Personnel Identification. Contractor’s field operations personnel, who normally
1156 come into direct contact with the public, including drivers, shall bear some means of
1157 individual photographic identification such as a name tag or identification card.

1158 c. Driver’s Qualifications. All drivers shall be trained and qualified in the operation
1159 of vehicles they operate and must possess a valid license, of the appropriate class, issued
1160 by the California Department of Motor Vehicles. Each driver of a collection vehicle shall
1161 at all times comply with all applicable state and federal laws, regulations and
1162 requirements.

1163 d. Customer Service Personnel. Contractor shall employ and provide ongoing
1164 training to the number of customer service representatives (CSRs) necessary to provide
1165 an excellent level of customer service. The primary responsibility of the CSRs is
1166 answering and addressing telephone and e-mail requests including for, but not limited to,
1167 new service, service changes, missed-pickups and other service-related complaints and
1168 billing inquiries. CSRs shall be fully trained to address the entire range of customer
1169 service issues and shall be fully trained in the use of telecommunications devices for the
1170 deaf services to communicate with hearing-impaired customers.

1171 e. Employee Courtesy. Contractor shall train its employees in customer courtesy,
1172 shall prohibit the use of loud or profane language, and shall instruct collection crews to
1173 perform the work quietly. Contractor shall use its best efforts to assure that all employees
1174 present a neat appearance and conduct themselves in a courteous manner. If any
1175 employee is found to be discourteous or not to be performing services in the manner
1176 required by this Agreement, Contractor shall take all necessary corrective measures
1177 including, but not limited to, transfer, discipline or termination.

1178 f. Employee Gratuities. Excepting unsolicited gifts from customers to their
1179 collection vehicle personnel (e.g. holiday gifts), Contractor shall not, nor shall it permit
1180 any agent, employee, or subcontractors employed by it to request, solicit, demand, or
1181 accept, either directly or indirectly, any extra compensation or gratuity.

1182 **10.03 Collection Equipment.**

1183 a. General Provisions. All equipment used by Contractor in the performance of
1184 services under this Agreement shall be of a high quality. The vehicles shall be designed
1185 and operated so as to prevent collected materials from escaping from the vehicles.
1186 Hoppers shall be closed on top and on all sides with screening material to prevent
1187 collected materials from leaking, blowing or falling from the vehicles. All trucks and
1188 containers shall be watertight and shall be operated so that liquids do not spill during
1189 collection or in transit.

1190 b. Registration. All vehicles used by Contractor in providing collection services,
1191 except those vehicles used solely on Contractor's premises, must be registered with the
1192 California Department of Motor Vehicles.

1193 c. Requirements for Equipment. The Contractor shall keep its vehicles in good order
1194 and repair. The Contractor shall clean and wash the trucks at a sufficient frequency to
1195 keep them clean and neat at all times. The cab and forepart of each truck shall be a
1196 uniform color. The Contractor shall paint its name on the side of each truck. The
1197 Contractor shall at all times possess and maintain adequate equipment to perform this
1198 Agreement.

1199 d. Reserve Equipment. The Contractor shall have available to it, at all times, reserve
1200 collection equipment which can be put into service and operation within a reasonable
1201 period of time after any breakdown. Such reserve equipment shall correspond in size and
1202 capacity to the equipment used by the Contractor to perform the contractual duties.

1203 e. Vehicle Inspections. Contractor shall inspect each vehicle daily to ensure that all
1204 equipment is operating properly. Vehicles which are not operating properly shall be taken
1205 out of service until they are repaired and do operate properly. Contractor shall perform
1206 all scheduled maintenance functions in accordance with the manufacturer's specifications
1207 and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded

1208 according to date and mileage and shall make such records available to the City upon
1209 request.

1210 f. Operation. Vehicles shall be operated in compliance with the California Vehicle
1211 Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in
1212 excess of the manufacturer's recommendations or limitations imposed by state or local
1213 weight restrictions on vehicles.

1214 g. Low Emissions Requirement. Contractor shall convert or retrofit its collection
1215 fleet to use the most cost-effective means to reduce air pollutant emissions and be in full
1216 compliance with local, state and federal clean air requirements, including, but by no
1217 means limited to, the proposed California Air Resources Board Heavy Duty Engine
1218 Standards to be contained in CCR Title 13, Section 2020 et seq., and the Federal EPA's
1219 Highway Diesel Fuel Sulfur regulations.

1220

1221 If, and only if, a material change in law after the date of this Agreement requires that the
1222 vehicles purchased during the term of this Agreement must be modified or replaced to
1223 meet new clean air requirements, Contractor may apply for a rate adjustment pursuant to
1224 Section 5.01 of this Agreement. Knowledge shall be imputed to Contractor of the current
1225 and proposed regulations, both state and federal, relating to clean fuel and/or low
1226 emissions requirements for Solid waste or similar vehicles which are in effect or expected
1227 to become effective during the term of this Agreement. Any impact from such current or
1228 proposed regulations shall not constitute a material change in law.

1229 **Article 11. Record Keeping and Reporting Requirements**

1230 **11.01 Records, Reports and Compilations.**

1231 a. Confidentiality. Certain financial records and data prepared by Contractor or its
1232 Affiliates, relating to the cost of Contractor providing services under this Agreement,
1233 may contain or constitute confidential trade secret information which is proprietary to
1234 Contractor or its Affiliates. Contractor shall designate any such information as
1235 "Confidential" if and when it is inspected by the City and its agents. The City agrees to
1236 maintain the confidentiality of such records and data to the full extent permitted by law.
1237 The City agrees to notify Contractor of any request from any third party that files legal
1238 action against the City seeking release of such records and data. The City shall tender the
1239 defense of such action to Contractor and Contractor shall indemnify and hold the City
1240 harmless from any and all expenses associated with the defense of such action, including,
1241 without limitation, the City's attorneys' fees and costs and any attorneys fees awards or
1242 other judgments against the City.

1243 b. Records. Contractor shall maintain such accounting, statistical and other records
1244 related to its performance under this Agreement as shall be necessary to develop the
1245 financial statements and other reports required by this Agreement. Also, Contractor
1246 agrees to take direction from the City on matters related to this Agreement, conduct data
1247 collection, information and record keeping, and reporting activities needed to comply
1248 with applicable laws and regulations and to meet the reporting and Solid waste program
1249 management needs of the City and AB 939. To this extent, such requirements set out in
1250 this and other articles of this Agreement shall not be considered limiting or necessarily
1251 complete. In particular, this article is intended to only highlight the general nature of
1252 records and reports and is not meant to define exactly what the records and reports are to
1253 be and their content. Further, with the written direction or approval of the City Manager,
1254 the records and reports to be maintained and provided by Contractor in accordance with
1255 this and other articles of the Agreement may be adjusted in number, format, or frequency.

1256 c. Records Access. The City may designate one or more City employee(s) or
1257 independent contractor(s) who shall have full access to the Contractor's accounting,
1258 statistical and other records. The City's employee(s) or independent contractors shall be
1259 subject to such reasonable disclosure limitation as may be necessary to protect
1260 Contractor's trade secrets. These limitations, if necessary, shall be negotiated in good
1261 faith between Contractor and the City and commemorated in a separate legally binding
1262 document.

1263 d. Compiled Financial Statements. Contractor shall furnish to the designated
1264 employees or independent contractors a compilation prepared by Contractor, which shall
1265 include:

- 1266 • an examination of the consolidated balance sheets;
- 1267 • statement of income;
- 1268 • retained earnings;
- 1269 • statement of changes in financial position and/or statement of cash flows of
1270 Contractor and its subsidiaries, reflecting all revenues derived by Contractor
1271 from the provision of collection services under this Agreement;

1272 • information needed by the City or its consultant for reporting to the Waste
1273 Management Board; and

1274 • such schedules or additional statements as may be required to reasonably
1275 evaluate all costs and revenues attributable to, or derived from, operations under
1276 this Agreement.

1277 The compilation shall be furnished to the City within thirty (30) days if a request by City
1278 is made in writing.

1279 e. Inspection of Records. The designated City employees or independent contractors
1280 shall have the right to inspect and review the books, records and accounts of Contractor,
1281 including but not limited to Contractor's income tax returns, payroll tax reports, and other
1282 documents or records required under this Agreement, at all times during the term of this
1283 Agreement.

1284 f. Contractor's Agreements with Labor Organizations. The Contractor shall notify
1285 the City of the expiration dates for all labor contracts and inform the City of any issues
1286 relating to the collective bargaining process that could affect the Contractor's ability to
1287 perform under the terms of this Agreement.

1288 g. Statement of Number of Customers. The Contractor shall furnish to the City semi-
1289 annually a signed statement setting forth the Contractor's total number of SFD customers,
1290 MFD customers, commercial and industrial customers in the City as of the date of the
1291 statement. The statement shall also indicate the breakdown of the number of MFD,
1292 commercial and industrial customers receiving Recycling and Green waste collection
1293 services.

1294 **11.02 Record Retention.** Contractor shall maintain any and all letters, books of account,
1295 invoices, vouchers, canceled checks, and other records or documents evidencing or relating to
1296 charges for services or expenditures and disbursements charged to under this Agreement.
1297 Contractor shall retain all such records for at least three (3) years after termination or expiration
1298 of this Agreement.

1299 Contractor shall maintain all documents and records under this Agreement and shall make such
1300 documents and records available for inspection or audit, at any time during regular business
1301 hours, upon written request by the City Manager, City Attorney, City Auditor, or a designated
1302 representative of any of them. Copies of such documents shall be provided to the City for
1303 inspection at the City offices when it is practical to do so. Otherwise, unless an alternative site is
1304 mutually agreed upon, the records shall be available at Contractor's address indicated for receipt
1305 of notices in this Agreement.

1306 Where City has reason to believe that such records or documents may be lost or discarded due to
1307 the dissolution, disbandment or termination of Contractor's business, City may, by written
1308 request or demand of any of the above named officers, require that custody of the records be
1309 given to City and that the records and documents be maintained in City Hall. Access to such
1310 sequestered records and documents shall be granted to any party authorized by Contractor,
1311 Contractor's representatives, or Contractor's successor-in-interest.

1312 **11.03 Additional Reporting.** The Contractor shall furnish the City with any additional reports
1313 as may reasonably be required, such reports to be prepared within a reasonable time following
1314 the reporting period.

1315 Records shall be maintained in forms and by methods that facilitate flexible use of data
1316 contained in them to structure reports, as needed. Reports are intended to compile recorded data
1317 into useful forms of information that can be used to, among other things:

- 1318 a. Evaluate past and expected progress towards achieving goals and objectives;
- 1319 b. Determine needs for adjustment to programs; and,
- 1320 c. Evaluate customer service and complaints.

