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**AMENDED AND RESTATED AGREEMENT  
BETWEEN THE CITY OF CHINO AND  
USA WASTE OF CALIFORNIA, INC.  
FOR THE PROVISION OF INTEGRATED WASTE MANAGEMENT SERVICES**

This AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF CHINO AND USA WASTE OF CALIFORNIA, INC. FOR THE PROVISION OF INTEGRATED WASTE MANAGEMENT SERVICES (“Agreement”) is effective as of December 16, 2025 (the “Effective Date”) (with commencement of services contemplated by this Agreement beginning on January 1, 2026, or as statutory or regulatory enforcement obligations arise under Applicable Law (the “Commencement Date”) by and between the City of Chino (“City”) and USA Waste of California Inc., a Delaware Corporation (“Contractor”) for integrated waste management services. City and Contractor are occasionally referred to herein individually as a “party” and collectively as the “parties”.

**RECITALS**

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time (“AB 939”), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Discarded Materials, as defined herein, handling within their jurisdictions; and

**WHEREAS**, AB 939 requires cities and counties to reduce, reuse, and recycle (including composting) Discarded Materials generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment; and

**WHEREAS**, Assembly Bill (AB) 341 of 2011 places requirements on businesses and multi- family property owners that generate a specified threshold amount of Discarded Materials to arrange for recycling services and requires the City to implement a mandatory commercial recycling program; and

**WHEREAS**, Assembly Bill (AB) 1826 of 2014 requires businesses and multi-family property owners that generate a specified threshold amount of organic waste per week to arrange for recycling services for that waste, requires cities to implement a recycling program to divert organic waste from businesses subject to the law, and requires cities to implement a mandatory commercial organics recycling program; and

**WHEREAS**, Senate Bill (SB) 1383, the Short- lived Climate Pollutant Reduction Act of 2016, requires the California Department of Resources Recycling and Recovery (“CalRecycle”) to develop regulations to reduce organics in landfills as a source of methane. As adopted by CalRecycle, these SB 1383 Regulations place requirements on multiple entities including the City of Chino's residential households, commercial businesses and business owners, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

**WHEREAS**, the City Council of the City of Chino declares its intention of maintaining reasonable rates for the collection, transportation, recycling, composting, and disposal of Discarded Materials and for providing temporary bin/roll-off services to commercial and residential premises within the City of Chino; and

**WHEREAS**, City awarded to Contractor an Agreement dated May 16, 2017, which became effective as of January 1, 2018 (the “Existing Agreement”), which is still in effect; and

**WHEREAS**, SB 1383 requires the City to implement certain organic waste collection programs and other regulatory requirements; and

**WHEREAS**, the City has chosen to delegate some of its responsibilities for Discarded Materials as set forth in SB 1383 and Chino Municipal Code (Chapters 8.16 and 8.18) to the Contractor through this Agreement; and

**WHEREAS**, the parties desire to amend and restate the Existing Agreement accordingly.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, TERMS, AND CONDITIONS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:**

## **1. GRANT OF EXCLUSIVE FRANCHISE**

The Existing Agreement granted Contractor an exclusive Franchise for the collection, handling and processing of Discarded Materials within the City of Chino. This Agreement continues and restates such exclusive Franchise as provided herein and pursuant to the City of Chino Municipal Code (Chapters 8.16 and 8.18) and California Public Resources Code Section 40059(a)(1), all of which permits Contractor’s Franchise for the collection, transportation, transfer, recycling, composting, and disposal of Solid Waste, Green Waste, Food Waste, Recyclable Materials, Organic Waste and Construction and Demolition Waste and for providing temporary Bin/Roll-Off Box services for all Commercial Premises and Residential Premises within the City of Chino. City reserves the right to amend City Ordinances in any manner necessary for the safety or welfare of the public or to protect the public interest. This Agreement shall be in force and effect beginning Effective Date within the corporate City Limits as they now or may hereafter exist, as shown in Exhibit “A.”

## **2. DEFINITIONS**

Whenever any term used in this Agreement has been defined by the City of Chino Municipal Code (Chapters 8.16 and 8.18), California Code of Regulations, or California Public Resources Code, the definitions in the City Code, California Code of Regulations, or Public Resources Code shall apply.

2.1 AB 939 - means the California Integrated Waste Management Act of 1989, as it may be amended from time to time.

2.2 Affiliate (non-capitalized and all variations thereof) - means all businesses (including corporations, limited and general partnerships, and sole proprietorships) that are directly

or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management and shall be deemed to be “affiliated with” Contractor and included within the term “affiliates” as used herein. An affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in Contractor, and/or a business that is also owned, controlled, or managed by any business or individual that has a direct or indirect ownership interest in Contractor.

2.3 Applicable Law - means all Federal, State, county, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirements of any governmental entity (including City Ordinances) or regulatory or quasi-regulatory authority having jurisdiction over an aspect of the collection services, including judicial interpretations thereof, that are in force on the Effective Date including without limitation AB 939, AB 341, AB 1826, and SB 1383 and all implementing regulations of CalRecycle, as may be enacted, issued or amended thereafter, until termination or expiration of this Agreement.

2.4 Approved C&D Processing Facility - means the facility identified on Exhibit “D,” that is licensed for the handling, processing and Recycling or disposal (as appropriate) of Construction and Demolition Debris, and which is Contractor selected and City approved.

2.5 Approved Organic Waste Processing Facility - means the facility identified on Exhibit “D,” that is licensed for the handling, processing and Recycling or disposal (as appropriate) of Organic Waste, and which is Contractor selected and City approved.

2.6 Approved Source Separated Recyclable Materials Processing Facility - means the facility identified on Exhibit “D,” that is licensed for the handling, processing and Recycling of Source Separated Recyclables, and which is Contractor selected and City approved.

2.7 Approved Transfer Facility - means the facility identified on Exhibit “D,” which is a transfer station owned or operated by Contractor or its affiliates, and which is Contractor selected and City approved.

2.8 Bins - means those Containers provided by Contractor for Commercial Premises and Multi-Family Premises. Bins are Containers usually 2-6 cubic yards in size, which are picked up by trucks by means of front loading apparatus; Bin sizes vary depending on the manufacturer, and any reference to Bin sizes in this Agreement is an approximation subject to +/- 10% of the stated capacity.

2.9 Biohazardous or Biomedical Wastes - means wastes, which may cause disease or reasonably be suspected of harboring pathogenic organisms, including, but not limited to, waste resulting from the operation of medical clinics, hospitals and other facilities producing wastes that may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, infectious waste, hypodermic needles, contaminated clothing and surgical gloves.

2.10 Blue Container – means that Container provided by Contractor, as described in 14 CCR Section 18982.2(a)(5), to be used for the purpose of storage and collection of Blue Container

Waste. Blue Containers shall comply with the color requirements of 14 CCR Section 18984.7 upon such time as new or replaced Containers are put into service in accordance with Section 5.1.a.ii..

2.11 Blue Container Waste – means (1) Source Separated Recyclables, and (2) Source Separated Organic Waste that is not designated for placement in a Green Container (e.g., paper, untreated wood). Blue Container Waste does not include Excluded Waste.

2.12 Bulky Goods - means discarded appliances (including refrigerators), furniture, carpets, mattresses, E-Waste, bundled and tied yard waste and/or wood waste that does not qualify as Green Waste due to its size, and similar large items which can be safely handled by two (2) people or weigh no more than two hundred (200) pounds and require special collection due to their size or nature, but can be collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. Bulky Goods must be generated by the Customer and at the service address from which the Bulky Goods are collected. Bulky Goods do not include abandoned automobiles, auto parts, trees, Construction and Demolition Debris, tires, jacuzzi tubs or spas, hot tubs, trampolines or items that cannot be handled by two persons. Bulky Goods are considered Discarded Material for purposes of this Agreement. Bulky Goods do not include Excluded Waste.

2.13 Business Days – means any day except any Saturday, any Sunday, and any day which is a Federal legal holiday in the United States.

2.14 California Code of Regulations or CCR - means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR, Division 7, Chapter 12” refers to Title 14, Division 7, Chapter 12 of the California Code of Regulations).

2.15 CalRecycle - means California's Department of Resources Recycling and Recovery, which is the State Department designated with responsibility for developing, implementing, and enforcing SB 1383 and related Applicable Laws on jurisdictions and other regulated entities.

2.16 Cart - means a plastic container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of approximately no less than 32-gallons and no greater than 96-gallons. Cart sizes vary depending on the manufacturer, and any reference to Cart sizes in this Agreement is an approximation of +/- 10% of the stated capacity.

2.17 City Limits - means the boundaries of the City of Chino together with all amendments and annexations thereto, which boundaries are shown by maps incorporated herein by reference and which are on file in the Office of the City Clerk of the City Council, as shown in Exhibit “A” hereto.

2.18 Collection Location – means the appropriate location for placement of Containers at a locale appropriate and accessible for Contractor’s collection of Discarded Materials in

accordance with the City of Chino Municipal Code and as determined by Contractor. Collection Locations for Single Family Residential Units, for example, are generally Curbside.

2.19 Commercial Premises - means Customers at all premises in the City other than Residential Premises upon which a business activity is conducted including but not limited to retail sales, wholesale operations, manufacturing, assembling, storage, industrial operations, and services, including, but not limited to, professional services, hospitality services, and restaurant and food services, but excluding Single Family Dwellings upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. The term “Commercial Premises” includes, but is not limited to, stores, offices, Federal and local governmental facilities, including, but not limited to, schools, school district offices, special districts and water districts (to the extent provided by law), restaurants, manufacturing, processing, assembly shops or plants, or other industrial facilities, hospitals, clinics, community care facilities, convalescent centers and nursing homes, rooming houses, hotels, motels or other transient occupancy facilities.

2.20 Compost, Compost(ing) or Compostable(s), or any variation thereof – means the product, process or materials, resulting from, or related to, the controlled biological decomposition of Organic Wastes that are Source Separated from the stream of other Discarded Materials, or which are separated at a centralized facility.

2.21 Container – means any and all types of receptacles compliant with Applicable Law for Discarded Material, including Carts, Bins, and Roll-Off Boxes.

2.22 Contamination Fee - means a special fee, as specified in Exhibit “C” hereto, charged by Contractor to Customers with either (i) Prohibited Container Contaminants to recover Contractor’s costs for separating and processing Prohibited Container Contaminants from materials collected by Contractor in accordance with this Agreement, or (ii) for arranging special, unscheduled collections, due to placement of Prohibited Container Contaminants, or (iii) resolving Customer violations relating to Excluded Waste.

2.23 “CPI” - means the Consumer Price Index CUSR0000SEHG02 CPI-U Garbage and Trash Collection, US City Average, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics.

2.24 Contractor - means USA Waste of California, Inc., a Delaware Corporation, the entity granted the Franchise pursuant to this Agreement.

2.25 Construction and Demolition Debris or C&D Debris - means used or discarded construction materials removed from a premise during the construction, remodeling, grading, land clearing, renovation, demolition, or other similar construction or demolition activities, including

rocks, soil, tree remains, and other Green Waste, which normally results from, and is ancillary to, land clearing or land development operations, construction or demolition.

2.26 Curbside - means a Collection Location for placement of Containers that provides for convenient and efficient access by Contractor's collection equipment from the side of a road or sidewalk, or near to the curb.

2.27 Customer - means any person or entity receiving service from Contractor under this Agreement, or the person arranging and obligated to pay for services pursuant to this Agreement, as the case may be, for collection, handling and processing of Discarded Materials. The Customer may or may not be the Generator of Discarded Materials.

2.28 Discarded Materials - means Recyclable Materials, Organic Waste, Solid Waste, and Construction and Demolition Debris placed by a Customer or Generator in a Container and/or at a Collection Location for the purposes of collection, handling and processing by Contractor. For the purpose of this Agreement, Discarded Materials does not include Edible Food or Excluded Waste.

2.29 Disposal Facility – means El Sobrante Landfill, located 10910 Dawson Canyon Road, Temescal Valley, California 92883, or such other Landfill owned or operated by Contractor or its affiliates licensed, permitted and operational to accept and dispose of Gray Container Waste. Currently, Gray Container Waste is deposited at the El Sobrante Landfill. The Contractor shall use its best efforts to assure that the waste continues to be deposited at a legally permitted Landfill should Riverside County change its methods of waste management or its waste stream management. The Contractor guarantees that should there be no remaining capacity at the El Sobrante Landfill at any time during the Term of this Agreement, it will take the City's Gray Container Waste to an alternate Landfill owned or operated by Contractor at the same price that the City would have paid at El Sobrante or Contractor may request a rate adjustment for increased costs as set forth in Section 16.

2.30 Divert or Diversion - means activities which reduce or eliminate Discarded Materials from disposal in Landfills (pursuant to 14 CCR Division 7, Chapter 12, Article 2), incineration, gasification or transformation, as defined in Public Resources Code Section 40201. Diversion includes but is not limited to Source Reduction, reuse, salvage, Recycling, and Composting.

2.31 Edible Food – means food intended for, and remains suitable for, human consumption. For the purposes of this Agreement, Edible Food is not a Discarded Material if it is recovered for redistribution to persons or organizations for human consumption, and thus not discarded for Contractor collection. Edible Food does not include food that does not meet the food safety requirements of the California Retail Food Code and nothing in this Agreement requires or authorizes the recovery of food not meeting such standards.

2.32 E-Waste - means discarded electronic devices, as that term is defined in 22 CCR Section 66273.9. Examples of E-Waste include: computer monitors, televisions, cash registers and oscilloscopes (CRT devices), computers, computer peripherals, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders,

compact disc players/recorders, calculators, and some appliances. E-Waste does not mean a major appliance, as defined in Public Resources Code Section 42166, or other devices which are: (1) comprised largely of metals; (2) qualify as “scrap metal” as defined in Section 66260.10; and (3) are Recycled.