1321 **11.04 Solid waste Records.** Upon request by City, Contractor shall maintain Solid waste
1322 service and diversion records for all services provided within City relating to:

- 1323 a. Customer services and billing information (including names and addresses);
- 1324 b. Monthly tonnage figures by City for Solid waste collected, transferred, processed
1325 and disposed of by the Contractor, and by type of generator (commercial, industrial,
1326 multi-family, and residential).
- 1327 c. The number of residential on-call clean-ups completed;
- 1328 d. City services by agency, including City facilities and special events at which
1329 collection occurs;
- 1330 e. Routes and route maps;
- 1331 f. Facilities, equipment and personnel used;
- 1332 g. Processing and disposal of Solid waste;
- 1333 h. Complaints;
- 1334 i. Missed pick ups;
- 1335 j. C&D diversion;
- 1336 k. Transfer station diversion;
- 1337 l. E-waste tonnage collected.

1338 **11.05 CERCLA Disposal Records.** City views the ability to defend against Comprehensive
1339 Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a
1340 matter of great importance. For this reason, the City regards the ability to prove where Solid
1341 waste collected in the City was taken for transfer or disposal, as well as where it was not taken,
1342 to be matters of concern. Contractor shall maintain, retain and preserve records which can
1343 establish where Solid waste collected in the City was disposed (and therefore establish where it
1344 was not). This provision shall survive the expiration or earlier termination of this Agreement.
1345 Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or
1346 earlier termination of the Agreement, in an organized and indexed manner, and whether in
1347 physical (e.g. weigh tickets) and/or electronic form. City, however may elect to obtain such
1348 physical and electronic records at the expiration of the Agreement, or upon termination.

1349 **Article 12. Service Inquiries, Complaints and Quality of Service.**

1350 **12.01 Service Inquiries and Complaints.**

1351 a. Inquiries and Complaints. All service inquiries and complaints shall be directed
1352 to the Contractor. A representative of the Contractor shall be available to receive the
1353 complaints during normal business hours. All service complaints will be handled by the
1354 Contractor in a courteous, prompt and efficient manner. If there is a dispute between the
1355 Contractor and a customer, the matter will be reviewed and a decision made by the City
1356 Manager.

1357 b. Customer Service Log. The Contractor will utilize a file system to maintain a
1358 record of all inquiries and complaints, in a manner prescribed by the City. City may
1359 obtain a copy of a customer file system or inspect same at any time during normal
1360 business hours.

1361 c. Resolving Disputes. Contractor agrees that it is in the best interest of the City that
1362 all residential waste and Recyclable materials be collected on the scheduled collection
1363 day. Accordingly, missed collections will normally be collected as set forth in Articles 7
1364 and 8 above regardless of the reason that the collection was missed. However, if a
1365 customer requests missed collection service more than two times in any consecutive two
1366 month period, the City Manager will work with the Contractor to determine an
1367 appropriate resolution to that situation. If the Contractor believes a complaint to be
1368 without merit, the Contractor shall notify the City Manager, either by fax or e-mail. The
1369 City Manager will investigate all disputed complaints and render a decision.





1370 **12.02. Quality of Service.**

1371 a. Intent. Contractor acknowledges and agrees that one of City's primary goals in
1372 entering into this Agreement is to ensure that the collection services are of the highest
1373 caliber, that customer satisfaction remains at the highest level, that maximum diversion
1374 levels are achieved, and that materials collected are put to the highest and best use.

1375 b. Liquidated Damages. It is Contractor's duty to perform services under this
1376 Agreement in such a manner as to implement the goals set forth in subsection a. above.
1377 If Contractor fails to adequately perform the services set forth in this Agreement, City
1378 and its residents will be damaged, disadvantaged or denied the full benefit intended by
1379 the terms of this Agreement. City finds, and Contractor agrees, that as of the time of the
1380 execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain
1381 the extent of damages which shall be incurred by City as a result of a breach by
1382 Contractor of its obligations under this Agreement. The factors relating to the
1383 impracticability of ascertaining damages include, but are not limited to, the fact that: (i)
1384 substantial damage results to members of the public who are denied services or denied
1385 quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration,
1386 and deprivation of the benefits of the Agreement to individual members of the general
1387 public for whose benefit this Agreement exists, in subjective ways and in varying degrees
1388 of intensity which are incapable of measurement in precise monetary terms; (iii) that
1389 services might be available at substantially lower costs than alternative services and the
1390 monetary loss resulting from denial of services or denial of quality or reliable services is
1391 impossible to calculate in precise monetary terms; and (iv) the termination of this
1392 Agreement for such breaches, and other remedies is, at best, a means of future correction

1393 and not remedies which make the public whole for past breaches. However, a single
 1394 breach or pattern of breaches may result in the termination of this Agreement as described
 1395 in Section 14.02.

1396 c. Service Performance Standards; Liquidated Damages for Failure to Meet
 1397 Standards. The parties further acknowledge that consistent, reliable Solid waste
 1398 collection service is of utmost importance to City and that City has considered and relied
 1399 on Contractor's representations as to its quality of service commitment in awarding the
 1400 Agreement to it. The parties further recognize that some quantified standards of
 1401 performance are necessary and appropriate to ensure consistent and reliable service and
 1402 performance. The parties further recognize that if Contractor fails to achieve the
 1403 performance standards, or fails to submit required documents in a timely manner, City
 1404 and its residents will suffer damages and that it is and will be impractical and extremely
 1405 difficult to ascertain and determine the exact amount of damages that City will suffer.
 1406 Therefore, without prejudice to City's right to treat such non-performance as an event of
 1407 default under this Article 12, the parties agree that the following liquidated damage
 1408 amounts represent a reasonable estimate of the amount of such damages considering all
 1409 of the circumstances existing on the date of this Agreement, including the relationship of
 1410 the sums to the range of harm to City that reasonably could be anticipated and the
 1411 anticipation that proof of actual damages would be costly or inconvenient. In placing
 1412 their initials at the places provided, each party specifically confirms the accuracy of the
 1413 statements made above and the fact that each party has had ample opportunity to consult
 1414 with legal counsel and obtain an explanation of the liquidated damage provisions at the
 1415 time that the Agreement was made.

1416 **Contractor**  **City** 
 1417 **Initial Here**  **Initial Here** 

1418 Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set
 1419 forth below:

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a.	Failure to promptly repair damage to customer property caused by Contractor or its personnel after the determination of fault.	\$500.00 per incident per location.
b.	Failure to maintain or timely submit to City all documents and reports required under the provisions of this Agreement.	\$500.00 per incident per day.
c.	Failure to comply with the hours of operation as required by this Agreement.	\$500.00 per incident per day.
d.	Failure or neglect to complete at least ninety (90%) percent of each route on the regular scheduled collection service work day.	\$1,000.00 for each route not completed.

e.	For each failure to collect Solid waste, that has been properly set out for collection, from an established customer account on the scheduled collection day and not thereafter collected within one (1) working day.	\$150.00
f.	For each failure to forward unresolved customer complaints to City pursuant to Section 12.01 (c)	\$500.00
g.	Failure to provide cart (s), bins(s) or containers to an existing customer on next service day and new customer within three (3) days.	\$200.00
h.	For each failure to provide an on-call cleanup as provided in Section 7.08, 7.09, 8.04, 8.05	\$150.00
i.	Failure to provide collection as required for City-sponsored special events as provided for in Section 4.11.	\$1,000.00 per event.
j.	Keeping fraudulent or grossly inaccurate records or providing fraudulent records with regard to customer complaint logging, tracking and resolution.	\$10,000 per incident
k.	Failure to maintain accurate records.	\$200.00

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Prior to assessing liquidated damages, the City shall give Contractor written notice of any alleged breach of this Agreement that the City believes justifies the imposition of liquidated damages. Contractor shall have ten (10) days after its receipt of said notice to correct or cure the breach described in the City's notice. If the Contractor fails or refuses to correct or cure the breach, then the City may thereafter impose liquidated damages on Contractor for any breaches occurring after the 10-day notice period and those listed in the written notice and consistent with the other provisions of this Agreement.

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d. Procedure for Review of Liquidated Damages. The City Manager may assess liquidated damages under this Article 12 on a monthly or less frequent basis. At the end of each period, the City Manager shall issue a written notice to Contractor ("Notice of Assessment") of the liquidated damages assessed and the basis for each assessment.

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The assessment shall become final unless, within ten (10) calendar days of the date of the Notice of Assessment, Contractor provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made.

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The City Manager shall schedule a meeting between Contractor and the City Manager as soon as reasonably possible after timely receipt of Contractor's request. The City Manager shall review Contractor's evidence and render a decision sustaining or reversing the administrative charges as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to Contractor. An appeal of the City Manager's decision may be taken to the Board of Administrative Appeals pursuant to procedures set forth in Title 1, Chapter 8, of the OMC.

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1447 If Contractor does not submit a written request for a meeting within fourteen (14)
1448 calendar days of the date of the Notice of Assessment, the City Manager's determination
1449 shall be final and Contractor shall make payment within five (5) calendar days.

1450 City's assessment or collection of liquidated damages does not prevent City from
1451 exercising any other right or remedy, including the right to terminate this Agreement, for
1452 Contractor's failure to perform the work and services in the manner set forth in this
1453 Agreement.

1454 **12.03 City Cost Recovery.** In addition to the liquidated damages and other remedies set forth
1455 herein, the City may bill the Contractor for fees and costs associated with addressing issues
1456 related to verified franchise violations that have not been remedied by the Contractor within a
1457 reasonable period of time, and City efforts to resolve complaints against Contractor. In instances
1458 where no liquidated damage is provided for, or no liquidated damage is imposed, and the
1459 Contractor remains in non-compliance after the City has given Contractor reasonable time to
1460 resolve the complaints, the City may require Contractor to reimburse City for the reasonable
1461 costs associated with City staff addressing verified violations of the Agreement, including, but
1462 not limited to, failures to properly resolve customer complaints and activities undertaken to force
1463 the terms of this Agreement. The costs to be recovered may include fully loaded personnel costs,
1464 direct costs incurred by the City, and third party costs incurred by the City when reasonably
1465 necessary to address Contractor's failure to comply with all terms of this Agreement.