2.33 Excluded Waste - means Biomedical Waste, Hazardous Waste, Hazardous Substances, Universal Waste, Special Waste, volatile, corrosive, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon disposal, be a violation of Applicable Law, including land use restrictions or conditions, waste that cannot be disposed of in Class III Landfills, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Containers after implementation of programs for the safe collection, Recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Contractor is not required to collect Excluded Waste.

2.34 Food Waste - means all food waste such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells and Compostable Food-Soiled Paper. Food Waste excludes fats, oils, and grease when such materials are Source Separated from other Food Waste. Food Waste does not include Edible Food if it is recovered for redistribution to persons or organizations for human consumption, and thus not discarded for Contractor collection.

2.35 Food-Soiled Paper - means Compostable paper material that has come in contact with food or liquid, such as, but not limited to, Compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons. Food-Soiled Paper is a subset of Food Waste. Food-Soiled Paper does not include non-Compostable paper.

2.36 Franchise - means the exclusive right and privilege granted by this Agreement to Contractor for its collection, handling and processing of Discarded Materials.

2.37 Franchise Fee - means the fee or assessment under Section 9 of this Agreement imposed by the City on Contractor because of its status as party to this Agreement, Contractor’s privilege in holding the Franchise granted hereunder, and which, inter alia, is intended to offset the City’s expense in administering this Franchise; and to compensate the City for damage to its streets, sidewalks, curbs and gutters and other infrastructure resulting from Contractor’s exercise of this Franchise, the expenses of administering the program, reporting requirements under Applicable Law, and other related expenses.

2.38 Generator - means a Customer or any person whose act first causes Discarded Materials or Excluded Waste to become subject to regulation under this Agreement or under Federal, State, or local regulations.

2.39 Gray Container - means that Container provided by Contractor, as described in 14 CCR Section 18982(a)(28), to be used for the purpose of storage and collection of Gray Container Waste.



2.40 Gray Container Waste - means all Solid Waste that is not otherwise designated for Source Separation into, and storage in, the Green or Blue Containers. Gray Container Waste does not include Excluded Waste.

2.41 Green Container – means that Container provided by Contractor, as described in 14 CCR Section 18982.2(a)(5), to be used for the purpose of storage and collection of Green Container Waste.

2.42 Green Container Waste – means Source Separated Organic Waste that is not designated for placement or storage in a Blue Container (i.e., Green Waste and Food Waste) or Gray Container. Green Container Waste does not include Excluded Waste.

2.43 Green Waste - means leaves, grass, clippings, brush and branches generated from landscapes or gardens at Residential, Multi-Family or Commercial Premises, and incidental pieces of untreated scrap lumber resulting from yard and landscaping installation, maintenance, or removal that have been Source Separated, and similar materials generated at any premises that fit within a Customer's Contractor-provided Green Waste Container. Materials not meeting these specifications are considered Bulky Goods when separated from other Discarded Materials and properly placed by the Customer for collection by Contractor as Bulky Goods in accordance with this Agreement. "Green Waste" includes Holiday trees but does not include materials that do not fully fit within the provided Green Container without overflow. Green Waste does not include Excluded Waste.

2.44 Gross Receipts - means any and all revenue actually received from all billings (whether by Contractor or City) that are directly or indirectly paid to, or recouped by, Contractor, and compensation in any form of Contractor or its subsidiaries, parent companies or other affiliates for the collection and transportation of Discarded Materials pursuant to this Agreement, in accordance with generally accepted accounting principles, including, but not limited to, monthly Customer fees for collection of Discarded Materials. Excluded from Contractor's "Gross Receipts" are amounts received from Organic Waste disposal and processing charges, revenue from the sale of Organic Waste products or Recyclable Materials, and special fees charged by Contractor intended to reimburse Contractor from costs arising from improper actions by Customers (e.g. Contamination Fee and Overage Fee), fees paid by Contractor to the City, and City administration and billing fees.

2.45 Hazardous Substances – means any of the following: (a) any substance defined, regulated or listed (directly or by reference) as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601, et seq.; (ii) the Hazardous Materials Transportation Act, 49 USC Section 5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; (iv) the Clean Water Act, 33 USC Section 1251, et seq.; (v) California Health and Safety Code Sections 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7401, et seq.; and (vii) California Water Code Section 13050; (b) any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereinafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as hazardous or toxic or

regulated under any other applicable federal, State, and local environmental laws currently existing or hereinafter enacted, including without limitation, friable asbestos, polychlorinated biphenyl (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.

2.46 Hazardous Waste - means waste defined as hazardous by Health and Safety Code Section 25117, including: (1) a waste or combination of wastes which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may either (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (b) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of, or otherwise managed; (2) a waste which meets any of the criteria for the identification of a hazardous waste adopted by the California Environmental Protection Agency’s Division of Toxic Substances Control pursuant to Health and Safety Code Section 25141; (3) any chemical, pollutant, contaminant, hazardous or toxic substance, constituent or material that under Applicable Law is considered to be hazardous or toxic or is or may be required to be remediated, including, without limitation, (a) any petroleum or petroleum products and their derivatives, radioactive materials, asbestos in any form that is or could become friable, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls and processes and certain cooling systems that use chlorofluorocarbons, or (b) any chemicals, materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” or any words of similar import pursuant to Applicable Law.

2.47 Hauler Route - means the designated itinerary or sequence of stops for each segment of the City’s collection service area, as defined in 14 CCR Section 18982(a)(31.5).

2.48 Household Hazardous Waste or HHW - means waste materials meeting the requirements of 14 CCR Section 18502(12) that are generated in small or de minimis quantities at Residential Premises.

2.49 Landfill - means a “Solid Waste Landfill” defined by Public Resources Code Section 40195.1.

2.50 Late Fee - means amounts charged by Contractor to reimburse it for administrative costs arising from Customer payment delinquency, including the cost of notices and adjustments to its accounting records, and may include a fixed fee, interest on past due amounts, non-sufficient funds fees, or re-start fees.

2.51 Mulch - means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch shall conform with the following conditions as specified in 14 CCR Section 18993.1(f)(4):

a. Meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3).

b. Was produced at one or more of the following types of facilities:

i. A compostable material handling operation or facility as defined in 14 CCR Section 17852(a)(12), that is permitted or authorized under 14 CCR, Division 7, other than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10);

ii. A transfer station or processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7; or

iii. A Solid Waste Landfill.

2.52 Multi-Family Premises - means premises with residential unit complexes of four (4) units or more such as apartments, condominiums and townhouses. Multi-Family Premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Premises. References to Multi-Family unit refer to an individual residential unit of the Multi-Family Premises.

2.53 Organic Waste - means Discarded Material originating from living organisms and their metabolic waste products, including but not limited to nonhazardous or untreated wood waste, paper, organic textiles, biosolids, digestate and sludges, Food Waste, and Green Waste that are accepted for processing by the Approved Organic Waste Processing Facility utilized by Contractor under this Agreement. Organic Waste does not include Excluded Waste or manure. For purposes of this agreement, organic textiles shall be treated as Solid Waste, and Printing and Writing Paper and Paper Products (each as defined in 14 CCR Section 18982(a)) shall be treated as Recyclables.

2.54 Overage Fee - means a special fee, as specified in Exhibit “C” hereto, charged to Residential, Multi-Family or Commercial Premises by Contractor to compensate it for its expenses in documenting and collecting overfilled Containers.

2.55 Person or person - means an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

2.56 Proposition 218 - means Articles XIII C and XIII D of the California Constitution and any implementing legislation promulgated thereunder, as may be amended from time to time.

2.57 Premises – when not used in the context of a specific category of site (Residential, Multi-Family or Commercial), means a tract of land with or without habitable buildings or appurtenant structures and refers to any and all Residential, Multi-Family or Commercial Premises.

2.58 Processing (non-capitalized and any variation thereof) - means Contractor’s controlled separation, recovery, volume reduction, conversion, disposal or Recycling of Discarded Materials including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the

use of conveyor belts, sorting lines, or volume reduction equipment, as defined in 14 CCR Section 17402(a)(20).

2.59 Prohibited Container Contaminants - means the following: (i) Discarded Materials placed in the Blue Container that are not designated as acceptable Blue Container Waste under this Agreement; (ii) Discarded Materials placed in the Green Container that are not designated as acceptable Green Container Waste under this Agreement; (iii) Discarded Materials placed in the Gray Container that are otherwise designated as acceptable in either the Blue Container or Green Container under this Agreement; and, (iv) Excluded Waste placed in any Container.

2.60 Recyclable Materials or Recyclables - means material that has been Source Separated from other Discarded Materials at a premises for the intended purpose of collection and processing to return it to the economy in the form of raw materials for new, reused, or reconstituted products by means of available markets and processes. As of the effective date, the list of acceptable Recyclables consists of empty aluminum cans; empty glass jars and bottles; steel and tin cans; empty aerosol containers; empty polyethylene terephthalate plastic ("PET") with symbol #1; high density polyethylene plastic ("HDPE") with symbol #2; plastic with symbol #5; plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable by plastic type number, but excluding expanded polystyrene, plastic film and plastic bags even if containing Recyclable Materials); metal foil; dry newspaper; dry mixed paper (e.g., ledger, computer paper, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and nonmetallic wrapping paper); dry corrugated cardboard; and telephone books. City and Contractor agree to meet and confer from time to time as needed to modify the list of acceptable Recyclable Materials to address developments in processing technologies, emerging uses for types of materials, or changes in available markets. Recyclable Materials does not include Excluded Waste. A list of acceptable Recyclable Materials is attached hereto as Exhibit "F".

2.61 Recycle, Recycling, Recycled or any variation thereof - means the act of having processed Recyclable Materials into a form suitable for reuse and having marketed those processed materials for a use consistent with the requirements of Applicable Law, using commercially available markets and processes. Recycling includes processes deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

2.62 Residential Premises - means Single Family Premises and residential complexes with less than four (4) dwelling units, including apartments and condominiums, but does not include hotels or motels. Hotels and motels shall be considered Commercial Premises under this Agreement.

2.63 Roll-Off Box or Roll-Offs - means an open top metal Container with a capacity of ten (10) to forty (40) cubic yards capable of being loaded via winch onto a roll-off vehicle equipped with rails.

2.64 Self-Hauler, or Self-Haul, or Self-Hauling - means a person who hauls Discarded Materials, recovered material, or any other material, he or she has generated to another person. Self-Hauler also includes a person who back-hauls waste, as defined in 14 CCR Section

18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator's own employees and equipment, as defined in 14 CCR Section 18982(a)(66)(A). A Self-Hauler must be a person within the City who is not primarily engaged in the business of collection, removal or transportation of Discarded Materials, but in the course of performing the person's primary business function incidentally transports such Materials with equipment owned or leased by that person. Examples of Self-Haulers include, but are not limited to, gardeners, landscapers, and household cleanup service firms. A person who is engaged in the business of collection, removal or transportation of C&D material (other than as work performed ancillary to the person's business and using that person's own forces and equipment) is not a Self-Hauler under any circumstance.

2.65 Single Family Premises – means any single-unit Residential Premises. Residential complexes of four (4) units or more shall be deemed Multi-Family Premises.

2.66 SB 1383 or SB 1383 Regulations – mean the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted on November 3, 2020, that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

2.67 Shared Bin Service – Multi-family and Commercial Premises with units that generate small enough quantities of Discarded Materials so as to share Container(s) without overflow or spillage may be allowed to share a Bin or Roll-Off Box with other Commercial units or Multi-Family units in the same Premises complex. Such "Shared Bin Service" Customers and Premises Owner shall be jointly and severally liable for payment of the regular bill for the Premises. Any shared account shall require prior written approval by the Contractor.

2.68 Sharps Waste - means those materials described in Health and Safety Code §117755, which generally include hypodermic needles, syringes, tubing, acupuncture needles and blood vials.

2.69 Solid Waste – means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, C&D Debris, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include Blue Container Waste, Green Container Waste, E-Waste, Bulky Goods, or Excluded Waste, or any of the following wastes:

- a. Hazardous waste, as defined in PRC Section 40141.
- b. Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
- c. Medical and Biohazardous Waste regulated pursuant to the Medical Waste Management Act (Part 14, commencing with Section 117600, of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste Landfill, as defined

in PRC Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to PRC, Division 30.

2.70 Source Separate(ion), or any variation thereof - means the process of separating Discarded Materials, including commingled Recyclables, that have been separated or kept separate in the Blue, Green or Gray Containers at the point of generation by the Customer or Generator for the purpose of additional sorting or processing of those materials by Contractor for Recycling, reuse or Composting, as defined in 14 CCR Section 17402.5(b)(4).

2.71 Special Wastes - means all the Discarded Materials specified in Exhibit “B”.

2.72 Universal Waste – means any of the following wastes that are conditionally exempt from classification as Hazardous Wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), 22 CCR Section 66261.9: (i) batteries as described in 22 CCR Section 66273.2; (ii) thermostats as described in 22 CCR Section 66273.4; (iii) lamps as described in 22 CCR Section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR Section 66273.6.

### **3. ACCEPTANCE: WAIVER**

Contractor agrees to be bound by and comply with all the applicable requirements of the Chino Municipal Code Chapters 8.16 and Chapter 8.18 and this Agreement.

### **4. FRANCHISE GRANT**

#### **4.1 Grant of Franchise**

a. Pursuant to Chino Municipal Code Chapters 8.16 and 8.18, and California Public Resources Code Section 40059(a)(1), City hereby grants to Contractor, on the terms and conditions set forth herein, the exclusive Franchise, right and privilege to collect, remove, transport, Recycle, Compost and dispose of, in a lawful manner, all Discarded Material, within the City Limits during the Term of this Agreement. The Franchise granted to the Contractor extends to both existing and new Residential, Multi-Family and Commercial Premises developed in City Limits, both temporary and permanent, including Construction and Demolition Debris.

b. The Franchise granted hereby is exclusive, and shall be so only if Contractor is and shall be ready, willing and able to perform its obligations under this Agreement unless Contractor’s performance is otherwise excused in accordance with this Agreement or Applicable Law, including but not limited to, collecting, transporting and disposing of all Discarded Materials generated within the City in accordance with the provisions of this Agreement and all Applicable Laws.

c. No other person or entity except the Contractor may offer or provide services described in this Agreement or other such similar collection, Recycling, transportation, Composting, and or disposal services within the City Limits. The City agrees to take such steps as it considers necessary, within legal parameters, to prohibit entities other than the Contractor from providing such services and agrees, to the extent lawfully and reasonably able, to assist Contractor in taking any steps or action to enforce its exclusive rights granted under this Agreement.

4.2 Annexations. This Agreement and Contractor's services hereunder shall extend to any territory annexed to the City during the Term that is not covered by an existing permit, license, agreement or franchise granted by another public entity for hauling Discarded Materials, except to the extent that collection by Contractor within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and City agrees that it shall cooperate with Contractor to fulfill any requirement necessary for Contractor to serve the annexed area consistent with this Section. In the event that the City Limits are so increased as a result of the City annexing any territory, Contractor may request a rate adjustment in accordance with Section 16.1.a hereof.

4.3 Scope of Franchise and Exclusions

The hauling services Franchise herein granted shall be subject to the following exclusions:

a. *Self-Hauling.* Notwithstanding the exclusive collection rights granted to Contractor under this Agreement, Generators may, subject to the conditions set forth herein, self-haul Solid Waste, Recyclable Materials, and/or Organic Waste, provided such activities are conducted in compliance with all applicable provisions of the Chino Municipal Code, state law, including but not limited to Title 14, California Code of Regulations § 18984.9, and any other applicable federal, state, or local requirements.

b. Contractor shall, upon request, assist the City in monitoring and identifying potential unauthorized self-hauling activity and shall furnish to the City any information within its possession reasonably necessary to support the City's enforcement of applicable self-hauling requirements. Contractor shall further cooperate in City-directed education and outreach efforts related to self-hauling obligations, including notification to Commercial Generators and their service providers, as directed.

c. *Gardner/Landscaper Green Waste.* Green Waste removed from a premises by an owner or occupant or by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service. To qualify for this exemption, a gardener or landscaper must not be a hauling service or Solid Waste Enterprise, must not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the Green Waste, and must utilize only his or her own employees and equipment to collect, transport and dispose of said Green Waste created by such gardener or landscaper in the course of its gardening, landscaping, or tree trimming services.

d. *Incidental C&D Debris Removal.* A construction contractor may engage in the collection, transportation, and disposal of Construction and Demolition (C&D) Debris generated exclusively as a direct byproduct of the contractor's construction activities, subject to the following conditions:

i. The contractor shall not operate in the capacity of a hauling service or a Solid Waste Enterprise.

ii. A separate fee shall not be charged for debris removal, except for any applicable tipping fees.

iii. The collection, transportation, and disposal of such debris shall be conducted solely by the contractor's employees utilizing the contractor's own equipment.

iv. This provision does not authorize third-party hauling, subcontracted waste removal, or the collection of debris not directly associated with the contractor's scope of work.

e. *Automotive Dismantling.* The collection, transportation and disposal of vehicles or machine parts and waste generated by an automotive/vehicle dismantler or a vehicular salvage or disposal yard.

f. *Hazardous Waste.* Contractor's Franchise does not preclude the collection, processing and/or transport of Hazardous Waste and non-spadeable wastewater or sewage sludge by third-party entities duly licensed to handle such Hazardous Waste and/or non-spadeable wastewater or sewage sludge materials.

g. *Redemption Centers.* Notwithstanding the Contractor's exclusive rights under this Agreement, Non-Organic Recyclable Materials that are sold or donated by the Owner or Generator shall not be considered discarded waste, provided such materials are delivered to legally mandated Recycling Facilities that comply with all applicable laws, regulations, and reporting requirements imposed by any governing authority.

i. *Fee Adjustment.* For the purposes of this Agreement, a discount, rebate, or reduction in third-party charges for handling, transporting, processing or disposal of recyclable materials shall not constitute a sale or donation. Any such arrangement shall be deemed disposal and remain subject to the Contractor's exclusive franchise rights.

j. *Emergency Collections.* The emergency collection, removal, disposal or Diversion of Discarded Materials by the City through City officers or employees in the normal course of their employment.

k. *City Hauls.* The collection, removal, disposal or Diversion of Discarded Materials by the City through City officers or employees in the normal course of their City employment.

l. *Unoccupied Units.* Premises which have been unoccupied by any human habitation and upon which no refuse has been produced or accumulated for three (3) consecutive months may be exempted from this Agreement by the City until such premises become occupied. For purposes of this Section, a unit shall be deemed "unoccupied" if the structure is both unoccupied and unused (such as, without limitation, foreclosed or abandoned structures). Structures that are presently unoccupied by virtue of their continuing use as a vacation home or a seasonal business shall not be considered as "unoccupied".

m. *Edible Food Recovery.* Contractor's Franchise does not preclude the collection, transport and distribution of Edible Food by third-party persons or organizations for human consumption. Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of Edible Food recovery efforts in the City.



n. *Legally Required Exemptions.* Other collection, removal or disposal activities required to be exempt from mandatory franchise services pursuant to law, or entities exempt from such franchise pursuant to State or Federal law, including but not limited to Non-City governmental entities located within City boundaries.

o. *State Owned Facilities.* Services provided to State Owned Facilities in the City limits that are provided pursuant to a separate contract.

## **5. SERVICES PROVIDED BY CONTRACTOR**

5.1 General as to All Customer Categories; Mandatory Service. Contractor shall be responsible for the collection, processing, transportation, Recycling, Composting and marketing services, as appropriate, of Discarded Materials generated within the City Limits in accordance with the terms of this Agreement, SB 1383 Regulations, and Chapters 8.16 and 8.18 of the City of Chino Municipal Code, all as in accordance with Applicable Law. The work to be performed pursuant to this Agreement shall include the furnishing of all labor, materials and equipment necessary for, and the collection of all Discarded Materials from, Residential, Multi-Family and Commercial Premises within the City Limits according to the terms of this Agreement, and the disposal, Recycling, Composting and/or Diversion of such materials. Contractor shall own or lease and maintain at its expense all equipment necessary to perform its duties as provided for under this Agreement, including sufficient radio equipment for office to field equipment communication.

Pursuant to Chapters 8.16 and 8.18 of the Chino Municipal Code, and except as provided below, all owners, occupants, Customers, Generators or other persons responsible for the day-to-day operation of any Residential Premises, Multi-Family or Commercial Premises within City Limits shall make arrangements to obtain and pay for collection service provided by Contractor under this Agreement. The City shall require all such owners, occupants, Customers, Generators or other persons to subscribe to the collection service provided for in this Agreement and Chino Municipal Code.

a. *Three-Stream System; Containers.*

i. *Blue, Gray, Green Container Sets.* Starting as of the Commencement Date, Contractor shall provide a three-Container collection program for Discarded Materials generated in City Limits. The three-Container system shall include Contractor's provision of three Container types to every Residential, Multi-Family and Commercial Premises Customer:

(1) At least one Blue Container for the storage and collection of Blue Container Waste;

(2) At least one Gray Container for the storage and collection of Gray Container Waste; and

(3) At least one Green Container for the storage and collection of Green Container Waste.

ii. *Color and Labelling; New/Replacement Containers to be SB 1383 Compliant.* After the Commencement Date, when Contractor puts a new Container in service or

replaces a Container in accordance with this Agreement, such new or replaced Container shall comply with 14 CCR Section 18984.7 and 14 CCR Section 18984.8. Notwithstanding anything to the contrary in this Agreement, Recyclable Containers may not conform with the color requirements of 14 CCR Section 18984.7 until they are replaced by Contractor.

(1) For new or replacement Containers, Contractor shall imprint new Container bodies or lids with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City Manager or designee for approval.

(2) All Containers provided by Contractor shall be kept in a reasonable condition and appearance. Contractor shall maintain ownership of all Containers provided to Customers at all times.

iii. *No Overflow / Overfilling.* Overflow or overfilling of Containers occurs where Discarded Materials contained therein spill-over or extend beyond the top or sides of the Container, or the containerized Discarded Materials fall from the Container to the ground (either during Container storage or collection) due to the size and/or number of Discarded Materials contained, or the lid of any lidded Container is unable to fully close due to the size and/or number of Discarded Materials contained therein. Where Contractor identifies instances of overfilling of Containers at any Premises, it will document the overfilling through the use of film or digital photography. Contractor will tag overfilled/overflowing Containers (with tags that include the date, time, and description of Container overflow) or deliver to the Customer a written notice via regular mail at the Customer's service address (or owner's address if owner is the direct customer). In addition, as soon as reasonably possible thereafter, Contractor may notify the Customer by electronic means, which may be via text message or e-mail. Contractor's notice shall provide documentation of the overfilling to both the City and the Customer. Where such documentation was presented to the Customer and Contractor documents another instance of overfilling within a rolling twelve (12) month period of a prior overfill violation, Contractor is authorized to charge an Overage Fee in the amount set forth in Exhibit "C" hereto. Container sizes, frequency of collection, or levels of service to the offending Customer may otherwise be modified to accommodate Discarded Materials overages generated at a Premises as described further in this Section 5. Contractor will maintain and provide the City a log listing all Customers where overfilled Discarded Material was observed and actions taken in response by Contractor, upon request by City. In addition, Contractor will provide the City Manager or his/her designee with written notification prior to delivering the next larger-sized Container, adjusting service levels or adjusting the service rate(s) to a Premises in accordance with this Section.

b. *Source Separation into Appropriate Containers.* Contractor shall monitor disposal of Discarded Materials and exercise diligent efforts, including public educational outreach, to facilitate and maximize the Source Separation of Discarded Materials as follows:

i. Gray Containers shall be used for the disposal and collection of Gray Container Waste;

ii. Green Containers shall be used for the disposal and collection of Green Container Waste; and

iii. Blue Containers shall be used for the disposal and collection of Blue Container Waste.

c. *Disposal Destinations for Discarded Materials.*

i. Contractor shall transport the Gray Container Waste to the approved Disposal Facility;

ii. Contractor shall transport the Blue Container Waste to (i) the Approved Source-Separated Recyclable Materials Processing Facility, or (ii) an Approved Transfer Station for transfer and transport to the Approved Source-Separated Recyclable Materials Processing Facility; and

iii. Contractor shall transport the Green Container Waste to (i) the Approved Organic Waste Processing Facility, or (ii) an Approved Transfer Station for transfer and transport to an Approved Organic Waste Processing Facility; and

iv. Contractor shall transport Construction and Demolition Debris to (i) an Approved C&D Processing Facility, or (ii) an Approved Transfer Station for transfer and transport to an Approved C&D Processing Facility.

These facilities shall be permitted to accept Solid Waste, Recyclable Materials, and Organic Waste, as applicable, collected by Contractor under this Agreement and shall comply with Applicable Law. Contractor shall pay all costs for the transport, transfer, Processing, and/or Disposal of Discarded Materials collected in accordance with this Agreement. Contractor's compensation for such services is included in the Rates charged to Customers. As applicable, facility(ies) owned or operated by Contractor shall meet thresholds on incompatible materials (as defined by 14 CCR Section 17402(a)(7.5).) and pursuant to 14 CCR Section 17409.5.8.

d. *Repair, Replacement of Damaged or Stolen Containers.* The Contractor shall, once per calendar year at no charge, repair or replace any provided Container which becomes unusable by reason of ordinary wear and tear, theft, or damage through no fault of the Customer or owner of the premises. Thereafter in each calendar year, Contractor shall charge the actual replacement or repair cost to each Customer for replacement or repair of Containers that are stolen or damaged for any other reason. Customers requesting to have a Container exchanged more than one (1) time per year will be charged the rate therefor set forth on Exhibit "C".

e. *Waivers for Commercial and Multi-Family Premises.*

i. Commercial and Multi-Family Premises may be exempted from their obligation to comply with some or all of the three-stream service requirements set forth in this Agreement, SB 1383 Regulations, and/or Chino Municipal Code Chapter 8.18, if: (i) the Multi-Family or Commercial Premises (through their owner) provide documentation, or the City has documentation from its staff, the Contractor, licensed architect, or licensed engineer demonstrating that the premises lack adequate space for Blue Containers and/or Green Containers, or (ii) that such Commercial or Multi-Family Premises are otherwise entitled to a waiver pursuant

to SB 1383 Regulations and/or Chino Municipal Code Chapter 8.18. Commercial/Multi-Family waivers are only effective upon application therefor by the Commercial/Multi-Family Premises' owner and written approval thereof by City.

ii. Contractor shall use reasonable efforts to assist City to verify that Commercial and Multi-Family Customers' de minimis, physical space constraint, and/or collection frequency waivers meet the applicable thresholds under 14 CCR Section 18984.11 by reviewing records Contractor is required to keep and maintain under this Agreement. Contractor shall use reasonable efforts to re-verify de minimis and physical space constraint waivers issued by City at least once every five (5) years from the date of issuance of the waiver. When City grants a waiver to a Customer, City shall notify Contractor of any such waiver granted by the City within seven (7) Business Days.

f. *Mechanized Collection; Safe Return to Collection Location.* Contractor shall provide all Container collection services using a completely 100% mechanized vehicle pick-up system for Discarded Materials. Mechanized shall mean that Contractor shall provide collector trucks that are capable of picking up Containers, emptying them into collector trucks and then returning them to the Collection Location.