1466 **12.04 Performance Review.** City may at its sole discretion hold a public hearing at which
1467 Contractor shall be present and shall participate, to review its collection system services and
1468 performance. Performance review hearings may be scheduled by City during the rate-setting
1469 process or at any other time deemed appropriate by City. The purpose of the hearing is to provide
1470 for a discussion and review of technological, economic, and regulatory changes in order to
1471 achieve a continuing, advanced Solid waste system; and to ensure services are being provided
1472 with adequate quality, effectiveness and economy. City may require Contractor to distribute a
1473 customer satisfaction survey to all customers receiving service under this Agreement, which
1474 survey shall be approved by City prior to distribution.

1475 Topics for discussion and review at the performance review hearing may include, but shall not be
1476 limited to, services provided, feasibility of providing new services, application of new
1477 technologies, customer complaints, amendments to this Agreement, developments in the law,
1478 new initiatives for meeting or exceeding AB 939's goals, regulatory constraints and Contractor
1479 performance. City and Contractor may each select additional topics for discussion at any
1480 performance review hearing.

1481 At City's request, Contractor shall, at a minimum, submit a report to City indicating the
1482 following:

- 1483 a. Analysis of results of customer satisfaction survey, broken down by
1484 customer category and level of service.
- 1485 b. Changes recommended and/or new services to improve City's ability to
1486 continue to meet the goals of AB 939 and to contain costs and minimize impacts
1487 on rates.

1488 c. Any specific plans for provision of changed or new services by
1489 Contractor, including modifications to service to meet changing circumstances
1490 and customer preferences.

1491 This report shall be reviewed in a public hearing(s). Contractor may submit other relevant
1492 performance information and reports for consideration. City may request Contractor to submit
1493 additional specific information for the hearing. In addition, any customer may submit comments
1494 or complaints during or before the hearing, either orally or in writing, and these shall be
1495 considered.

1496 Not later than sixty (60) days after the conclusion of each performance review hearing, City may
1497 issue a report. As a result of the review, City may require Contractor to provide expanded or new
1498 services within a reasonable time and for reasonable rates and compensation and City may direct
1499 or take corrective actions for any performance inadequacies.

1500 **Article 13. Performance Bond; Insurance; Indemnification.**

1501 **13.01 Performance Bond.** Upon execution of this Agreement, the Contractor shall furnish to
1502 the City, and keep current, a performance bond, or other form of financial assurance acceptable
1503 to City, in the amount of \$25,000.00 for faithful performance of this Agreement; however, if
1504 Contractor proposes to assign this Agreement the amount of performance bond may be
1505 unilaterally increased by City roughly equal to three (3) months revenue under this Agreement
1506 for the faithful performance of its terms. The cost for providing the performance bond or other
1507 form of financial assurance shall be considered an allowable cost in determination of rates under
1508 Article 5.

1509 **13.02 Insurance.**

1510 a. Insurance Policies. Contractor shall secure and maintain throughout the term of
1511 this Agreement, insurance against claims for injuries to persons or damages to property
1512 which may arise from or in connection with Contractor's performance of work or services
1513 under this Agreement. Contractor's performance of work or services shall include
1514 performance by Contractor's employees, agents, representatives and subcontractors.

1515 b. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1516 1. The most recent editions of Insurance Services Office form number GL
1517 0002 covering Commercial or Comprehensive General Liability and Insurance
1518 Services Office form number GL 0404 covering Broad Form Comprehensive
1519 General Liability; or Insurance Services Office Commercial General Liability
1520 coverage ("occurrence" form CG 0001).

1521 2. The most recent editions of Insurance Services Office form number CA
1522 0001 covering Automobile Liability, code 1 "any auto."

1523 3. Worker's Compensation insurance as required by the Labor Code of the
1524 State of California and Employer's Liability Insurance.

1525 c. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1526 1. Commercial or Comprehensive General Liability: \$5,000,000 combined
1527 single limit per occurrence for bodily injury, personal injury and property damage.

1528 2. Automobile Liability: \$5,000,000 combined single limit per accident for
1529 bodily injury and property damage.

1530 3. Workers' Compensation and Employers Liability: Workers compensation
1531 limits as required by the Labor Code of the State of California and Employers
1532 Liability limits of \$1,000,000 per accident.

1533 e. Other Insurance Provisions. The policies are to contain, or be endorsed to contain,
1534 the following provisions:

1535 1. General Liability and Automobile Liability Coverages:

1536 (a) The City, its officials, directors, employees and volunteers are to be
1537 covered as additional insureds as respects: liability arising out of activities
1538 performed by or on behalf of Contractor; products and completed
1539 operations of Contractor; premises owned, leased or used by Contractor;
1540 or automobiles owned, leased, hired or borrowed by Contractor. The

1541 coverage shall contain no special limitations on the scope of protection
1542 afforded to the City, its officials, directors, employees or volunteers.

1543 (b) Contractor's insurance coverage shall be primary insurance as
1544 respects City, its officials, employees and volunteers. Any insurance or
1545 self-insurance maintained by City, its officials, employees or volunteers
1546 shall be excess of Contractor's insurance and shall not contribute with it.

1547 (c) Any failure to comply with reporting provisions of the policies
1548 shall not affect coverage provided to City, its officials, employees or
1549 volunteers.

1550 (d) Coverage shall state that Contractor's insurance shall apply
1551 separately to each insured against whom claim is made or suit is brought,
1552 except with respect to the limits of the insurer's liability.

1553 2. Workers' Compensation and Employers Liability Coverage. The insurer
1554 shall agree to waive all rights of subrogation against City, its officials, employees
1555 and volunteers for losses arising from work performed by Contractor for City
1556 except for the sole negligence of City.

1557 3. All Coverages. Each insurance policy required by this clause shall be
1558 endorsed to state that the coverage shall not be suspended, voided, canceled by
1559 either party, except after thirty days' prior written notice by certified mail, return
1560 receipts requested, has been given to City.

1561 f. Acceptability of Insurers. The insurance policies required by this section shall be
1562 issued by an insurance company or companies admitted to do business in the State of
1563 California and with a rating in the most recent edition of Best's Insurance Reports of size
1564 category VII or larger and a rating classification of A or better. To the extent permitted by
1565 law, all or any part of the required insurance may be provided under a plan of self-
1566 insurance.

1567 g. Verification of Coverage. Contractor shall annually furnish City with certificates
1568 of insurance and with original endorsements affecting coverage required by this clause.
1569 The certificates and endorsements for each insurance policy are to be signed by a person
1570 authorized by that insurer to bind coverage on its behalf. The certificates and
1571 endorsements are to be on forms provided by or acceptable to City and are to be received
1572 and approved by City before work commences.

1573 h. Subcontractors. Contractor shall include all subcontractors as insureds under its
1574 policies or shall furnish separate certificates and endorsements for each subcontractor. All
1575 coverages for subcontractors shall be subject to all of the requirements stated herein.

1576 i. Rights of Subrogation. All required insurance policies shall preclude any
1577 underwriter's rights of recovery or subrogation against City except for the sole
1578 negligence of City with the express intention of the parties being that the required
1579 insurance coverage protects both parties as the primary coverage for any and all losses
1580 covered by the above-described insurance. Contractor shall ensure that any companies
1581 issuing insurance to cover the requirements contained in this Agreement agree that they
1582 shall have no recourse against City for payment or assessments in any form on any policy
1583 of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event

1584 of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which City is
1585 named as an additional insured shall not apply to City.

1586 **13.03 Indemnification.**

1587 a. Indemnification. Contractor shall indemnify, defend and hold harmless City, its
1588 officers, directors, employees, volunteers and agents (collectively "indemnities") from
1589 and against any and all loss, liability, penalty, forfeiture, claim, demand, action,
1590 proceeding or suit of any and every kind and description (including, but not limited to,
1591 injury to and death of any person and damage to property, or for contribution or
1592 indemnity claimed by third parties) arising or resulting from and in any way connected
1593 with:

1594 (1) the negligence or willful misconduct of Contractor, its officers, employees,
1595 agents and/or subcontractors in performing services under this Agreement;

1596 (2) the failure of Contractor, its officers, employees, agents and/or applicable laws
1597 (including, without limitation, Environmental Laws) and regulations, and/or
1598 applicable permits and licenses;

1599 (3) the acts of Contractor, its officers, employees, agents and/or subcontractors in
1600 performing collection services under this Agreement for which strict liability is
1601 imposed by law (including, without limitation, environmental laws).

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1603 The foregoing indemnity applies regardless of whether the loss, liability, penalty,
1604 forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused
1605 in part by any of the indemnities' negligence, except this indemnity shall be limited to
1606 exclude coverage for intentional wrongful acts and active negligence of indemnities.
1607 Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and
1608 expense, defend (with attorneys acceptable to the City) the City, its officers, directors,
1609 employees, and agents against any claims, actions, suits or other proceedings, whether
1610 judicial, quasi-judicial or administrative in nature, arising or resulting from any events
1611 described in the immediately preceding paragraph.

1612 Contractor's duty to indemnify and defend shall survive the expiration or earlier
1613 termination of this Agreement.

1614 b. Hazardous Substances Indemnification. Contractor shall indemnify, defend with
1615 counsel selected by City, protect and hold harmless the City, its officers, directors,
1616 employees, volunteers, and agents (collectively, "indemnitees") from and against all
1617 claims, damages (including but not limited to special, consequential, natural resources
1618 and punitive damages), injuries, costs, (including without limit any and all responses,
1619 remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action,
1620 suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses
1621 (including without limit attorneys' and expert witness fees and costs incurred in
1622 connection with defending against any of the foregoing or in enforcing this indemnity),
1623 (collectively, "damages") of any kind whatsoever paid, incurred or suffered by, or
1624 asserted against, indemnitees arising from or attributable to the acts or omissions of
1625 Contractor, its officers, directors, employees, companies or agents, whether or not
1626 negligent or otherwise culpable, in connection with or related to the performance of this
1627 Agreement, including without limit damages arising from or attributable to any

1628 operations, repair, clean-up or detoxification, or preparation and implementation of any
1629 removal, remedial, response, closure, post-closure or other plan (regardless of whether
1630 undertaken due to governmental action) concerning any hazardous substance, hazardous
1631 waste, and/or house hazardous waste (collectively, "waste") at any places where
1632 Contractor transports, processes, stores or disposes of the Solid waste, and/or
1633 construction and street debris, or other waste collected under this Agreement. This
1634 indemnity afforded indemnitees, shall only be limited to exclude coverage for intentional
1635 wrongful acts and active negligence of indemnitees. The foregoing indemnity is intended
1636 to operate as an agreement pursuant to Section 107(e) of the Comprehensive
1637 Environmental Response, Compensation and Liability Act, CERCLA, 42 USC §9607(e)
1638 and California Health and Safety Code §25364, to defend, protect, hold harmless, and
1639 indemnify City from liability. This provision is in addition to all other provision in this
1640 Agreement and is intended to survive the end of the term of this Agreement. Nothing in
1641 this paragraph shall prevent the Contractor from seeking indemnification or contribution
1642 from persons or entities other than indemnitees, for any liabilities incurred by the
1643 Contractor, or the indemnitees. As appropriate, the parent company should provide the
1644 guarantees necessary to meet this provision. All costs of Contractor incurred in providing
1645 this indemnification and in defense of itself and related party entities, shall be disallowed
1646 for purposes of setting rates under this Agreement.