Where the Collection Location is within an enclosure constructed pursuant to the requirements of the City, the Contractor shall be responsible for the removal and replacement of all Containers placed therein. The Contractor shall use sufficient care in the handling of such Containers so as to prevent any damage to the enclosure and/or the enclosure doors; and, in the case of either enclosure or Curbside collections shall use sufficient care in the handling of Containers so as to prevent any damage to adjacent facilities or improvements. The Contractor shall repair at its own expense and within thirty (30) working days after notification from the City any such enclosure or adjacent facilities or improvements damaged by it.

g. *Customer Rates.* Customers shall be charged by Contractor for its services hereunder at rates set forth in Exhibit "C" hereto.

h. *Construction and Demolition Debris.* All Customer types may receive service for the collection of C&D Debris through the Contractor's temporary rental of Bins or Roll-Offs at the duration, capacity and service levels necessitated by the C&D Debris to be generated at the Premises. Such Bin or Roll-Off rentals for C&D Debris shall be at the rates set forth in Exhibit "C". C&D Debris Service must be provided within seven (7) workdays of receipt of the request. Contractor shall use commercially reasonable efforts to place temporary rental of Bins or Roll-Offs with as little disturbance as possible and without obstructing alleys, roadways, driveways, sidewalks, or mailboxes. Contractor will use commercially reasonable efforts to place Roll-Offs in compliance with City's right-of-way requirements and Municipal Code.

5.2 Service to Residential Premises. Contractor's Residential Premises service shall include:

a. *Weekly Service.* Once each week, upon a regular Business Day schedule as determined by Contractor and noticed to Customers, Contractor shall collect Discarded Materials (except Bulky Goods, C&D Debris and HHW) that have been placed for collection at Residential Premises in the proper Collection Location. For an additional fee (set forth in Exhibit "C"),

Contractor may negotiate and bill Customers for special pick-up procedures above and beyond the normal services described herein (e.g., valet or scout services) upon Customer request therefor, or for Containers that are obstructed in a manner that prevents mechanized collection by Contractor, or for Containers otherwise not placed in a proper Collection Location.

b. *Residential Customers; Container Type and Placement for Collection.* Basic service for Residential Premises shall consist of three Carts (Blue, Gray and Green) to be placed for collection prior to Contractor's normal weekly collection time, as such time is determined by Contractor, approved by City (which approval shall not be unreasonably withheld, conditioned or delayed), and noticed to the City and Customers at least 30 days in advance. Unless subject to special valet or scout services, Residential Discarded Materials must be placed within Containers at Curbside, or in the Collection Location without obstructions, so as to permit reasonably convenient collection by Contractor. City agrees to use its best efforts to enforce parking and other ordinances so as to facilitate Contractor's collection efforts.

c. *Residential Container Capacity.*

i. If basic service Residential Containers prove to be of insufficient size for a Customer, so as to cause the overfilling of, or overflow from, such Containers, then Contractor shall provide additional Containers or larger Containers to prevent such overflow at the premises in accordance with Section 5.1.a.iii. Contractor may charge an additional cost to the Customer, plus any additional fees for exchanging or replacing Containers, as set forth in Exhibit "C".

ii. Customers may also request additional Containers, in which case Contractor shall charge the appropriate monthly fee, plus any additional fees for exchanging or replacing Containers in accordance with Section 5.2.c, as set forth in Exhibit "C".

iii. Contractor shall provide a smaller sized Containers, upon request by the Customer, where on-site space is limited, for disabled and elderly customers (65 years of age or older), and for low-volume Customers/Generators. For Residential Premises that are low-volume Generators using no more than 64-gallon Carts for each Discarded Materials service, Contractor shall provide such services at the reduced rate set forth in Exhibit "C".

d. *Backyard Physically Disabled Pick-Up.* Contractor shall provide special backyard collection services to Customers in Residential Premises at the rate(s) set forth in Exhibit "C" subject to the restrictions and conditions in this Subsection. Customers must submit a request to the City to be eligible for such special backyard collection services and the City shall confirm that the Customer is eligible for such program. To be eligible, the Customer must be physically unable to move collection Containers, such as a handicap or inability verified through a signed sworn statement, including that there is no other able-bodied person in the household to perform Container roll-out. City shall regularly provide a list of Customers eligible for disabled pick-up to Contractor. This service is distinct from optional valet or scout services that are provided to Customers upon request for non-disability related reasons.

5.3 Multi-Family Premises. Contractor shall provide Bin or Cart service in accordance with this Section for all Discarded Materials generated at all Multi-Family Premises at the same rates as set for Commercial Premises in Exhibit "C". Default service for Multi-Family Premises shall consist of a three-stream (Blue, Gray and Green) set of Bins to be placed in the Collection

Location prior to Contractor's normal weekly collection time, as such time is determined by Contractor, approved by City (which approval shall not be unreasonably withheld, conditioned or delayed), and noticed to the City and Customers at least 30 days in advance. Based on Customer request or Container capacity requirements, Multi-Family Premises may also utilize the alternative Cart service described below. Contractor's Multi-Family Premises service for the three-stream (Blue, Gray and Green) Containers shall include:

a. *Multi-Family Premises Weekly Service.* Once each week, upon a regular Business Day schedule, and more frequently if required to handle the Discarded Materials generated at the Multi-Family Premises without overflow or overfilling, Contractor shall collect the Discarded Materials (except Bulky Goods, C&D Debris or HHW) from the approved Collection Location. The regular Business Day schedule shall be determined by Contractor and approved by City (which approval shall not be unreasonably withheld, conditioned or delayed), and noticed to the City and Customers at least 30 days in advance. For an additional fee (set forth in Exhibit "C"), Contractor may negotiate and bill Multi-Family Customers for special pick-up procedures above and beyond the normal services described herein (e.g., valet or scout services) upon Customer request therefor, or for Containers that are obstructed in a manner that prevents mechanized collection by Contractor, or for Containers otherwise not placed in a proper Collection Location.

b. *Container Access; Placement.* Unless subject to special valet or scout services, Multi-Family Containers shall be placed for collection in an unobstructed Collection Location acceptable to Contractor and City, which Location may be Curbside (in the case of Carts), in an alley, Container enclosure, or such other convenient Collection Location deemed appropriate, accessible, and non-disruptive to vehicular or pedestrian traffic.

c. *Cart Alternative for Multi-Family Premises.* Where space prohibits safe collection of Multi-Family Bins as determined by Contractor, Multi-Family Premises may subscribe to once per week collection with 3-Carts (in Blue, Gray and Green) for the same rate as charged to Single-Family Premises in accordance with Exhibit "C". City shall bill any such Multi-Family Premises receiving alternative 3-Cart service.

d. *Multi-Family Container Capacity.*

i. If the basic service for Multi-Family Customers described in Section 5.3.a. proves to be of insufficient size for a Multi-Family Premises, so as to cause the overfilling of, or overflow from, such Containers, then Contractor shall provide additional Containers or larger Containers to prevent such overflow at the premises. Contractor may charge an additional cost to the Customer, plus any additional fees for exchanging or replacing Containers, as set forth in Exhibit "C".

ii. Multi-Family Customers may also request additional Containers, in which case Contractor shall charge the appropriate monthly fee, plus any additional fees for exchanging or replacing Containers, as set forth in Exhibit "C".

5.4 Commercial Premises. Contractor shall provide Bin, Roll-Off or Cart service in accordance with this Section for all Discarded Materials generated at Commercial Premises (except Bulky Goods, C&D Debris or HHW) at the rates for Commercial Premises set forth in Exhibit "C". Contractor's collection from Commercial Premises shall be made at least once per week on a regular Business Day schedule as such schedule is determined by Contractor, approved

by City (which approval shall not be unreasonably withheld, conditioned or delayed), and noticed to the City and Customers at least 30 days in advance. Commercial Premises service for the three-stream (Blue, Gray and Green) set of Containers shall include:

a. *Commercial Weekly Bin Service.* Not less often than once per week, and more frequently if required to handle the waste stream of the Commercial Premises without overflow or overfilling, Contractor shall collect the Discarded Materials that have been placed for collection in the proper Containers. Contractor's basic level service for Commercial Customers shall be the provision of a three-stream (Blue, Gray and Green) set of Bins at the Commercial service rates in Exhibit "C".

b. *Roll-Off Alternative for Commercial Premises.* Commercial Premises may also be serviced through Roll-Off Boxes, on either a temporary or permanent basis. Contractor may charge the service fee for collecting / servicing Roll-Off Boxes at Commercial Premises at the rates set forth in Exhibit "C". Contractor may charge a delivery fee for Roll-Off Box delivery at the rates set forth in Exhibit "C".

c. *Cart Alternative for Commercial Premises.* In special cases where there is not appropriate space on the Commercial Premises for the placement of a Bin or Roll-Off Box, Contractor may allow "Commercial Cart Service" to satisfy the need or the requirement of three-stream (Blue, Gray and Green) Discarded Material removal service from such Commercial Premises. The Commercial Cart Services contemplated under this Section shall be collected by Contractor at least one time per week, and more frequently if required to handle the waste stream of the Commercial Premises without overflow or overfilling, at the rate(s) set forth in the attached Exhibit "C".

d. *Container Access.* Unless subject to special valet or scout services, Commercial Premises Containers shall be placed for collection in an unobstructed Collection Location acceptable to Contractor and City, which Location may be Curbside (in the case of Carts), in an alley, Container enclosure, or such other convenient Collection Location deemed appropriate, accessible, and non-disruptive to vehicular or pedestrian traffic.

Contractor may negotiate and bill Commercial Premises Customers for special pick-up procedures above and beyond the normal services described herein (e.g., valet or scout services) upon Customer request therefor, or for Containers that are obstructed in a manner that prevents mechanized collection by Contractor, or for Containers otherwise not placed in a proper Collection Location.

e. *Commercial Container Capacity.* If provided Commercial Containers prove to be of insufficient size for a Commercial Premises, so as to cause the overfilling of, or overflow from, such Containers, then Contractor shall provide additional Containers or larger Containers to prevent such overflow at the premises. Contractor may charge an additional cost to the Customer, plus any additional fees for exchanging or replacing Containers, as set forth in Exhibit "C". Commercial Customers may also request additional Containers, in which case Contractor shall charge the appropriate monthly fee, plus any additional fees for exchanging or replacing Containers, as set forth in Exhibit "C".

#### 5.5 Additional, Non-Regular Services.

a. *Special Roll-Off Box Services.*

i. Commercial Premises may be temporarily or permanently served by Roll-Off Boxes as described in Section 5.4.b. above.

ii. Multi-Family Premises may subscribe to temporary or permanent Roll-Off Box service, subject to having accessible space for storage and collection, at the rates set forth in Exhibit “C”. Storage space and collection accessibility of Roll-Off Boxes at Multi-Family Premises are subject to the same standards as for Multi-Family Containers generally, as stated in Section 5.3.a. above.

iii. Residential Premises may order use of Roll-Off Boxes only on a temporary basis not-to-exceed seven (7) days at the rates therefor in Exhibit “C,” unless a longer period for such rental is approved by the City in writing.

b. *Rental Bin Services.* Contractor may provide Bins for use by Residential Premises Customers for the purpose of temporary cleanups for Discarded Materials. This service shall be provided at an additional cost to the Customer requesting such services and at the rate(s) set forth in Exhibit “C”. Items deemed not acceptable for this collection include, but are not limited to, any dead animals, dirt, earth, and Excluded Waste. In the event that the Discarded Materials placed in Containers by Customer do not fit into the applicable Container(s), with lid closed and no overflow of materials, or exceed the dimensions or weight-limit of the Container, Contractor may charge the Customer an overage fee, as applicable and in accordance with Exhibit “C.”

c. *Bulky Goods/E-Waste Pick-Up.*

i. *General.* Contractor will make a good faith effort to Divert Bulky Goods collected in accordance with this Agreement away from a Landfill to another facility where it can be either Recycled or refurbished for reuse. Collection of C&D Debris is not included in this service.

ii. *Residential Premises.* Contractor shall provide three (3) Curbside Bulky Goods/E-Waste pick-ups of no more than six (6) total Bulky Goods and/or E-Waste items per pick-up for each Residential Premise per calendar year at no additional expense to the Customer or to the City. Bulky Goods/E-Waste collection shall take place on the Customer’s regularly scheduled day by appointment made with a minimum two (2) Business Days’ prior notice to Contractor. In the event that such notice is not provided by the Customer two (2) Business Days in advance of the Customer’s next regularly scheduled collection day, the Bulky Goods/E-Waste collection shall occur on the following regularly scheduled collection day or such other time as Contractor and the Customer may agree.

(1) Residential Premises that desire additional Bulky Goods/ collection beyond the free service may request a Bin for temporary collection or, for additional Bulky Goods/E-Waste, request additional Curbside pick-ups by Contractor at the rate(s) set forth in Exhibit “C”. Such additional pick-ups shall also require a minimum two (2) Business Days’ prior notice to Contractor and shall occur on the following regularly scheduled collection day with proper notice or such other time as Contractor and the Customer may agree.