1647 c. Proposition 218 Indemnification. City intends to comply with all applicable laws
1648 concerning the setting of rates under this Agreement. Nonetheless, Contractor shall
1649 indemnify, defend and hold harmless the City, their officers, employees, agents and
1650 volunteers, (collectively, indemnitees) from and against all claims, damages, injuries,
1651 losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or
1652 administrative proceedings, interest fines, charges, penalties and expenses (including
1653 attorneys' and expert witness fees, expenditures for investigation, and administration) and
1654 costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or
1655 assessed against Contractor or any of the indemnitees resulting in any form from the
1656 City's setting of rates for service under this Agreement or in connection with the
1657 application of California Constitution Article XIII C and Article XIII D to the imposition,
1658 payment or collection of rates and fees for services provided by Contractor under this
1659 Agreement. Notwithstanding the foregoing, this indemnity shall not extend to any
1660 portion of the rates that is not associated with Contractor's costs in providing service,
1661 such as governmental fees, franchise fees or charges. Nothing herein is intended to imply
1662 that California Constitution Articles XIII C or XIII D, apply to the setting of rates for the
1663 services provided under this Agreement, rather this section is provided merely to allocate
1664 risk of loss as between the parties.

1665 d. AB 939 Indemnification. The Contractor agrees to indemnify and hold harmless
1666 City, its officers, directors, employees and agents from and against all fines and/or
1667 penalties imposed by the California Integrated Waste Management Board if the source
1668 reduction and recycling goals or any other requirement of AB 939 are not met by City
1669 with respect to the waste stream collected under this Agreement and such failure is due to
1670 the failure of Contractor to meet any obligation under this Agreement, including delays in
1671 providing information that prevents City from submitting reports required by AB 939 in a
1672 timely manner.

1673 In interpreting the foregoing AB 939 indemnification provision, Contractor and City are
1674 cognizant of Public Resources Code 40059.1 and agree that the intent of this Agreement

1675 is to provide Contractor with the breadth of rights and responsibilities to allow the City to
1676 meet its AB 939 diversion requirements through implementation of Contractor's
1677 programs. The program and services to be carried out by Contractor under this
1678 Agreement, as more particularly outlined in the service specifications (Exhibit A), are
1679 intended and expected to allow the City to meet its AB 939 diversion requirements,
1680 provided all programs are carried out consistently and competently, and with an
1681 aggressive program of outreach and customer education. Reliance by the City on
1682 Contractor's ability to provide programs and services that will consistently provide for
1683 City's compliance with AB 939 diversion requirements constitutes a material
1684 consideration for City to grant the exclusive rights and privileges contained herein.

1685 **ARTICLE 14. DEFAULT AND REMEDIES**

1686 **14.01 Events of Default.** All provisions of the franchise and this Agreement to be performed
1687 by Contractor are considered material. Each of the following shall constitute an event of default.

1688 a. Fraud or Deceit. If Contractor practices, or attempts to practice, any fraud and/or
1689 deceit upon City.

1690 b. Repeated Pattern of Breaches. If there is a pattern of breaches over time such that
1691 in combination, they constitute a material failure by Contractor to perform its obligations.

1692 c. Insolvency or Bankruptcy. If Contractor becomes insolvent, unable, or unwilling
1693 to pay its debts, or upon listing of an order for relief in favor of Contractor in a
1694 bankruptcy proceeding.

1695 d. Failure to Maintain Coverage. If Contractor fails to provide or maintain in full
1696 force and affect the workers' compensation, liability, or indemnification coverage as
1697 required by this Agreement.

1698 e. Violations of Regulation. If Contractor, its facilities, transfer station or disposal
1699 site, fall out of full regulatory compliance or Contractor violates any permits, orders or
1700 filings of any regulatory body having jurisdiction over Contractor which violation or non-
1701 compliance materially affects the Contractor's ability to perform under this Agreement,
1702 provided that Contractor may contest any such orders or filings by appropriate
1703 proceedings conducted in good faith, in which case no breach of the Agreement shall be
1704 deemed to have occurred during the pendency of the contestation or appeal, to the extent
1705 Contractor is able to adequately perform during that period.

1706 f. Result of Performance Review. Failure to provide information as requested for a
1707 performance review, or failure to adequately perform as revealed by a performance
1708 review, as provided in Section 12.04.

1709 g. Failure to Perform. If Contractor ceases to provide collection, transfer, transport,
1710 processing, or disposal services as required under this Agreement for a period of two (2)
1711 consecutive business days or more, including without limit, cessation of services due to
1712 work stoppages or slowdowns, strikes, sickouts, picketing or concerted job actions by
1713 Contractor's employees.

1714 h. Failure to Pay. If Contractor fails to make any payments required under this
1715 Agreement.

1716 i. Failure to Maintain or Supply Records. If Contractor fails to maintain and/or to
1717 provide City with required information, reports, and/or records in a timely manner as
1718 provided for in this Agreement.

1719 j. False or Misleading Statements. Any representation or disclosure made to City
1720 by Contractor in connection with or as an inducement to entering into this Agreement, or
1721 any future amendment to this Agreement or in conjunction with any application for a rate
1722 increase, which proves to be false or misleading in any material respect as of the time
1723 such representation or disclosure is made, whether or not any such representation or
1724 disclosure appears as part of this Agreement.

1725 k. Attachment. There is a seizure or attachment of, or levy on, the operating
1726 equipment of Contractor, including without limits its equipment, maintenance or office
1727 facilities, or any part thereof.

1728 l. Failure to Provide Assurance of Performance. If Contractor fails to provide
1729 reasonable assurances of performance as required under Section 13.01.

1730 m. Criminal Activity of Contractor. Should Contractor or any of its officers and
1731 directors be “found guilty” of felonious conduct relating to its obligations, or other
1732 felonious conduct at any of Contractor’s operations. The term “found guilty” shall be
1733 deemed to include any judicial determination that Contractor or any of Contractor’s
1734 officers, directors or employees is guilty, and any admission of guilt by Contractor, or
1735 any of Contractor’s officers, directors or employees including, the pleas of “guilty,”
1736 “nolo contendere,” “no contest,” or “guilty to a lesser felony” entered as part of any plea
1737 bargain. Such felonious conduct includes, but is not limited to any activities related to or
1738 carried out pursuant to this Agreement for: (i) price fixing, (ii) illegal transport or
1739 disposal of hazardous or toxic materials, (iii) bribery of public officials, or (iv) fraud or
1740 tampering. In the event of felonious conduct, City reserves the right to exercise one or
1741 more of the remedies specified below in Section 14.02. Such action shall be taken after
1742 Contractor has been given notice and an opportunity to present evidence in mitigation.

1743 n. Assignment. Contractor assigns this Agreement in violation of Section 16.08.
1744 Contractor shall be given two (2) business days from notification by the City to cure any
1745 default arising under subsections g, h, i, k, and l provided, however that the City shall not
1746 be obligated to provide Contractor with a notice and cure opportunity if the Contractor
1747 has committed the same or similar breach within a twenty-four (24) month period.

1748 However, notwithstanding anything contained herein to the contrary, for the failure of the
1749 Contractor to provide collection services for a period of two (2) consecutive work days, the City
1750 may secure the Contractor’s records on the fourth (4th) work day in order to provide interim
1751 collection services until the matter is resolved and the Contractor is again able to perform under
1752 this Agreement; provided, however, if the Contractor is unable for any reason to resume
1753 performance at the end of thirty (30) calendar days all liability of the City under this Agreement
1754 to the Contractor shall cease and this Agreement may be deemed terminated by the City. Interim
1755 collection service may be provided by City, or a designated third party, pursuant to Section 14.08
1756 of the Agreement, or otherwise.

1757 **14.02 Right to Terminate Upon Default**

1758 Upon a default by Contractor, the City shall give Contractor ten (10) days’ written notice of said
1759 default. Upon Contractor’s failure or refusal without legal excuse to correct, make good or cure
1760 said default within ten (10) days of said notice, the City Council shall have the right to terminate
1761 this Agreement upon a ten (10) business days notice if the public health or safety is threatened,
1762 without the need for any hearing, suit or legal action. If public health or safety is not immediately
1763 threatened the City Council may terminate after a hearing and subsequent thirty (30) days notice
1764 of the decision to terminate, without need for further hearing, suit or legal action. This right of
1765 termination is in addition to any other rights of City upon a failure of Contractor to perform its
1766 obligations under this Agreement.

1767 City’s right to terminate this Agreement and to take possession of Contractor’s equipment and
1768 facilities are not exclusive, and City’s termination of this Agreement shall not constitute an

1769 election of remedies. Instead, they shall be in addition to any and all other legal and equitable
1770 rights and remedies which City may have.

1771 By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality
1772 service, the lead time required to effect alternative service, and the rights granted by City to
1773 Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall
1774 be entitled to injunctive relief.

1775 **14.03 Effective Date.** In the event of the events specified above, and except as otherwise
1776 provided in those subsections, termination shall be effective upon the date specified in the City's
1777 written notice to the Contractor and upon that date this Agreement shall be deemed immediately
1778 terminated. Upon such termination all liability of the City under this Agreement to the Contractor
1779 shall cease, and the City shall have the right to call the performance bond and shall be free to
1780 negotiate with other contractors for the operation of the collection services. The Contractor for
1781 failure to perform shall reimburse the City all direct and indirect costs of providing interim
1782 collection services.

1783 **14.04 Termination Cumulative.** The City's right to terminate this Agreement is cumulative to
1784 any other rights and remedies provided by law or by this Agreement.

1785 **14.05 Excuse from Performance.** The parties shall be excused from performing their
1786 respective obligations hereunder in the event they are prevented from so performing by reason of
1787 floods, earthquakes, other "acts of God", war, civil insurrection, riots, acts of any government
1788 (including judicial action) and other similar catastrophic events, which are beyond the control of
1789 and not the fault of the party claiming excuse from performance hereunder. Labor unrest,
1790 including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other
1791 concerted job action conducted by Contractor's employees or directed at Contractor or its
1792 selected facilities is not an excuse from performance and Contractor shall be obligated to
1793 continue to provide service notwithstanding the occurrence of any or all of such events.