(2) Multi-Family and Commercial Premises. Multi-Family Premises and Commercial Premises may request Bulky Goods/E-Waste collection services at the rate(s) set forth in Exhibit “C”.

d. *Holiday Tree Pick-up.* Contractor shall collect from Residential Premises all Holiday trees, for the period beginning on December 26 of each calendar year and ending fourteen (14) days thereafter. Trees taller than four feet (4') in length shall be cut in half by Customer. The trees shall be Diverted, either by deposit at a Composting facility, a tree farm or nursery, or a grinding operation where feasible; Contractor shall collect Holiday trees with tinsel, flocking or ornaments from the Collection Location and dispose such trees as appropriate. Multi-Family and Commercial Premises may have Holiday Trees Collected as Bulky Waste.

e. *Battery Recycling Program.* Contractor shall provide City facilities with “Battery Tracker” receptacles (i.e., receptacles designed for the collection and holding of batteries), located at various facilities in the City of Chino at locations designated by City, to collect used batteries, which will be managed by the Contractor. Contractor shall provide such “Battery Tracker” receptacles at no cost to City.

f. *Sharps Collection.* Contractor will implement a program for collection and safe processing of Sharps Waste generated by Residential Premises through a community or mail-based program. Contractor will develop and distribute public education materials to promote this program. For each calendar year, the first mail back Container shall be provided by Contractor to the Customer at no cost to Customer. Additional containers in the same calendar year will be available for a fee in an amount established from time-to-time by Contractor. The initial fee amount as of the Commencement Date shall be Five Dollars (\$5.00) per Sharps Waste Container, which shall increase annually in the same manner as the rates are adjusted in accordance with Section 16.3. Contractor shall track Sharps Waste program participation and report such participation to the City in Contractor’s quarterly report.

g. *Illegal Roadside Bulky Goods Removal.* Contractor shall collect all abandoned Bulky Goods located on City-owned property within twenty (20) feet of the paved City rights-of-way in the City Limits within two (2) Business Days of notification by the City. The City may also collect such items from the right-of-way or on City-owned property that pose a hazard and deposit them in two (2) Roll-Off Boxes provided by the Contractor at the City service yard. Contractor shall collect such Bulky Goods within two (2) Business Days following notification by the City. City agrees to work with the Contractor to identify chronic illegal dumping sites to mitigate and eliminate waste dumped at these sites.

h. *Residential Composting Bin.* Contractor shall provide one home Composting workshop at a location within the City determined by mutual agreement of Contractor and the City each calendar year, at no additional cost to the City. Residential Premises Customers that successfully complete the workshop are eligible to receive a free Composting bin for Residential use upon request. Contractor is not obligated to provide more than one hundred (100) free home Composting bin to Residential Premises Customers per calendar year. Contractor may provide additional home Composting bin to Customers upon request for a fee.

i. *Lamp Tracker Program for City Fluorescent Bulbs.* Contractor shall provide the City a Commercial fluorescent Lamp Tracker recycling program at City-owned facilities. Such program shall include a mail-back program for Commercial fluorescents including,

but not limited to, 4, 6, and 8 -foot tubes. Annual program costs to Contractor shall not to exceed Four Thousand Dollars (\$4,000.00). Once the annual program cost is fully expended, Contractor may continue to provide these services at City's sole expense.

j. *Graffiti Removal.* Contractor shall remove graffiti from all Containers within two (2) Business Days of observation by Contractor's employees or notification by City or a Customer.

k. *Used Motor Oil.* The Contractor shall pick-up used motor oil from Residential Premises, upon request, in quantities not to exceed two (2) gallons per Residential Premises per week. The Contractor may refuse to accept any oil which has not been placed in a used-oil disposal receptacle mutually agreed upon by the Customer and the Contractor. The Contractor agrees to have any oil collected under this Section disposed of/Recycled in accordance with all pertinent Federal, State, and local laws and regulations.

l. *Collection at City Facilities* Contractor, at City's sole option, shall provide three-stream (blue, gray, green) Discarded Materials collection and Recycling to the following locations within the City, at no charge to the City, as listed below:

- City Fire Stations;
- Police Department;
- City Hall;
- Bus Stops;
- Public Works Service Yard and City Parks;
- Up to six (6) 40 cubic yard Roll-Off Boxes annually, at locations mutually agreed by Contractor and the City, as directed by the City Manager;
- Other City public facilities as agreed upon in writing by Contractor and City Manager; and
- Carboard receptacles for City events as-needed.

City Facilities that are under construction, while under construction, are not eligible for free service. Alterations to services or service levels at City facilities that impact the Service Rates (Exhibit C) shall be subject to the provisions of Section 16 for Rate adjustments.

m. *Special Event Collection.* Contractor shall make available three-stream (Blue, Gray, Green) Containers and disposal services for the following agreed upon City-directed events listed below at no cost to the City. City Events will be provided Containers for Discarded Materials at the appropriate service levels for each venue or event, as mutually agreed by the parties. The City-directed events receiving service as of the Effective Date are:

- Earth Day Event (two days);
- 4th of July Festival (two days);
- Corn Feed Run;
- Halloween Spectacular; and
- Holiday Parade and Festival.

Should any of the events listed in this Section be discontinued by the City, Contractor shall provide services for an additional event that shall be of equal size and scope to the discontinued event.

n. *Community Clean-up Events.* Contractor shall provide Containers as set forth herein for Solid Waste, Green Waste, E-Waste, and certain Recyclables as determined by Contractor for City organized community clean-up efforts at no charge, for up to two (2) events per year and ten (10) forty-yard loads per event. City and Contractor shall coordinate on the timing and place of such events. Contractor shall deliver Containers to agreed-upon collection points and shall cooperate with the City and designated community leaders to remove containers and dispose of collected material. City shall provide staff for these events to direct, manage and oversee the special cleanup events. Once the date of the clean-up is determined, the City and Contractor shall notify residents of the date and location of the cleanup event.

o. *Street Sweeping Contact Designation.* Contractor shall require that the third-party contract service provider designate a dedicated individual responsible solely for street sweeping route management and responding to field complaints. This individual, employed or assigned through the third-party service provider, shall serve as the primary point of contact for the City regarding street sweeping operations, ensuring timely responses to service issues, route adjustments, and community concerns. The Contractor shall provide the City with the name, contact information, and availability of this designated individual and require that the third-party service provider maintain adequate staffing and resources are in place to support street sweeping operations effectively. *Special Waste Services.* Contractor may also charge fees for performance of special waste services (e.g., the hauling and disposal of Special Wastes) as agreed upon in separate contracts between Contractor and each Customer requesting such special service. Special handling and special equipment shall also be subject to additional fees. Contractor shall provide a schedule of all such fees and payments to the City Manager. Special Wastes are listed in Exhibit “B”.

p. *Disposal at Approved Landfill.* Contractor guarantees that all Solid Waste collected pursuant to this Agreement will be deposited at an approved Disposal Facility for the full term of this Agreement. The Contractor shall use its best efforts to ensure that waste continues to be deposited at a cost-effective landfill should the designated disposal site or waste management methods change. The Contractor guarantees that should there be no remaining capacity at El Sobrante Landfill at any time during the Term of this Agreement, it will take the City’s Gray Container Waste to an alternate Landfill owned or operated by Contractor at the same price that the City would have paid at El Sobrante or Contractor may request a rate adjustment for increased costs as set forth in Section 16. The Contractor shall notify the City of the approved landfill in advance of any changes.

5.6 SRRE and HHWE City Requested additional Services. Contractor shall respond to City’s requests to implement program or service alternatives identified in the City’s Source Reduction and Recycling Element (SRRE) and Household Hazardous Wastes Element (HHWE) to increase the amount of Diversion. In the event the City makes such a request, Contractor shall be entitled to an adjustment to the rates set forth in Exhibit “C” in accordance with, and subject to, Section 6.1.b. and Section 16. For any additional programs or services implemented as a result of such request, Contractor shall provide City with written reports in a form adequate to meet City’s

reporting requirements to CalRecycle upon implementation of such additional programs or services.

5.7 Minimized Missed Pick-Up Standards. It is the intent of this Agreement to ensure that the Contractor provides a high-quality level of Discarded Materials service for Customers with minimal missed pick-ups (“MPUs”). All complaints received by the City and reported to the Contractor shall be promptly resolved by Contractor. Repetitive violations of these standards shall be considered unsatisfactory performance under terms of the Agreement and shall subject Contractor to provisions of Sections 10 and 11. The minimum service standards for the Contractor are as follows:

a. *Residential Premises Service:*

i. No more than one (1) MPU of Containers properly set out for collection by Customer per 1,000 Customers served over the course of one (1) calendar year;

ii. 95% of all MPUs will be remedied within one (1) Business Day of call received from the applicable Customer or City;

iii. All Customers with a MPU will be contacted by Contractor the following day to ensure Customer is satisfied and has no other issues;

iv. Non-emergency Container exchanges (i.e., for old or dirty bins) completed on next regularly scheduled collection day following notification, subject to the terms of this Agreement for Container exchanges and the rates therefor in Exhibit “C”; and

v. Emergency Container exchanges (i.e., for broken wheels or cracked Containers) by Contractor to be completed within one (1) Business Day of call received from the applicable Customer, subject to the provisions of Section 5(A)(4).

b. *Commercial Premises and Multi-Family Premises Service:*

i. No more than one (1) MPU per 1,000 customers served over the course of one (1) calendar year;

ii. 95% of all MPUs will be remedied within one (1) Business Day of call received from the applicable Customer or City;

iii. All Customers with a MPU will be contacted by Contractor the following day to ensure Customer is satisfied and has no other issues;

iv. Obstructed Container(s) – if a Container is inaccessible, Contractor will contact the Customer to make subsequent arrangements for collection;

v. Non-Emergency Container exchanges (i.e., for old or dirty bins) completed within five (5) Business Days following notification, subject to the terms of this Agreement for Container exchanges and the rates therefor in Exhibit “C”;

vi. Emergency Container exchanges (i.e., for broken wheels or cracked bins) completed within one (1) to two (2) Business Day(s) of call received, subject to the provisions of Section 5.1.d.;

vii. Extra pick-up (as opposed to MPUs) for Commercial and Multi-Family Customers to be completed within one (1) Business Day of call received from the applicable Customer, subject to the terms of this Agreement for extra collections and the rates therefor in Exhibit “C”.

#### 5.8 Contamination Monitoring.

a. *Generally.* Contractor shall implement a contamination monitoring program to minimize Prohibited Container Contaminants and prohibit Excluded Waste as described in this Section 5. Upon finding Prohibited Container Contaminants or Excluded Waste in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Sections 5.8.b.-c. below.

i. *Route Reviews.* Contractor shall annually conduct route reviews of its hauler routes to comply with contamination monitoring requirements under this Agreement and all Applicable Laws using its WM Smart Truck<sup>SM</sup> systems. The Contractor’s hauler route personnel shall observe, via the WM Smart Truck<sup>SM</sup> system, the contents of surveyed Containers as the Container materials are emptied into the Contractor vehicle. Contractor shall conduct a sufficient number of route reviews to adequately determine Customers’ overall compliance with 14 CCR Section 18984.5(b). The City has approved Contractor’s use of its Smart Truck<sup>SM</sup> system, including contamination monitoring via digital/video monitoring and the use of the internet to conduct such route reviews. Contractor is not required to inspect every Container on any one route, but rather may select planned areas of survey, to be prepared by Contractor and provided in advance by writing to City, for Container inspection on an area-by-area basis as needed to comply with the standards for contamination monitoring set by 14 CCR Section 18984.5(b).

ii. *Records of Contamination.* When Contractor identifies Prohibited Container Contaminants or Excluded Waste in a Container, Contractor shall record each such event of identification in a written log or in the on-board computer system including date, time, Customer’s address, type of Container; and maintain photographic documentation if available. Contractor shall make this documentation part of the Customer’s account record and provide such documentation to the City following its discovery of Prohibited Container Contaminants or Excluded Waste in a Container.

#### b. *Prohibited Container Contaminants.*

i. *Residential Premises.* Except with respect to observable Excluded Waste (detailed in Section 5.8.c. below), upon finding Prohibited Container Contaminants in a Container at a Residential Premises, Contractor shall follow the following contamination noticing procedures:

(1) *First and Second Occurrence.* For the first and second occurrence within any rolling twelve (12) month period of Container Contamination, Contractor shall Collect the contaminated Container and shall provide the customer with a written description via email, text, or other electronic means, of the date, time and description of observed contaminants, and shall promptly thereafter deliver to the Customer a written notice via regular

mail at the Customer's service address (or owner's address if owner is the direct Customer) containing the following information:

- The fact that Prohibited Container Contaminants were present in the Container;
- The date and time the notice was issued;
- Any photographic documentation of the violation(s);
- A description of the materials that are appropriate for collection in the subject Container type and proper methods of Source Separation;
- An explanation that subsequent incidents of contamination may, or will continue to, result in non-collection, the imposition of a Contamination Fee, and where warranted, require additional or larger-sized collection Containers; and
- Contractor's contact information to obtain additional information and/or receive responses to questions the Customer may have.

(2) *Third and Subsequent Occurrences.* For the third and subsequent occurrence within any rolling twelve (12) month period of Container Contamination, Contractor shall collect the contaminated Container and may charge the Residential Premises a Contamination Fee as set forth in Exhibit "C". Contractor shall deliver to the Customer a notice containing the information listed immediately above. Contractor shall notify the City in writing on a quarterly basis of such repeat Container Contamination violations. In addition, upon City's reasonable request, Contractor shall deliver to City copies of all notices, tags and evidence related thereto. Contractor may pursue as applicable, appropriate legal remedies against the offending Customer.

ii. *Commercial and Multi-Family Premises.* Except with respect to observable Excluded Waste (detailed in Section 5.8.c. below), upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the following contamination noticing procedures:

(1) For each occurrence of Container Contamination, Contractor shall Collect the contaminated Container and shall provide the Customer with a written description via email, text, or other electronic means, of the date, time and description of observed contaminants, and shall promptly thereafter deliver to the Customer a written notice via regular mail at the Customer's service address (or owner's address if owner is the direct Customer), which shall contain the following information:

- The fact that Prohibited Container Contaminants were present in the Container;
- The date and time the notice was issued;
- Any photographic documentation of the violation(s) or a means of accessing such photographic documentation;
- A description of the materials that are appropriate for Collection in the subject Container type and proper methods of Source Separation;

- An explanation that subsequent incidents of contamination may, or will continue to, result in non-Collection, the imposition of a Contamination Fee, and where warranted, require additional or larger-sized Collection Containers; and
- Contractor's contact information to obtain additional information and/or receive responses to questions the Customer may have.

iii. *Issuance of Contamination Fee.* For each occurrence of Container Contamination at Commercial or Multi-Family Premises, Contractor shall Collect the contaminated Container and may charge the Customer a Contamination Fee as set forth in Exhibit "C," provided, however, that new Commercial or Multi-Family Customers shall not receive a Contamination Fee for the first two (2) instances of Contamination after starting service. Contractor shall deliver to the Customer a notice containing the information listed immediately above. For repeated instances of contamination, Contractor may also increase the Container size, Collection frequency, or require an additional Container and charge the Customer the appropriate rate(s) set forth on Exhibit "C". Contractor shall deliver to the Customer a notice containing the information listed immediately above. Contractor shall notify the City in writing on a quarterly basis of such repeat Container Contamination violations. In addition, upon City's reasonable request, Contractor shall deliver to City copies of all notices, tags and evidence related thereto. City shall consult with Contractor and consider, and pursue as applicable, appropriate legal remedies against the offending Customer.

c. *Excluded Waste.* If Contractor's personnel observe Excluded Waste in any uncollected Container, the Contractor's personnel shall post a non-collection tag on that Container explaining the date, time, and nature of Excluded Waste identified, and Contractor shall not collect the Discarded Materials that contain Excluded Waste. Contractor may, upon each instance of observed Excluded Waste in a Container, levy a Contamination Fee upon the offending Customer as set forth in Exhibit "C". Contractor shall promptly thereafter deliver to the Customer a written notice via regular mail at the Customer's service address (or Owner's address if Owner is the direct Customer) containing the following information:

- The fact the Container could not be collected because of the observed presence of Excluded Waste;
- The date and time the notice was issued;
- Any photographic documentation of the violation(s);
- A description of the materials that are appropriate for collection in the Contractor Containers, proper methods of Source Separation, and an explanation of Excluded Waste being prohibited from any Container;
- An explanation that subsequent incidents of Excluded Waste may, or will continue to, result in non-collection, and the imposition of a Contamination Fee; and
- Contractor's contact information to obtain additional information and/or receive responses to questions the Customer may have.

Contractor shall notify the City in writing of repeat (three or more) Excluded Waste violations at a Premises, and deliver to City copies of all documentation, and notices related

thereto. City shall consult with Contractor and consider, and pursue as applicable, appropriate legal remedies against the offending Customer.

5.9 Procurement of Recovered Organic Waste Products. The parties are in the process of negotiating a separate agreement (the "Procurement Agreement") in accordance with 14 CCR Section 18993.1(d)(2) that is cost neutral to both parties to assist the City in complying with its procurement obligations as set forth in 14 CCR §18993.1. Should the parties reach mutual agreement on the terms and conditions of the Procurement Agreement, the City Manager is hereby authorized in his or her discretion to execute the Procurement Agreement on behalf of the City or present it to the City Council for approval.

a. *Procurement Credits.*

i. *Coordination with Regional Agencies and Special District:*

(1) The City reserves the right to coordinate with special districts, regional agencies, and similar entities (e.g., Inland Empire Utilities Agency, , schools, public parks) to facilitate procurement compliance.

(2) If any such entity wishes to procure Recovered Organic Waste Products on behalf of the City, a separate agreement or memorandum of understanding (MOU) shall be executed.

ii. *Verification of Procurement Credit Eligibility:*

(1) Contractor acknowledges that without a written agreement, procurement activities by external entities cannot be counted toward the City's compliance target.

(2) Contractor shall provide certifications, reports, and verification documents as required by CalRecycle and the City to ensure proper accounting of procurement credits.

5.10 SB 1383 Compliance Reviews. Subject to applicable law governing data security and privacy rights, including, without limitation, the California Consumer Privacy Act of 2018 (Civ. Code, § 1798.100 et. seq.), Contractor shall, upon City's request, assist City with its annual compliance review of Commercial and Multi-Family Customers as set forth in 14 CCR Section 18995.1(a)(1)(A) and investigations of complaints as set forth in 14 CCR Section 18995.1(a)(3). Any such compliance review shall mean a "desk" review of records as well as field audits to determine the Commercial/Multi-Family Customer's compliance with 14 CCR Section 18984.1. Notwithstanding the foregoing and unless otherwise provided in the Agreement, Contractor shall not have any obligation to inspect the Premises of any Customer or pursue any enforcement action related to, or arising out of, 14 CCR Section 18995.1, Section 18995.3, and Section 18995.4, which remain the sole obligations of City pursuant to Applicable Law.

a. *Field Audits.* For purposes of this Agreement, a "Field Audit" shall mean an on-site inspection of a Commercial or Multi-Family Customer's premises conducted to verify compliance with the source-separated collection requirements under this Agreement. Should the Commercial or Multi-Family Customer not have sufficient collection services, then Contractor



shall consider and recommend any applicable waivers pursuant to 14 CCR Section 18984.11, or require such Customer to subscribe to compliant source-separated collection services.

b. *Physical Inspections and Corrective or Enforcement Actions.* Notwithstanding the foregoing, Contractor shall not be responsible for conducting physical inspections of customer premises, nor shall Contractor have any obligation to initiate, undertake, or enforce any corrective or enforcement actions related to or arising from 14 CCR Sections 18995.1, 18995.3, and 18995.4, which shall remain the sole responsibility of City in accordance with Applicable Law.

## **6. TECHNOLOGICAL DEVELOPMENTS; PUBLIC EDUCATION**

### **6.1 Developments in Methods and Technologies for Discarded Materials Collection; City Directed Changes.**

a. Contractor and the City acknowledge the dynamic nature of science and technology and, therefore, agree to cooperate in the best interests of the City in efforts to research and develop Discarded Materials and other pilot programs during the term of this Agreement. In addition, Contractor shall meet with the City on an annual basis to discuss scientific, technological and economic developments and advancements in the field of Discarded Materials management, and if any are reasonably available to suggest changes to the methods currently utilized by the City or to suggest the implementation of pilot programs.

b. City may direct Contractor to perform additional services or modify Contractor's obligations under this Agreement, including, modifying the manner in which Contractor performs existing programs or services, adding new or additional services or programs, directing waste to a facility other than the facilities designated under this Agreement, targeted routing, and or implementing different kinds of services. Subject to the provisions of Section 16, Contractor shall be entitled to an adjustment in the Contractor Compensation for providing any additional or modified services directed by the City under this Section.

6.2 Public Educational Outreach. Contractor shall, at its sole cost and expense, develop, prepare, and distribute all educational materials and implement all public education programs and activities in full compliance with 14 CCR Section 18985.1 and any other applicable laws or regulations. Contractor shall coordinate and cooperate with the City to align public education efforts with the City's waste diversion and recycling objectives. All educational materials shall be provided in English and Spanish, and in any additional languages as required by law.

a. *General.* In general, Contractor-provided public education and outreach shall include all content required by this Section 6.2 and should: (i) inform Generators about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, reuse, and reduction of Landfill disposal; (ii) instruct Generators on the proper method for placing Discarded Materials in Containers for collection, Source Separation, and setting Containers out for collection with specific focus on minimizing Prohibited Container Contaminants; (iii) clearly define Excluded Waste and educate Generators about the hazards of such materials and their opportunities for proper handling; (iv) discourage Generators from buying

products if the product and its packaging are not readily reusable, Recyclable, or Compostable; (v) inform Generators subject to Edible Food recovery requirements under SB 1383 Regulations of their obligation to recover Edible Food and actions they can take to prevent the creation of Food Waste; (vi) encourage the use of Compost and Mulch; and, (vii) encourage Generators to purchase products/packaging made with Recycled-content materials. The cumulative intended effect of these efforts is to reduce each Customer's generation of Gray Container Waste service and, ultimately, disposal, and Contractor agrees to support and not undermine or interfere with such efforts.

b. *Contractor Cooperation and/or Support for City Educational Efforts.* Contractor shall cooperate and coordinate with the City on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. Contractor shall obtain approval from the City Manager or his/her designee, which shall not be unreasonably withheld or delayed, on all Contractor-provided public education materials as set forth in Exhibit "E". In the event the City desires Contractor to perform additional education and outreach obligations, the parties shall meet and confer in good faith to discuss the scope of such education and outreach activities. Contractor shall be entitled to a rate adjustment in accordance with Section 16 to compensate it for any such new or modified obligations.

c. *Annual Education Plan.* Annually, Contractor shall develop and submit an annual public education plan to promote the programs performed by Contractor under this Agreement. The annual public education plan shall present the education activities as set forth in Exhibit "E" for the upcoming calendar year and shall be submitted with the Contractor's annual report.

d. *Distribution Methods.* Contractor shall use the following methods to provide education information to Customers:

i. *Printed materials:* Contractor shall provide education materials in print (e.g., billing inserts; or in the case of mailings by City, Contractor will provide education materials to so be mailed) once every calendar year for Multi-Family and Commercial Customers. The Contractor shall be responsible for the design, printing, and distribution of these materials. All Contractor-printed public education materials shall, at a minimum, use recycled paper and/or be made of recycled material.

ii. *Electronic materials and website content:* Contractor shall provide electronic and website content for all education and outreach materials, including those that were provided in print, and which may further include, but are not limited to: digital graphics, digital versions of print materials, and social media posts. Contractor shall provide education and outreach materials to the City (in an editable, electronic format) for City's use in providing this information in print to Residential Customers at least once every three (3) months. The Contractor shall be responsible for the design, posting, and electronic distribution of these materials.

iii. *Materials Language.* The Contractor shall make all public education and outreach materials available in English and Spanish.

e. *Record of Educational Program Materials.* Contractor shall include a copy of all education and outreach materials distributed and provide such materials to the City in a form and manner to ensure City Compliance with 14 CCR Section 18985.3.

## **7. FRANCHISE TERM**

The Term of this Agreement shall commence as of the Effective Date and expires at the close of business on December 31, 2032. By mutual consent, this Agreement may be extended for an additional five (5) years from January 1, 2033 to December 31, 2037. Either party may provide notice to the other party of its intent not to renew this Agreement on or before one (1) year of the termination/expiration of the Term to allow time for the City to pursue any request for proposals for the services set forth herein.

## **8. FRANCHISE TRANSFERRABLE: CITY CONSENT REQUIRED**

8.1 Except with respect to an affiliate of Contractor, the Franchise granted by this Agreement shall not be transferred, sold, hypothecated, sublet or assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Contractor, either by act of the Contractor or by operation of law, without the prior written consent of the City expressed by resolution. For purposes of this Section, “change in ownership” shall mean any acquisition of more than fifty percent (50%) of Contractor’s voting stock by a person, or group of persons acting in concert, who do not already own fifty percent (50%) or more of the voting stock; provided that a change of ownership shall not include the acquisition of Contractor’s voting stock by an entity affiliated with Contractor. Except with respect to an affiliate of Contractor, any attempt by Contractor to assign this Franchise without the consent of the City shall be void.

For a change in ownership or an assignment to a non-affiliate of Contractor, Contractor will submit its request for City consent to the City together with documents sufficient to reasonably demonstrate to the City that: (i) the transferee's audited financial statements for at least the immediately preceding three (3) operating years; (ii) the proposed transferee has municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor; (iii) in the last five (5) years, the proposed transferee has not suffered any citations or other censure from any Federal, State, or local agency having jurisdiction over its waste management operations due to any significant failure to comply with Federal, State, or local waste management law and that the transferee has provided the City with a complete list of such citations and censures; (iv) the proposed transferee has at all times conducted its operations in an environmentally safe and conscientious fashion; (v) proof that the proposed transferee conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all Federal, State, and local laws regulating the collection and disposal of waste, including Hazardous Waste; (v) the transferee's officers or directors have no criminal convictions for fraud, deceit, false claims or racketeering with respect to the transferee's course of business; (vi) a “transition plan” describing how Contractor proposes to efficiently transition the rights and obligations hereunder to the transferee or assignee without material disruptions to service, and (vii) any other information reasonably required by the City to ensure the proposed transferee can fulfill the terms of this Agreement, including the payment of indemnities and damages and provision of bonds and/or performance standards, in a timely, safe, and effective manner.

8.2 The City shall not unreasonably withhold its consent to a transfer or change of ownership of the Franchise granted by this Agreement. The City may impose reasonable conditions of approval on a transfer, including, but not limited to, conditions requiring acceptance of amendments to this Agreement.