1794 The party claiming excuse from performance shall, within two (2) business days after such party
1795 has notice of such cause, give the other party notice of the facts constituting such cause and
1796 asserting its claim to excuse under this section.

1797 The interruption or discontinuance of Contractor's services caused by one or more of the events
1798 excused shall not constitute a default by Contractor under this Agreement. Notwithstanding the
1799 foregoing, however, if Contractor is excused from performing its obligations hereunder for any
1800 of the causes listed in this section for a period of seven (7) calendar days or more, City shall
1801 nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10)
1802 business days' notice, in which case the provisions relative to taking possession of Contractor's
1803 land, equipment and other property and engaging City's personnel in Section 14.08 and this
1804 Article will apply.

1805 **14.06 Assurance of Performance.** City may, at its option and in addition to all other remedies
1806 it may have, demand from Contractor reasonable assurances of timely and proper performance of
1807 this Agreement, in such form and substance as City may require. If Contractor fails or refuses to
1808 provide satisfactory assurances of timely and proper performance in the form and by the date
1809 required by City, such failure or refusal shall be an event of default.

1810 **14.07 City Remedies for Contractor Default.**

1811 City shall have the following rights:

- 1812 a. Waive Default. To, at its sole discretion, waive the Contractors' default.
- 1813 b. Termination. Terminate the Agreement in accordance with this Article.
- 1814 c. All Other Available Remedies. In addition to, or in lieu of termination, to
1815 exercise all of its remedies in accordance with this Article and any other remedies at law
1816 and in equity, to which City shall be entitled, according to proof.
- 1817 d. Damages Survive. If Contractor owes any damages upon City's termination of
1818 the Agreement, Contractor's liability under this Article shall survive termination.

1819 Whether or not City exercises its right to terminate, City shall have the right to: (i) seek
1820 performance by the surety under the letter of credit, performance bond or certificate of
1821 deposit (instrument for securing performance), and (ii) make a claim on any insurance
1822 policy or policies.

1823 **14.08 City Right to Perform Service.**

1824 a. General. In the event that Contractor, for any reason whatsoever, fails, refuses or
1825 is unable to collect, transfer, transport, process and dispose of any or all Solid waste
1826 which it is required by this Agreement, at the time and in the manner provided in this
1827 Agreement, for a period of more than three (3) business days, and if, as a result thereof,
1828 Solid waste should accumulate in the city to such an extent, in such a manner, or for such
1829 a time that the City should find that such accumulation endangers or menaces the public
1830 health, safety or welfare, then City shall have the right, but not the obligation, upon one
1831 business day prior written notice to Contractor during the period of such emergency as
1832 determined by the City Manager, to perform, or cause to be performed, such services.

1833 b. Billing and Compensation to City. During such time that City is providing Solid
1834 waste services, or causing them to be provided by a third party, Contractor shall bill and
1835 collect payment from all users of the above-mentioned services. Contractor further agrees
1836 that, in such event, it shall reimburse City for any and all costs and expenses incurred by
1837 City in providing the Solid waste service in such a manner and to an extent as would
1838 otherwise be required of Contractor under the terms of this Agreement. Such
1839 reimbursement shall be made from time to time after submission by City to Contractor of
1840 each statement listing such costs and expenses, but in no event later than five (5) business
1841 days from and after each such submission.

1842 c. City's Actions Not A Taking. City's exercise of its rights under this Section (1)
1843 does not constitute a taking of private property for which compensation must be paid, (2)
1844 will not create any liability on the part of City to Contractor (including loss of revenue by
1845 Contractor), and (3) does not exempt Contractor from any of the indemnity provisions of
1846 this Agreement, which are meant to extend to circumstances arising under this section.

1847 d. Duration of City's Performance. City's right pursuant to this section to render
1848 collection services shall terminate when City determines that such services can be
1849 resumed by Contractor; provided nothing in this section is intended to limit such other
1850 rights as City has under this Article.

1851 **Article 15. Modifications to the Agreement**

1852 **15.01 Modifications.** The City shall have the power to make changes in this Agreement as the
1853 result of changes in law, changes in the City of Oakley Municipal Code, or both, to impose new
1854 rules and regulations on the Contractor under this Agreement relative to the scope and methods
1855 of providing collection services as may be necessary or desirable to meet City's responsibilities
1856 with regard to public welfare, sanitation, health and AB 939. The City shall give the Contractor
1857 notice of any proposed change and an opportunity to be heard concerning those matters. The
1858 scope and method of providing collection services under this Agreement shall also be liberally
1859 construed to include, but not be limited to, the manner, procedures, operations and obligations,
1860 financial or otherwise, of the Contractor.

1861 **15.02 Change in Law.** The City and the Contractor understand and agree that the California
1862 Legislature and other regulatory bodies have the authority to make comprehensive changes in
1863 Solid waste management legislation and that these and other changes in law in the future which
1864 mandate certain actions or programs for counties or municipalities may require changes or
1865 modifications in some of the terms, conditions or obligations under this Agreement. The
1866 Contractor agrees that the terms and provisions of the City of Oakley Municipal Code, as it now
1867 exists or as it may be amended, shall apply to all of the provisions of this Agreement.

1868 If any future change in law (including new laws, regulations, policies, mandates, guidance
1869 documents) or the City code materially alter the obligations of the Contractor, then the affected
1870 service rates, as established in Exhibit B of this Agreement, will be adjusted.

1871 Nothing in this Agreement requires any party to perform any act or function contrary to law. The
1872 City and Contractor agree to enter into good faith negotiations regarding modifications to this
1873 Agreement which may be required in order to implement changes in the interest of the public
1874 welfare or due to change in law. When such modifications are made to this Agreement, the City
1875 and the Contractor shall negotiate in good faith, a reasonable and appropriate compensation
1876 adjustment for any increase or decrease in the services or other obligations required of the
1877 Contractor due to any modification in the Agreement. The City and the Contractor shall not
1878 unreasonably withhold agreement to such compensation adjustment.

1879 **15.03 Amendments.** This Agreement may be modified or amended only by a written document
1880 executed by both the Contractor and the City, and approved as to form by the City Attorney.

1881 **Article 16. Miscellaneous Provisions**

1882 **16.01 New Services and Container Inventory.** Contractor shall provide collection service to
1883 any new customer within one business day of receiving such request. Contractor shall provide
1884 new customer requested debris boxes within one (1) business day of receiving such request and
1885 by next service day for existing customers. Contractor shall provide new customer requested
1886 carts and bins by the next regular pickup day. If a request for new service or for a change of
1887 service is received in the form of a voicemail message or an e-mail, the time of receipt of the
1888 request shall be considered to be the time of the customer's transmission of the message.
1889 Contractor shall maintain an adequate inventory of each type of container as is necessary to meet
1890 these requirements.

1891 **16.02 Report of Accumulation of Solid waste.** Contractor shall direct its drivers to note (1)
1892 the addresses of any premises at which they observe that Solid waste is accumulating and is not
1893 being delivered for collection; and (2) the address, or other location description, at which Solid
1894 waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the
1895 address or description to City within five (5) business days of such observation.

1896 **16.03 Emergency Services.** Contractor shall as soon as practically possible and normally
1897 within four (4) hours of notice from the City, provide collection services in order to remove
1898 debris resulting from a disaster or other emergency event (declared or not), unless upon a
1899 reasonable effort Contractor is unable to do so. In particular, Contractor shall under City's
1900 direction utilize such personnel, drop boxes, and/or drop box vehicles as are reasonably available
1901 to collect and transport debris and the Contractor will be reasonably compensated for said work
1902 performed.

1903 **16.04 Load Inspection Program.** Contractor shall develop and implement a public education
1904 program designed to educate generators regarding proper methods of handling and disposing of
1905 hazardous waste and a load inspection program for Contractor's personnel to detect and discover
1906 hazardous waste placed by generator for collection by Contractor. Collection vehicle drivers
1907 shall be trained by Contractor to inspect containers prior to collection when practical.

1908 In the event a collection vehicle driver finds hazardous waste at the point of collection and such
1909 waste is in an uncovered or leaking container that would be unsafe to leave, the hazardous waste
1910 shall be left in the collection container and Contractor's environmental technician shall be
1911 notified to handle the issue with the generator. Environmental technicians shall help guide the
1912 generator to safely containerize the hazardous waste and shall explain the generator's options for
1913 proper disposition of such material. Under no circumstances shall Contractor's employees
1914 knowingly collect hazardous waste or remove unsafe or poorly containerized hazardous waste
1915 from a collection container. In the event an extremely hazardous waste is found in a collection
1916 container or collection area, such as an explosive or large quantity of concentrated corrosive
1917 material, Contractor shall immediately notify the appropriate regulatory authorities.

1918 If materials collected by Contractor are delivered to a facility owned by Contractor for purposes
1919 of transfer, processing, or disposal, load checkers and equipment operators at such facility shall
1920 conduct inspections in areas where collection vehicles unload Solid waste, Recyclable materials,
1921 Green waste, or Green waste and food waste to identify hazardous wastes. Facility personnel
1922 shall remove these materials for storage in an on-site hazardous materials storage container(s).
1923 Contractor shall make reasonable efforts to identify and notify the generator. Contractor shall
1924 arrange for removal of the hazardous wastes by permitted haulers in accordance with applicable
1925 laws and regulatory requirements.

1926 Contractor shall comply with emergency notification procedures required by applicable laws and
1927 regulatory requirements. All records required by regulations shall be maintained at the
1928 Contractor's facility. These records shall include: waste manifests, waste inventories, waste
1929 characterization records, inspection records, incident reports, and training records.

1930 **16.05 Independent Contractor.** In the performance of services under this Agreement,
1931 Contractor is an independent contractor and not an officer, agent, servant or employee of City.
1932 Contractor shall have exclusive control of the details of the services and work performed and
1933 over all persons performing such services and work. Contractor shall be solely responsible for
1934 the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any.
1935 Neither Contractor nor its officers, employees, agents, contractors or subcontractors shall obtain
1936 any right to retirement benefits, workers compensation benefits, or any other benefits which
1937 accrue to City employees, and Contractor expressly waives any claim it may have or acquire to
1938 such benefits.

1939 **16.06 Laws to Govern.** This Agreement and all matters relating to it shall be governed by the
1940 laws of the State of California.