## **9. FRANCHISE FEE AND ADMINISTRATIVE FEES**

9.1 Franchise Fees. In consideration for the grant of Franchise provided herein, the City shall receive a monthly Franchise Fee of Contractor's Gross Receipts under this Agreement. The Franchise Fee shall either be remitted to the City, or collected and retained by the City, as follows:

a. *Contractor Remittances of Franchise Fees.* Contractor shall, on a monthly basis, remit to the City the Franchise Fee as provided in Exhibit C attached hereto, as may be duly adjusted in accordance with any future City approvals in accordance with Proposition 218, on all Gross Receipts from Commercial accounts and other accounts that are directly billed by Contractor. Remittance of Franchise Fees for which Contractor is responsible shall be payable monthly by Contractor to City not more than thirty (30) days after the last day of each calendar month. The City may deduct Franchise Fees from payments to Contractor with respect to services billed by City pursuant to Section 9.1.b. below.

b. *Franchise Fee Amounts Collected Directly by City.* For Residential accounts and accounts billed directly by the City, the City shall, upon receiving payments from such Customers, withhold the applicable Franchise Fee, as described in 9.1.a. above, of the Gross Receipts from such Customer payments, which withheld amounts will not be remitted to Contractor.

### **9.2 Administrative Fees.**

a. *Public Benefit Payment.* Contractor shall provide to the City an annual Public Benefit Payment in the amount of Five Hundred Sixty-Two Thousand Dollars (\$562,000). This payment will be made in two equal installments bi-annually on July 15 and January 15 of each year beginning July 15, 2026 and every year thereafter over the Term of this Agreement. The parties expressly acknowledge and agree that this payment constitutes a negotiated contractual consideration and is not a rate, fee, or charge imposed for refuse collection, processing, or disposal services. The Public Benefit Payment represents compensation to the City for the exclusive franchise rights granted under this Agreement and for the broader public benefits associated with the administration and oversight of the City's solid waste programs. This payment shall not be deemed a regulatory fee, service charge, or tax within the meaning of Proposition 218 or Proposition 26..

b. *Billing Service Fee.* Commencing on the Effective Date, the City shall retain a monthly Billing Service Fee for each Residential and other Customer accounts directly billed by the City. Any adjustments impacting Service Rates, as detailed in Exhibit "C", shall comply with the provisions of Section 16. This fee is intended to offset the City's costs associated with staff time, billing administration, processing, and account management.

i. The Billing Service Fee shall be subject to an annual adjustment based on the Consumer Price Index (CPI), consistent with the rate adjustments set forth in Section

16.3 commencing July 1, 2026, and shall continue to be applied annually on July 1 of each subsequent year. Any resulting impact on the Service Rates, as set forth in Exhibit C, shall be addressed in accordance with the provisions of Section 16.3.

ii. Notwithstanding the foregoing, the City reserves the sole discretion to modify the Billing Service Fee, either by increasing or decreasing the amount, as necessary to reflect actual cost fluctuations associated with providing billing and administrative services. Any such modification shall be based on demonstrated changes in the City's costs and shall be implemented in a manner consistent with applicable laws and regulations. City shall provide Contractor 90 days' prior notice so that Contractor may adjust the Rates as necessary to account for the increase or decrease in the Billing Service Fee.

c. *Recycling Administration Fee.* Commencing on the Commencement Date, the City shall retain a monthly Recycling Administration Fee as set forth in Exhibit C and as may be duly adjusted by City in accordance with Proposition 218 to recover its actual and reasonable costs associated with the administration, oversight, monitoring, and enforcement of the City's solid waste, recycling, and organics diversion programs, including but not limited to compliance with state mandates such as Senate Bill 1383. This fee shall be assessed per Residential and other Customer accounts directly billed by the City.

d. *Fee Verification & Adjustments.*

i. *Annual Verification.* The City shall perform an annual verification of the Recycling Administration Fee to ensure that the amount retained accurately reflects the City's actual administrative costs incurred during the prior fiscal year for enforcement of the City's solid waste, recycling, and organics diversion programs, including but not limited to compliance with . Any resulting impact on the Service Rates, as set forth in Exhibit C, shall be addressed in accordance with the provisions of Section 16.3.

ii. *Annual Adjustment Methodology.* The Recycling Administration Fee shall be calculated as a fixed percentage of the disposal component of the applicable Service Rates. The percentage shall be established to reasonably reflect the City's cost of program administration. While the Consumer Price Index (CPI) may be used as a reference index for evaluating changes in cost, the Recycling Administration Fee shall not be subject to an automatic CPI-based adjustment. Instead, any adjustment shall be based on actual administrative cost data verified by the City. The initial adjustment shall take effect on July 1, 2025, and shall be applied annually on July 1 of each subsequent year, in accordance with the procedures set forth in Section 16.3.

iii. Any fees, charges, or surcharges paid to the City, including, without limitation, the Franchise Fees and administrative fees under this Article 9, may be duly adjusted by City in accordance with Proposition 218. Any such fees, charges, or surcharges paid to the City shall not be included in the Service Rate cap and shall be passed-through to Customers by Contractor.

e. *Use of Funds.* This fee reimburses the City for administrative costs related to AB 939 programs and SB 1383 compliance, including staffing, outreach, reporting,

enforcement, and technical assistance. Funds may also support recycling promotion programs in partnership with the Contractor.

f. Public Outreach/Education Contribution. Contractor shall pay an additional Fifteen Thousand Even Dollars (\$15,000.00) annually to the City for use in public education and outreach. From the Effective Date, this amount shall increase by CPI in the same manner as the rates are adjusted in accordance with Section 16.3.c. commencing on July 1, 2025, and every July 1 thereafter.

9.3 Billing for Residential Premises. The City shall invoice and collect Service Rates payments from Residential Premises Customers.

a. Contractor Invoices Provided to City For Residential Services. On or before the 30th day of each month, Contractor shall send City an itemized invoice and accounting of services provided by Contractor to Residential Premises. To this end, Contractor shall provide City the following information and this information will be incorporated into the next invoice submitted by City to a Residential Premises Customer: (i) all Discarded Materials services, transport and processing provided by Contractor to Residential Premises (including regular Service Rates and any optional/special services) for the previous month, for billing by the City, and (ii) all changes in the level of service provided to any Residential Customer (excepting that to the extent City has notice of new or closed Residential accounts prior to Contractor actual knowledge or notice, the City shall annually notify Contractor of such new or closed Residential accounts). Each itemized invoice for Residential Premises Customers shall include:

i. Amounts of any State Integrated Waste Management Fee, Public Res. Code §§ 48000 et seq., and any Riverside County import fee (for Riverside County Landfill Disposal) established by Riverside County (including an itemization of such fees based upon tonnage Disposed, Customer type(s), and actual fees charged by the State or Riverside County, as applicable).

ii. Base or basic Residential Premises Service Rates applicable to Contractor's prior-month's actual service, with a tonnage break-down.

iii. Special Residential Premises service charges (e.g., Bulky Waste, special roll-out services, Container overage charges, contamination fees, etc.) applicable to Contractor's prior-month's actual service, with a tonnage break-down.

b. *City Billing.* The City shall bill Residential Premises monthly, in arrears, for services provided and invoiced to City by Contractor pursuant to this Section. The City shall hold and administer a separate City account/fund reserved for holding Service Rates collected from Residential Premises.

c. *City Remittance of Service Rates Collected from Residential Premises.* The City shall pay the Contractor monthly for the billed Residential Premises Service Rates collected, along with a certified statement of reconciliation by the City within thirty (30) days of each calendar month for the previous month's billings.

d. *Residential Premises Listing.* As needed, City will provide Contractor a listing of all Residential Customer locations, by route, where service was initiated or canceled during the previous month.

e. *Late Payments by Residential Premises.* City may charge Residential Premises Customers a Late Fee for Residential Premises' accounts that become delinquent based on the City-established fee schedule for such delinquencies. City shall retain the funds received as delinquent payment charges.

f. *Late Payments by City.* In the event of late payment by the City, Contractor shall promptly provide written notice to City of such delinquency, and (excepting in the case of a dispute subject to Section 16.4 if such delinquency continues for a period of fifteen (15) days thereafter, Contractor may, in its discretion, set-off amounts owed by Contractor to City from payments owed by City to Contractor.

9.4 Customer Verification. Beginning on April 1, 2024 and each April 1 thereafter during the Term, the number of Customers receiving service and the level of service billed by the City shall be verified as follows:

a. Not later than April 30, the City shall provide to the Contractor current billing information for each Customer, including name, address and level of service.

b. Contractor shall have thirty (30) days to review the documentation supplied by the City. Contractor shall inform the City in writing not later than five (5) days following the end of the thirty (30) day review period of any disagreement and the basis for such disagreement.

c. In addition to submitting comments under Subsection b. above, Contractor may at the same time provide information to the City regarding the number of Customers and service levels based on its own route audit.

d. Contractor and City agree to negotiate in good faith and update the City's billing records as needed within ten (10) days of Contractor's submittals.

9.5 Contractor Billing for Commercial and Multi-Family Premises Accounts. Contractor shall be responsible for billing directly all Commercial and Multi-Family Premises Customers, and for all Construction and Demolition services, for accrued Service Rates based on the service levels to which each such Customer is subscribed. In addition, Contractor shall directly bill Residential Premises that have subscribed to temporary Bin/Roll-Off Box collection, processing and Disposal.

a. *Late Payments.* Contractor may charge Commercial and Multi-Family Premises Customers a Late Fee (as set forth in Exhibit "C") in the event that any such Customer has not remitted required payments within ninety (90) days after the date of billing.

## **10. IMPOSITION OF LIQUIDATED DAMAGES OR TERMINATION**

10.1 General. If the City Manager determines that the Contractor's or its subcontractors' performance pursuant to this Agreement have not been in material conformance with reasonable industry standards which are obtained in similar cities in Southern California or with the provisions of this Agreement or Applicable Law, the City Manager shall, prior to assessment of any liquidated

damages under this Section 10 of this Agreement, advise Contractor in writing of such deficiencies. To the extent the deficiency is susceptible to correction, the City Manager may, in his/her written notice of deficiency, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be sixty (60) days from the receipt by the Contractor of such written notice unless such deficiency cannot reasonably be cured by Contractor within sixty (60) days. The City Manager shall review the Contractor's response and refer the matter to the City Council, or decide the matter and notify the Contractor of that decision, in writing. A decision or order of the City Manager shall be final and binding on Contractor if the Contractor fails to file a "Notice of Appeal to Council" with the City Manager within thirty (30) days of receipt of the City Manager's decision or if Contractor fails to pursue any legal remedies available under Applicable Law, including filing an action with a court of competent jurisdiction. Within ten (10) working days of receipt of a Notice to Appeal, the City Manager shall either refer the appeal to the City Council for proceedings in accordance with Section 10.2 below, or (except when the Notice of Appeal relates to the order of a hearing officer) refer the matter to a hearing officer as provided in Section 11, below.

10.2 Appeal or Matter Referred to Council. The City Council, in the case of an Appeal or referral to Council, may set the matter for hearing. The City Council shall give Contractor, and any other person requesting the same, fourteen (14) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give the Contractor, or its representatives and any other interested person, a reasonable opportunity to be heard.

a. Based on the evidence presented at the public hearing, the City Council shall determine by resolution whether this Agreement should be terminated or liquidated damages imposed. If, based upon the record, the City Council determines that the performance of Contractor is in breach of any material term of this Agreement, the City Council may terminate this Agreement or impose liquidated damages. Contractor's performance under its Franchise is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

b. Council right of termination or to impose liquidated damages is in addition to any other rights of City upon failure of Contractor to perform its obligations under this Agreement.

10.3 Termination of Franchise. The City shall have the right to terminate Contractor's Franchise and this Agreement and/or impose liquidated damages upon Contractor's material breach of this Agreement of, following notice and opportunity to correct as described above, the following:

a. If the Contractor practices, or attempts to practice any fraud or deceit upon the City.

b. If the Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon filing of an order for relief in favor of Contractor in a bankruptcy proceeding.

c. If the Contractor fails to maintain in full force and effect the worker's compensation and liability insurance, indemnification coverage, or cash bond as required by this Agreement.



d. If the Contractor violates any orders of any regulatory body having jurisdiction over the Contractor relative to this Agreement or Applicable Law, provided that the Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which no breach of this Agreement shall be deemed to have occurred while any such contest or challenge is pending.

e. If the Contractor ceases to provide collection services as required under this Agreement over all or a substantial portion of the City for a period of seven (7) days or more, except when occurring for reasons not within the control of the Contractor for Force Majeure in accordance with Section 24.1.

f. If the Contractor willfully fails to make payments required under this Agreement.

g. Any failure of the Contractor to comply with an order of the hearing officer made pursuant to Section 11.

#### 10.4 Liquidated Damages.

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

b. Contractor agrees to pay as liquidated damages, and not as a penalty, the amounts set forth below:

##### i. *Collection Reliability*

(1) For each failure to deliver Containers to a new Customer within five (5) Business Days after order, which exceeds ten (10) such failures annually: One Hundred Fifty Dollars (\$150.00) per occurrence.

(2) For each failure to collect Discarded Materials, which has been properly set out for collection, from an established Customer, on the scheduled collection day and not collected by the end of the next Business Day in accordance with Section 5.7, which exceeds fifteen (15) such failures annually: Seventy Five Dollars (\$75.00) per occurrence per Customer.

ii. *Collection Quality*

(1) For each failure to clean-up Discarded Materials spilled from Containers (except where caused by overloading or tipping/spilling by the Customer or other force not due to overfilling) that exceeds ten (10) such failures annually: One Hundred Fifty Dollars (\$150.00).

(2) For each failure to properly notice, and process Customer violations relating to observed Prohibited Container Contaminants or Excluded Waste, or provide City information relating to such violations as required by this Agreement, that exceeds ten (10) such separate failures annually, provided that multiple failed notices on any given day shall count as one (1) failure: One Hundred Dollars (\$100.00).