1941 **16.07 Consent to Jurisdiction.** The parties agreed that any litigation between City and
1942 Contractor concerning or arising out of this Agreement shall be filed and maintained exclusively
1943 in the courts of County of Contra Costa, Martinez, State of California, or in the United States
1944 District Court for the Northern District of California. Each party consents to service of process
1945 in any manner authorized by California or Federal law.

1946 **16.08 Assignment.** No assignment of this Agreement or any right occurring under this
1947 Agreement shall be made in whole or in part by the Contractor without the express written
1948 consent of the City. The City shall have full discretion to approve or deny, with or without cause,
1949 any proposed or actual assignment by the Contractor. City may perform a detailed review of all
1950 aspects of any proposed assignment and Contractor shall provide all documents and information
1951 requested by City to facilitate its review. All costs of City in performing such a review will be
1952 reimbursable by Contractor to City on demand. Any assignment of this Agreement made by the
1953 Contractor without the express written consent of the City shall be void and shall be grounds for
1954 the City to declare a default of this Agreement and immediately terminate this Agreement by
1955 giving written notice to the Contractor, and upon the date of such notice this Agreement shall be
1956 deemed immediately terminated, and upon such termination all liability of the City under this
1957 Agreement to the Contractor shall cease, and the City shall have the right to call the performance
1958 bond and shall be free to negotiate with other contractors, the Contractor, or any other person or
1959 company for the service which is the subject of this Agreement. In the event of any assignment,
1960 the assignee shall fully assume all the liabilities of the Contractor.

1961 The use of a subcontractor to perform services under this Agreement shall not constitute
1962 delegation of Contractor's duties provided that Contractor has received prior written
1963 authorization from the City Manager to subcontract such services and the City Manager has
1964 approved a subcontractor who will perform such services. Contractor shall be responsible for
1965 directing the work of Contractor's subcontractors and any compensation due or payable to
1966 Contractor's subcontractor shall be the sole responsibility of Contractor. The City Manager shall
1967 have the right to require the removal of any approved subcontractor for reasonable cause.

1968 **16.09 Nondiscrimination.** In the performance of all work and services under this Agreement,
1969 Contractor shall not discriminate against any person on the basis of such person's race, sex,
1970 color, national origin, religion, marital status or sexual orientation. Contractor shall comply with

1971 all applicable local, state and federal laws and regulations regarding nondiscrimination, including
1972 those prohibiting discrimination in employment.

1973 **16.10 Compliance with Laws.** In the performance of this Agreement, Contractor shall comply
1974 with all applicable laws, regulations, ordinances and codes of the federal, state and local
1975 governments, including the City of Oakley Municipal Code.

1976 City shall provide written notice to Contractor of any planned amendment to the Oakley
1977 Municipal Code that would substantially affect the performance of Contractor's services under
1978 this Agreement. Such notice shall be provided at least thirty (30) calendar days before the City
1979 Council's approval of such an amendment.

1980 **16.11 Permits and Licenses.** Contractor shall obtain, at its own expense, all permits and
1981 licenses required by law or ordinance, specifically including the City business license, and
1982 maintain them in effect throughout the term of this Agreement. Contractor shall provide proof of
1983 such permits, licenses or approvals and shall demonstrate compliance with them upon the request
1984 of the City Manager.

1985 **16.12 Point of Contact.** The day-to-day dealings between the Contractor and the City shall be
1986 between the Contractor and the City Manager or his or her designee.

1987 **16.13 Notices.** Whenever either party desires to give notice to the other, it must be given by
1988 written notice addressed to the party for whom it is intended, at the place last specified as the
1989 place for giving of notice in compliance with this paragraph. For the present, the parties
1990 designate the following as the respective persons and places for giving of notice:

1991

As to the City:

City Manager

City of Oakley

3231 Main Street

Oakley, CA 94561

As to the Contractor:

Oakley Disposal Service, Inc.

P.O. Box 5397

Concord, CA 94520

1992 Notices shall be effective when received at the address as specified above. Changes in the
1993 respective address to which such notice is to be directed may be made by written notice.
1994 Facsimile transmission is acceptable notice, effective when received, however, facsimile
1995 transmissions received (i.e. printed) after 4:30 p.m. or on weekends or holidays, will be deemed
1996 received on the next business day. The original of items that are transmitted by facsimile
1997 equipment must also be mailed.

1998 **16.14 Entire Agreement.** This Agreement is the result of mutual drafting efforts of the parties,
1999 both of whom were represented by counsel. Therefore, no interpretation shall be given to this
2000 Agreement which would favor one party or the other because of the identity of the drafter. This
2001 Agreement and the attached Exhibits constitute the entire Agreement and understanding between
2002 the parties, and it shall not be considered modified, altered, changed or amended in any respect
2003 unless in writing and signed by the parties. The ODS/ISD Franchise Agreement and all
2004 amendments to it are expressly superseded in total by this Agreement. In addition, all prior
2005 written and oral communications, including correspondence, drafts, memoranda and
2006 representations, are superseded by this Agreement.

2007 **16.15 Severability.** If any provision of this Agreement or the application of it to any person or
2008 situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement
2009 shall not be affected, shall continue in effect.

2010 **16.16 Right to Require Performance.** The failure of the City at any time to require
2011 performance by the Contractor of any provision of this Agreement does not affect the right of the
2012 City thereafter to enforce the provision, nor shall waiver by the City of any breach of any
2013 provision be held to be a waiver of any succeeding breach of the provision or as a waiver of any
2014 provision itself.

2015 **16.17 Headings.** Headings in this document are for convenience of reference only and are not
2016 to be considered in any interpretation of this Agreement.

2017 **16.18 Exhibits.** Each Exhibit referred to in this Agreement forms an essential part of this
2018 Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this
2019 reference. The list of exhibits is set forth at the end of the Table of Contents.

2020 **16.19 Incorporation of City's Municipal Code.** This Agreement is entered into under the
2021 authority of the ordinances contained with the City's Municipal Code and the Municipal Code is
2022 hereby incorporated in and made a part of this Agreement by reference. To the extent there is a
2023 conflict between the Municipal Code and this Agreement, specifically as concerns Title 4,
2024 Chapter 20 thereof, the terms and provisions of the Municipal Code shall prevail.

2025 **16.20 Authority to Execute.** Contractor warrants that it has the authority to enter in to this
2026 Agreement and that the officers signing below have the authority to bind the Contractor.

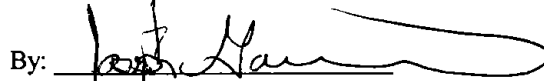
2027 **16.21 Effective Date.** This Agreement shall take effect when it is properly executed by the
2028 City and the Contractor, and that date shall be reflected in the opening paragraph.

2029 IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement on the
2030 respective date(s) below each signature.

CITY OF OAKLEY

OAKLEY DISPOSAL SERVICE, INC.

By: 
Bryan H. Montgomery, City Manager

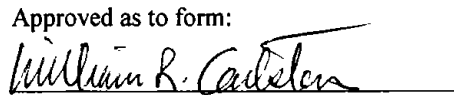
By: 
Joe Garaventa

Date: 6/2/10

Date: 6/7/10

Attest:

Nancy Ortenblad, City Clerk

Approved as to form:

William R. Galstan, Special Counsel

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Exhibit A

Service Specifications:

Description of Collection, Recycling and Education Services and Programs

I. Residential Collection Services

Solid waste

Contractor will offer a fully automated collection service for Solid waste. Each single family dwelling will have a choice of four cart sizes for refuse collection (32-gallon, 64-gallon or 96-gallon). On a weekly basis the carts will be serviced at the curb by an automated collection vehicle and tip the contents into the body of the vehicle. Drivers will provide special consideration for on-premises services as described below (i.e. seniors, disabled).

Only Garbage shall be placed in the garbage cart. Customers shall be instructed to place their cart out the night before their collection day or by 5:00 a.m. on their service day. At least three (3) feet of space shall be between the garbage cart and any other object including Green waste and recycling carts, mailboxes or portable basketball hoops. The cart will be placed on the street in front of the curb for street side pickup. The cart's front will face out to the street.

Customers with extra Garbage or large Bulky items can call customer service prior to their service day to arrange for extra service for a fee, as described in Exhibit B.

Recycling

Contractor will offer automated collection services for recycling. Each single family dwelling will receive a 64-gallon cart for recycling. On a weekly basis the carts will be serviced on the same day as their regular garbage pick up day at the curb. The carts will be serviced by an automated collection vehicle which will tip the contents into the body of the vehicle. Drivers will provide special consideration for on-premises service as described below (i.e. seniors, disabled).

Customers will not have to source separate Recyclable material. All material will be deposited into the 64-gallon recycling cart. The cart will be placed on the street in front of the curb for street side pickup. The cart's front will face out to the street. Contractor will provide a 64-gallon recycling cart for those customers with special needs such as disability or storage limitations or a 96-gallon recycling cart for those customers who generate excess Recyclable material. This option will not be an advertised service, but provided on a case by case as needed basis. Additional carts for Recyclable material will be available for the rate set forth in Exhibit B. Customers shall be instructed to place their cart out the night before their collection day or by 5:00 a.m. on their service day. At least three (3) feet of space shall be between the garbage cart and any other object including Green waste and recycling carts, mailboxes, portable basketball hoops, etc.

Acceptable Recyclable material:

- ◆ All plastic containers #1-7
- ◆ Aluminum and tin cans
- ◆ Glass bottles and jars of all colors

- 2077 ♦ White paper
- 2078 ♦ Envelopes (with or without windows)
- 2079 ♦ Computer print out paper (with blue/green stripe)
- 2080 ♦ Adding machine tape
- 2081 ♦ Colored paper
- 2082 ♦ Fax paper
- 2083 ♦ White & carbonless forms
- 2084 ♦ Laser printer paper
- 2085 ♦ Manila folders and envelopes
- 2086 ♦ Magazines
- 2087 ♦ Newspapers
- 2088 ♦ Cardboard (3'x3' in size, no larger)
- 2089 ♦ Phone books
- 2090 ♦ Junk mail
- 2091 ♦ Construction paper
- 2092 ♦ Aluminum foil
- 2093 ♦ Scrap metal and small metal appliances

2094
2095 Unacceptable Recyclable material:

- 2096 ♦ Plastic bags
- 2097 ♦ Carbon paper
- 2098 ♦ Spiral or bound notebooks
- 2099 ♦ Food/snack waste
- 2100 ♦ Restroom waste
- 2101 ♦ Tyvek (overnight envelopes)
- 2102 ♦ Food wrappers
- 2103 ♦ Cookware/Ceramics
- 2104 ♦ Window glass or mirrors
- 2105 ♦ Shrink wrap
- 2106 ♦ Polystyrene/Styrofoam

2107
2108 All contaminated containers will be tagged for customer education purposes.

2109
2110 **Green waste**

2111 Each single family dwelling will receive a 96-gallon cart for Green waste collection. On a bi-weekly basis (every other week) the carts will be serviced on the same day as regular garbage pick up at the curb. An automated collection vehicle will tip the contents into the body of the vehicle. Customers will be notified annually of their collection schedule. Contractor will provide a 64-gallon Green waste cart for those customers with special needs such as disability or storage limitations. This option will not be an advertised service, but provided on a case by case as needed basis. Drivers will provide special consideration for on-premises service as described below (i.e. seniors, disabled).

2119
2120 Guidelines for collection are:

- 2121 ♦ Place Green waste directly into the cart.
- 2122 ♦ Do not bag or place Green waste in any container before placing it in the cart.

- 2123 ♦ Place the cart on the street in front of the curb for street side pickup.
- 2124 ♦ Face the cart's front out to the street.
- 2125 ♦ Leave at least three (3) feet of clear space on either side of the cart. Keep cart away from any
- 2126 mailboxes, carts or cars.

2127
2128 Acceptable Green waste material:

- 2129 ♦ Grass clippings
- 2130 ♦ Brush
- 2131 ♦ Weeds and leaves
- 2132 ♦ Hay and straw
- 2133 ♦ Prunings
- 2134 ♦ Tree trimmings
- 2135 ♦ Tree branches 6 inches or less in diameter and 3 feet or less in length

2136
2137 Unacceptable Green waste material:

- 2138 ♦ Plastic bags
- 2139 ♦ Rocks or concrete
- 2140 ♦ Sod and dirt
- 2141 ♦ Loose fruits and vegetables
- 2142 ♦ Tree trunks, stumps, palm fronds
- 2143 ♦ Branches more than 6 inches in diameter or more than 3 feet in length
- 2144 ♦ Pet waste

2145
2146 All contaminated containers will be tagged for customer education purposes.

2147
2148

2149 **On-Premises Service**

2150
2151 Contractor shall provide on-premises collection of residential Solid waste, Recyclable materials
2152 and Green waste to a SFD customer if all adult customers residing there have disabilities that
2153 prevent them from setting their Garbage, Recycling or Green waste cart at the curb for collection
2154 and if a request for on-premises service has been made to, and approved by, the City Manager in
2155 the manner required by City. On premises service shall include pickup and replacement of carts
2156 within the front or side yard and return of the cart to such location. The Contractor shall
2157 authorize on-premises service in appropriate circumstances.

2158
2159 **On Call Bulky waste Cleanup Program**

2160
2161 Contractor will offer residential customers two (2) on-call curbside Bulky waste cleanups and/or
2162 recycle cleanups per year. The Bulky waste cleanup program allows a maximum of two (2)
2163 cubic yards per cleanup or the equivalent of fourteen (14) thirty-two gallon bags. Pick up will be
2164 on the same day as regular garbage service. Contractor provides large item pick-up for a fee as
2165 outlined in Exhibit B. For customer convenience, Contractor utilizes a voice mail system so
2166 customers may leave messages after business hours including requests for scheduling on-call
2167 collection service. Guidelines will be as follows:

2168
2169 Guidelines for collection:

- 2170 ♦ Place items at the curb by 5:00 a.m., preferably the night before the cleanup day.
- 2171 ♦ All items must be stacked in one place.
- 2172 ♦ Bag or tie items with rope, cord, tape or string strong enough to keep the bundle intact or
- 2173 place in disposable containers. All containers will be taken including metal and plastic trash
- 2174 cans.
- 2175 ♦ Place cleanup items in a single pile at a distance of 4 feet or more from all carts.

2176
2177 Unacceptable Bulky waste material:

- 2178 ♦ No item may weigh more than 150 lbs. or be longer than 4 feet. Bags cannot weigh more
- 2179 than 50 pounds.
- 2180 ♦ No televisions or computer monitors.
- 2181 ♦ No household hazardous wastes including paint, motor oil, car batteries, antifreeze, solvents,
- 2182 pesticides, cleaners.
- 2183 ♦ No large car parts (tires, transmission blocks, engines, etc.) or large furniture.
- 2184 ♦ No rocks, dirt or concrete.
- 2185 ♦ No refrigerators, freezers, air conditioners or other appliances with Freon.
- 2186 ♦ No tree stumps or large tree trunks.
- 2187 ♦ Do not place cleanup items near or in front of refuse or recycling carts.
- 2188 ♦ No loose piles

2189
2190 **On Call Recycle Cleanups**

2191
2192 Contractor will offer residential customers two (2) on-call curbside recycling cleanups and/or

2193 Bulky waste cleanups per year. A recycling cleanup is for recycling extra Green waste and/or

2194 for extra corrugated cardboard. Residents will call customer service to schedule a pickup a week

2195 in advance.

2196
2197 Guidelines:

- 2198 ♦ After filling Green waste cart, place extra clippings in containers that are 32-gallons or less in
- 2199 volume. Maximum 75 lbs. per container. Containers will not be taken away. Do not use
- 2200 plastic bags.
- 2201 ♦ Tree branches and prunings must be 3 feet or less in length and 6 inches or less in diameter.
- 2202 ♦ Trim cardboard to 3 feet or less on each side, flatten and bundle with string.
- 2203 ♦ For pickups, place bundled cardboard or Green waste containers at the curb by 5:30 a.m. or,
- 2204 preferably, the night before.
- 2205 ♦ Keep extra material at least 4 feet away from carts.

2206
2207 **Motor Oil and Oil Filters**

2208 Customers will be able to recycle motor oil and oil filters. Customers will call customer service

2209 to schedule a pickup. Contractor will provide a prepackaged kit to the requesting customer to

2210 place and store the motor oil and oil filters for collection. Customers are allowed a maximum of

2211 three (3) gallons of oil per pick up.

2212
2213
2214 Used motor oil and filters will not be collected during the On-Call Bulky waste Cleanups.

2215
2216

2217 **II. Multifamily Collection Services**
2218

2219 **Solid waste**

2220 Multifamily residents subscribing individually for service will receive carts for Solid waste,
2221 Recycling and Green waste. These customers will receive service that is very similar to the type
2222 described for single family dwellings. Multi-family residents who do not subscribe individually
2223 for service will be provided with carts (32-gallon, 64-gallon or 96-gallon) or front end load
2224 containers ranging in size from two (2) cubic yards to six (6) cubic yards. Collection frequency
2225 will be at a minimum once a week. Contractor provides large item pick-up for a fee as described
2226 in Exhibit B.

2227
2228 Contractor will service compactor containers as long as the compactor meets collection vehicle
2229 specifications.

2230 **Recycling**

2231
2232 Recycling service will be provided to all complexes and individuals in multifamily complexes
2233 unless the City determines otherwise. A one year implementation timeline for mandatory
2234 multifamily single stream recycling will be provided to the City within thirty (30) days following
2235 the approval of this Agreement. Carts or front-end load containers will be used for recycling. The
2236 types of material collected will be the same as detailed under Residential Recycling Services.
2237

2238
2239 Multifamily residents who subscribe individually for service will receive
2240 instructions/information that is similar to residents of single family dwellings. Those residents of
2241 multifamily complexes not subscribing to individual service will receive information through the
2242 facility manager, if available or the property owner. Contractor will bill the facility manager,
2243 landlord or homeowners association for the service in cases where front load containers are
2244 utilized.

2245
2246 The City of Oakley reserves the right to review service criteria (space limitations, impractical
2247 service, lack of recycle material, lack of commitment to separate material from Solid waste) and
2248 require any adjustments to the program. Contractor will work with all multifamily customers to
2249 maximize recycling services and minimize additional overall cost of service upon request of the
2250 customer.

2251
2252 Contractor will service compactor containers as long as the compactor meets our collection
2253 vehicle specifications.

2254 **Green waste**

2255 Green waste service will be offered to all complexes and individuals in multifamily complexes
2256 unless the City determines otherwise. Carts or drop boxes will be used.
2257

2258
2259 The City of Oakley reserves the right to review service criteria (space limitations, impractical
2260 service, lack of recycle material) and approve any exemptions from the program. Contractor will
2261 work with all multifamily customers to maximize Green waste services and minimize additional
2262 overall cost of service upon request by the customer.
2263

2264

2265 **On Call Bulky waste Cleanup**

2266 Multifamily residents subscribing individually for service will receive on-call Bulky waste
2267 cleanups as described under Residential Services. Contractor provides large item pick-up for a
2268 fee as described in Exhibit B.

2269
2270 Multifamily residents subscribing to bin service have the option of scheduling debris boxes for
2271 complex clean ups according to the fees set forth in Exhibit B. The property manager or
2272 designated representative must call in advance to schedule a box. The customer service
2273 department will determine the appropriate box size based on the size of the complex. Contractor
2274 will provide the property manager/designee with information to distribute to their tenants
2275 regarding acceptable material for the cleanups. No hazardous waste or white goods containing
2276 Freon will be allowed. Bin service customers cannot request individual cleanups. All other
2277 guidelines apply as described in Residential Services. Contractor provides large item pick-up for
2278 a fee as described in Exhibit B.

2279
2280 **On Call Recycle Cleanups**

2281 Multifamily residents subscribing individually for service will receive the same information as
2282 residential customers described in Residential Services for on-call recycle cleanups. Green waste
2283 exempt customers will not be eligible for Green waste cleanups. Those residents of multifamily
2284 complexes not subscribing to individual service will receive (2) cardboard on-call cleanups only.
2285 The facility manager will coordinate with Contractor whether a bin, debris box or other
2286 collection method would best suit their need.

2287
2288
2289 **III. Commercial/Industrial Collection Services**

2290
2291 **Solid waste**

2292 Commercial and industrial customers are serviced in a variety of ways depending upon their
2293 location, frequency and amount of service required, accessibility and where they are situated
2294 relative to other customers with similar service requirements and as described in Section 9 of this
2295 Agreement. Commercial and Industrial customers will typically be serviced in one of three
2296 ways. The most common means of managing materials generated by this segment of the
2297 customer base is the use of small containers/bins for collection by front end load vehicles. These
2298 containers come in multiple sizes and can be configured to various dimensions in order to fit a
2299 given refuse enclosure. These bins are typically utilized for collection of Refuse and Recyclable
2300 material and will be available for Green waste service.

2301
2302 Drop boxes are used in circumstances where the generator has a large amount of material that
2303 would require too frequent service of a front end load container. These boxes also come in
2304 multiple shapes and sizes and are transported by roll-off collection vehicles equipped with a hoist
2305 to lower and raise the container onto the bed of the vehicle for transport. These containers are
2306 typically used for Refuse, Recyclable material and Green waste. These boxes must have a
2307 minimum of twice a month service. However, the City of Oakley may require more frequent
2308 service based upon health or public nuisance issues.

2309
2310 Some customers may be better served by use of containers equipped with compactors. These
2311 receptacles are generally very useful for Bulky waste and material that is easily compacted in
2312 order to maximize payloads. Roll-off collection vehicles are also utilized to transport and

2313 exchange compactor boxes. Contractor will provide service at the compacted rate as long as the
2314 customer supplies their own compactor.

2315
2316 In certain instances where commercial customers do not require a large degree of service,
2317 commercial carts are utilized. These containers are identical to those employed in serving
2318 residential customers and typically are used by small business owners who do not generate a
2319 large amount of refuse or recyclables. These carts are generally serviced by the vehicles serving
2320 the residential customers.

2321
2322 Contractor will work closely with commercial and industrial customers to determine the most
2323 efficient and cost effective service options available to them.

2324
2325 **Recycling**

2326 Contractor will provide City with an implementation timeline with benchmarks for commercial
2327 recycling and Green waste implementation within sixty (60) days of the implementation of the
2328 Residential Single Stream Program. The timeline shall include a start date for mandatory
2329 commercial recycling.

2330
2331 After program implementation, progress reports will be submitted upon request by City. This
2332 report will include, but is not limited to name of customer, current solid waste and recycling
2333 service level, new service level, potential diversion and customer cost savings and the names of
2334 customers who refuse to participate.

2335
2336 Contractor will offer a range of recycling services to commercial customers:

- 2337
2338 ♦ Send a Waste Assessment Survey and commercial recycling mailer outlining new services to
2339 all commercial customers.
2340 ♦ Meet with large waste generators to identify potential recycle waste streams and source
2341 reduction opportunities.
2342 ♦ Conduct on-site Waste Assessments upon request for all commercial customers. Make
2343 recycling and source reduction recommendations.
2344 ♦ Attend and speak to business organizations such as the Chamber of Commerce.
2345 ♦ Review current service levels of all commercial customers. Determine potential for recycling
2346 and contact customer.

2347 Contractor will work with all commercial customers to maximize recycling services and
2348 minimize additional overall cost of service.

2349
2350

2351
2352 **Commercial/Industrial Diversion Requirements**

2353 Contractor will use all commercially reasonable efforts to implement a comprehensive,
2354 commercial/industrial recycling, reuse and diversion program to maximize the amount of Solid
2355 waste that can be diverted from this segment of the City's waste stream. The implementation
2356 timeline mentioned above will include diversion rate benchmarks which can be used to evaluate
2357 the effectiveness of the program.

2358
2359
2360

2361 **IV. Construction and Demolition**

2362 Construction and demolition debris means wood, wallboard, metal, glass, paper, plastic, concrete
2363 and other recyclable and non-recyclable Solid wastes, including Mixed waste, generated by
2364 residential, commercial and industrial demolition, remodeling, and construction activities.
2365 Containers are available in sizes including six (6) cubic yards and ranging from twenty (20)
2366 cubic yards to forty (40) cubic yards.

2367
2368 Construction and Demolition (C&D) customers must contact a customer service representative
2369 (CSR) at Contractor to arrange for service. The CSR will ask if the drop box contains recycle
2370 material and will direct Construction and demolition debris, including dirt and cement, to a
2371 permitted processing facility. The diversion goal of these mixed loads at the processing facility is
2372 a minimum fifty (50%) percent. The customer will indicate on their order form, by checking the
2373 applicable box, if they need documentation to comply with the City of Oakley Municipal Code.
2374 Contractor will report to the City any flagrant violations of the City C&D Ordinance. Contractor
2375 will obtain a fifty (50%) percent or greater diversion from mixed C&D customers on a bin by bin
2376 basis. Bins where a fifty (50%) percent diversion rate cannot be achieved must be hauled and
2377 noted as Solid waste. Prior to servicing mixed C&D bins as Solid waste, customer must be
2378 notified.

2379
2380 **VI. Holiday Tree Recycling**

2381
2382 **Residential**

2383 Contractor will offer two options for residential customers for recycling holiday trees:

- 2384 ♦ Green waste cart collection – Place unflocked tree in green waste cart. Branches must be 6
2385 inches or less in diameter and 3 feet or less in length. Cut off treetops.
2386 ♦ Recycling - Contractor shall provide annual Holiday tree collection pick up and recycling.
2387 This service shall be provided during the first three weeks of each year at a time and in a
2388 manner to be mutually agreed upon by City and Contractor.
2389

2390 Information and instructions for the Holiday Tree Collection Program will be sent to residential
2391 customers as a bill insert upon City approval.
2392

2393 **Multifamily**

2394 A flyer, approved by the City, will be sent to multifamily complexes notifying them of their tree
2395 recycling options and program guidelines. Multifamily accounts can use their existing green
2396 waste bins for recycling, or schedule a green waste recycling roll off bin.
2397

2398 **Commercial**

2399 Commercial customers will receive the same options for recycling holiday trees as are offered to
2400 Residential customers. Commercial accounts can also use their existing green waste bins for
2401 recycling or the free drop off locations described above.
2402

2403 Guidelines for residential, multifamily and commercial customers:

- 2404 • Remove stands, whether metal, plastic or wood.
2405 • No flocked or artificial trees.
2406 • Remove lights, ornaments, tinsel and other trimming from branches.
2407
2408

2409 **VII. Electronic Recycling**

2410 Contractor will offer a curbside collection program for computer monitors, televisions and other
2411 electronic equipment (universal waste) for single family, multi-family and commercial
2412 customers.
2413

2414
2415 Single family, multifamily and commercial customers can call Contractor customer service a
2416 week in advance of when they want their pick up to arrange for the collection of electronic
2417 equipment for a fee as described in Exhibit B. Multi-family and commercial customers that do
2418 not have individual billing may, for a prepaid fee as described in Exhibit B, request an on
2419 property pick-up. For commercial customers, this material will need to be placed in a location
2420 accessible to larger vehicles. Multifamily customers will be asked where their material will be
2421 located for collection. If the customer does not provide this information, the customer will be
2422 asked to place the material near their garbage enclosure.
2423

2424 Collection arrangements that have not been made according to the guidelines above will not be
2425 picked up and a non-collection notice will be left with information on how to schedule.
2426

2427 **VIII. Public Education**

2428
2429 Contractor will develop materials that convey instructions and information to residential,
2430 multifamily and commercial customers. Information will be distributed to customers on an
2431 annual basis, at a minimum. Multifamily and commercial literature may differ slightly due to
2432 collection differences. This information will include:
2433

- 2434 ♦ Garbage collection guidelines
- 2435 ♦ Recycle collection guidelines
- 2436 ♦ Green waste collection guidelines
- 2437 ♦ On call cleanup guidelines
- 2438 ♦ Recycle cleanups
- 2439 ♦ Set out of oil and oil filters
- 2440 ♦ Spacing between carts
- 2441 ♦ Recycling Drop Off Center
- 2442 ♦ Hazardous waste guidelines
- 2443 ♦ How to Reach Us
- 2444 ♦ Payment Options
- 2445 ♦ Service Questions
- 2446 ♦ Vacation policy
- 2447 ♦ Holidays
- 2448 ♦ Holiday Tree Collection Program as described on page 10.
- 2449 ♦ Website
- 2450 ♦ Customer Complaint Resolution Process
- 2451 ♦ Electronic Waste Recycling

2452
2453
2454 Single Stream Implementation Outreach- An implementation plan will be submitted to the City
2455 for approval sixty (60) days after contract approval. The implementation plan will include, but is

2456 not limited to: dates for cart delivery and start date of new services; types of outreach methods to
2457 be used (brochures, workshops, meetings, personal contact, etc. stickers; press releases and
2458 newspaper ads). The City will approve all educational material within a reasonable time period
2459 that enables implementation deadlines to be met.

2460

2461 **IX. City Services**

2462 City facilities will be provided service at no charge to City as specified in Section 4.04 of this
2463 Agreement.

2464

2465 **X. Outreach to Schools**

2466 Contractor has a separate Agreement with the Oakley Unified School District. Contractor will
2467 include all solid waste and recycle tons in their quarterly recycle reports to the City.

2468

2469 **XI. Scope of Services**

2470 Nothing contained herein is intended to modify the definitions of Solid waste or the scope of
2471 exempt waste as set forth in this Agreement or City ordinances, including but not limited to
2472 Oakley Municipal Code, Title 4, Chapter 20. The City's ordinances, the Agreement and this
2473 Exhibit A shall be interpreted in a manner so as to harmonize any inconsistencies.

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Exhibit B

Service Rates

Standard service – Residential:

- 32 gallon weekly solid waste wheeled cart service, includes weekly commingled recycling service in a 64 gallon blue wheeled cart and alternating week collection of green waste in a 96 gallon green wheeled cart \$24.95
- 64 gallon weekly solid waste wheeled cart service, includes weekly commingled recycling service in a 64 gallon blue wheeled cart and alternating week collection of green waste in a 96 gallon green wheeled cart \$34.90
- 96 gallon weekly solid waste wheeled cart service, includes weekly commingled recycling service in a 64 gallon blue wheeled cart and alternating week collection of green waste in a 96 gallon green wheeled cart \$39.60

Extra weekly recurring service – Residential:

- Additional solid waste wheeled cart service
 - 32 gallon wheeled carts (each) \$24.95
 - 64 gallon wheeled carts (each) \$34.90
 - 96 gallon wheeled carts (each) \$39.60
- Additional recycling or green waste wheeled carts (each) \$7.85

Extra one time collection services – Residential

In addition to the above there is a standard price list across the Contra Costa and Solano Counties for Extras. That price list includes refrigerators, tires, CRTs and other E-waste, 33 gallon bags, bulky items, etc. The pricing on the Extras list is periodically changed to reflect the cost of disposing of these items e.g. the cost of Freon removal from refrigerators. This price list is generally not subject to jurisdictional approval as the cost of disposal of many of the items is too variable to be based on an annual formula.

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Exhibit C

City Facilities and Special Collection Services

City Facilities shall include but not be limited to the following:

City Hall and adjacent City buildings

Library

City parks and related buildings and facilities.