(3) For each failure to transport Discarded Materials to an appropriate facility for the particular Material type for processing and disposal in accordance with Section 5.1.c, that exceeds five (5) such failures annually: One Hundred Dollars (\$100.00) per occurrence.

iii. *Vehicle Requirements.* For failure to meet vehicle requirements under Section 17 that exceeds ten (10) such failures annually: One Hundred Fifty Dollars (\$150.00) for each occurrence.

iv. *Customer Responsiveness*

(1) For each failure to initially respond to a Customer complaint in accordance with Section 19.2.a. within one (1) Business Day: One Hundred Fifty Dollars (\$150.00) per occurrence.

(2) For each failure to promptly accept any Customer call due to the lack of adequate staff fluent in English and Spanish that exceeds ten (10) such occurrences annually: One Hundred Fifty Dollars (\$150.00) per occurrence.

(3) For each failure to remove graffiti from Bins and Roll-Off Boxes within five (5) Business Days of employee observation or receipt of request from City or Customer: One Hundred Fifty Dollars (\$150.00) per failure.

v. *Cooperation with Service Provider Transition.* For each day routing information requested by City is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service: One Thousand Dollars (\$1,000.00) per day.

vi. *Liquidated Damages for SB 1383 Violations.*

(1) Failure to implement three-stream Container system: for each occurrence of failing to offer Customers the three- Container system service required by and compliant with Section 5 hereof and the Chino Municipal Code, excluding Generators and Customers granted waivers or that demonstrate compliance with Recycling and Organic Waste Self-Hauling: One Hundred Fifty Dollars (\$150.00) per Generator or Customer.

(2) Failure to perform Route Reviews: for each failure to conduct Hauler Route contamination monitoring in accordance with this Agreement: One Hundred Fifty Dollars (\$150.00) per Hauler Route.

(3) Failure to comply with Container labeling and colors: for each occurrence of Contractor's failure to comply with Container labeling and color requirements as required by SB 1383 Regulations: One Hundred Dollars (\$100.00) per Container.

(4) Failure to perform public education and outreach: for each failure to perform any individual education and outreach activity as required and in the timeframe specified by this Agreement: One Hundred Dollars (\$100.00) per occurrence.

(5) Failure to submit reports or allow access to records: for each failure to submit any individual report or provide access to records in compliance with and in the timeframe specified in this Agreement. One Hundred Fifty Dollars (\$150.00) per report.

(6) Failure to conduct compliance tasks (Section 5(J)): for each failure to conduct any compliance review, Discarded Materials evaluations and/or other inspection required by this Agreement: One Hundred Dollars (\$100.00) per occurrence.

Liquidated damages shall only be assessed after Contractor has been given written notice and an opportunity to cure any such deficiency in accordance with Section 10(A). The notice shall include a brief description of the incident or the event of non-performance. Contractor may review (and make copies at its own expense) all non-confidential information in the City's possession relating to the incident or the event of non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with the City Manager or the City Manager's designee. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident or the event of non-performance. The City Manager shall provide Contractor with a written explanation of the determination on each incident or event of non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager shall be final and Contractor may file a Notice of Appeal for an administrative hearing pursuant to Article 11. Notwithstanding any provision of law to the contrary, the City has the affirmative duty to undertake reasonable measures to mitigate the amount of liquidated damages asserted or collected.

10.5 Timing of Payment. Contractor must pay any liquidated damages assessed by the City in accordance with this Agreement within ten (10) days after they are assessed. If such assessed damages are not paid within the ten (10) day period, the City may proceed against the performance bond or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

## **11. ADMINISTRATIVE HEARING PROCEDURES**

11.1 Upon the filing of a Notice of Appeal pursuant to Section 10.1, or if the Contractor should allege a breach of the Agreement by the City, either the City Manager or the City Council may refer the matter to a hearing officer. City and Contractor shall mutually agree on a hearing officer. If agreement is not reached within twenty (20) days of the filing of the notice of breach, then Contractor shall select the hearing officer from a list of three potential hearing officers who

are retired California Superior Court judges or Appellate Court justices, none of whom are related to parties, prepared by the City Manager and approved by the City Council.

11.2 The hearing shall be conducted according to California Code of Civil Procedure Section 1280, et seq. The exclusive venue shall be in San Bernardino County, California. A hearing officer to whom a matter is referred shall have the authority to: 1) order the City or Contractor to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; 2) assess damages upon the City or the Contractor consistent with the terms of this Agreement; or 3) find there has been no breach. If the hearing officer finds there has been no breach, such a decision precludes the City from terminating this Agreement or imposing liquidated damages. For any occurrence or series of related occurrences, the damages awarded shall be reasonably related to the seriousness of the breach.

11.3 The party losing the hearing shall be liable for the hearing officer's fees.

11.4 The hearing officer shall commence the hearing within thirty (30) days of selection unless the parties otherwise agree. Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties, or if agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of privilege of the parties, and the hearing officer shall adopt procedures to protect such rights. Except as may be otherwise specifically agreed by the parties, no other form of pretrial discovery shall be available to the parties provided that if either party notifies the hearing officer that a material violation of the Franchise or rights in connection therewith is claimed by either party, the provisions of Code of Civil Procedure Section 1283.05 shall apply.

11.5 Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.

11.6 Until final decision is entered from the hearing officer and the time for appeal or other post-judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in the Agreement and related to the subject matter of the hearing shall be stayed.

11.7 The order of the hearing officer may be appealed by Contractor by the filing of a Notice of Appeal with the City Council, and the City Council shall hold a hearing and take appropriate action in accordance with Section 10.2.

## **12. CITY'S ADDITIONAL REMEDIES**

In addition to the remedies set forth in Sections 10 and 11 above, City shall have the following rights and remedies following a material breach by Contractor which is not remedied following notice and opportunity to cure pursuant to Section 10.1.

12.1 To rent or lease equipment from Contractor at its fair and reasonable rental value for the purpose of collecting, transporting, processing, Recycling, Composting, and disposing of

Discarded Materials, which Contractor is obligated to collect, transport, process, Recycle, Compost, and dispose of for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to possess the equipment. If City exercises its rights under this Section, City shall pay to Contractor the reasonable rental value of the equipment so taken for the period of City's possession thereof.

12.2 The right to permit others to perform the services otherwise to be performed by Contractor hereunder, or to perform such services itself.

12.3 The right to seek damages and/or injunctive relief.

### **13. PRIVACY; CONFIDENTIALITY**

13.1 Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit (other than City), private agency, or company, unless upon the request of a law enforcement agency, the authority of a court of law, by statute, or upon valid authorization of the Customer. The provision shall not be construed to preclude Contractor from preparing, participating in, or assisting the City in the preparation of waste characterization studies, waste stream analyses, or enforcement actions relating to Prohibited Container Contaminants/Excluded Waste as may be required or permitted by AB 939 or SB 1383.

13.2 Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Customers.

13.3 The rights accorded Customers pursuant to this Section shall be in addition to any other privacy right accorded Customers pursuant to Federal or State law.

13.4 The City acknowledges that Contractor may assert that certain records and reports of Contractor submitted to the City are proprietary, confidential, or contain trade secrets or other intellectual property of Contractor (collectively, "Contractor's Intellectual Property"). All of Contractor's Intellectual Property held by Contractor and not submitted to City is and shall be under the sole ownership and control of Contractor. The Contractor shall provide City with written notice of all records and reports submitted to the City that Contractor asserts are Contractor's Intellectual Property. The City will maintain the confidentiality of all of Contractor's Intellectual Property provided by Contractor.

13.5 Notwithstanding the foregoing, Contractor acknowledges that City is legally obligated to comply with the California Public Records Act (Government Code Section 6250, et seq.) ("CPRA"). City acknowledges that Contractor may consider certain records, reports, or information contained therein, which Contractor is required to provide to City under this Agreement, to be of a proprietary or confidential nature. In such instances, Contractor will inform City in writing of which records are considered propriety or confidential. At such time as City receives a request for records under the CPRA or Federal Freedom of Information Act or a subpoena or other court order requesting disclosure of the records, City shall notify Contractor of the request, subpoena or order and of City's obligation and intent to provide a response within ten

(10) days. Contractor shall within five (5) days either: (i) consent in writing to the disclosure of the records; or (ii) seek and obtain, at Contractor's sole cost and expense, order of a court of competent jurisdiction staying or enjoining the disclosure of the records. In the event it is judicially determined that such records are legally required to be disclosed, Contractor shall hold City harmless from, and pay all City costs incurred in the course of, the judicial action (including City's reasonable attorneys' fees and costs, and any award of attorneys' fees against City).

#### **14. REPORTS AND ADVERSE INFORMATION**

14.1 Quarterly Report. Contractor shall submit to City a written Quarterly Report in a form acceptable to City within forty-five (45) days following the end of each calendar quarter, which shall include the following information:

- a. Volume of Discarded Materials collected (in tons);
- b. Volume of Discarded Material Diverted as the result of Contractor's performance of the Recyclable Materials and Organic Waste collection programs, in a manner consistent with the reporting requirements promulgated pursuant to AB 939 and SB 1383;
- c. A record of Recyclable Materials sold reflecting the quantity or tonnage sold of each category;
- d. Information compiled concerning Customer complaints, along with a brief narrative describing any operational changes made to respond to complaints received and to prevent their reoccurrence in the future, if necessary; and
- e. A list of notices issued detailing contamination problems and Contractor's follow-up actions, including copies of contamination notices and warning letters issued during the month.
- f. Quarterly commercial compliance summaries for AB 341, AB 1826, and SB 1383, which shall include:
  - i. The total number of customers subject to each regulation;
  - ii. The number of customers compliant solely through programs provided by Contractor;
  - iii. The number of customers whose compliance is achieved through third-party haulers, waivers, or internal diversion programs;
  - iv. The number of non-compliant customers, including the service address and contact information for each;
  - v. Residential SB 1383 compliance metrics, if available.
- g. Quarterly tonnage reports by collection program and facility type, which shall include:

- i. Tonnage collected by each collection program (e.g., trash, recycling, green/organics);
  - ii. Names and locations of all facilities receiving material (e.g., landfills, transfer stations, processing facilities);
  - iii. Diversion and residual waste disposal tonnage for each processing facility; and
  - iv. Final disposition (landfill or otherwise) for all collected materials.
- h. Construction and Demolition (C&D) Debris Program quarterly reporting, which shall include:
- i. The number of C&D projects/customers serviced;
  - ii. The total tons of C&D waste diverted;
  - iii. The total tons of C&D waste disposed;
  - iv. For any projects failing to meet the 65% diversion rate: the customer name, project address, and a brief explanation as to why the minimum diversion threshold was not met.

14.2 Annual Reports. The Contractor shall submit to the City a written Annual Report information, in a form acceptable to the City, no later than forty-five (45) days after the end of each calendar year, which shall include the following information:

- a. A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities including, but not limited to, services began or discontinued during the reporting year, and the number of Customers for each class of service;
- b. A report, in a form satisfactory to the City, on the City's progress in meeting, and maintaining its ability to meet its goals, under AB 939 and SB 1383, along with any recommended changes;
- c. A list of Contractor's officers and members of its board of directors;
- d. Documents, if requested by the City, showing Gross Receipts of the Contractor for services performed under this Agreement including a statement detailing Gross Receipts from all operations conducted or permitted pursuant to this Agreement and report of all City fees paid, a list of Customers billed by Contractor in accordance with Section 9.5 that are sixty (60) or more days past due and include the following information for each delinquent Commercial account: name; service address; contact information; number of days the account is delinquent; Customers whose service will be or has been suspended due to non-payment of all amounts due or account delinquency; and method(s) the Contractor has used to attempt collection of the bad debt, including date of such attempt(s).

14.3 AB 939 Reporting. Contractor shall assist the City in the preparation of all reports required under AB 939. This shall include development of all data required to prepare reports required by CalRecycle.

14.4 SB 1383 Reporting. Within forty-five (45) days after the end of each calendar year, the Contractor shall provide a written SB 1383 annual report to the City covering the most recently completed calendar year. Such report shall contain the following information:

a. *Contamination Monitoring Report.* Contractor's report under this Section shall include the following information regarding route reviews conducted by Contractor under this Agreement:

i. Documentation of Hauler Route reviews conducted pursuant to 14 CCR Section 18984.5(b), as described and in accordance with 14 CCR Section 18995.1, including a description of the process for determining the level of contamination and the number of route reviews conducted;

ii. Documentation of SB 1383 Regulatory non-compliance complaints that were received and investigated by Contractor under Section 20, in accordance with 14 CCR Section 18995.3, and the number of notices, violations, or targeted education materials issued to Customers for Prohibited Container Contaminants;

iii. Copies of all documentation related to route reviews, "desk-top" reviews, and notices issued to Customers with Prohibited Container Contaminants; and

iv. Documentation of the number of Containers where the contents were disposed due to observation of Prohibited Container Contaminants.

b. *Compliance Report.* Contractor's report under this Section shall include:

i. The total number of Customers receiving each type of Organic Waste collection services;

ii. The number of Organic Waste Customers and edible food Generators that received information and the type of education and outreach used;

iii. The number of complaints that were received and reviewed by Contractor under Section 20;

iv. Copies of information and public education materials provided to customers related to SB 1383, if any, including the date that the information was distributed to Customers, the number of accounts receiving the information, if applicable, in accordance with 14 CCR Section 18985.3;

v. To the extent the Approved Organic Waste Processing Facility(ies) accept(s) Compostable Plastics and/or plastic bags:



(1) Written notification that the Approved Organic Waste Processing Facility(ies) has and will continue to have the capabilities to process and recover Compostable Plastics included with the Green Container Waste; and

(2) Written notification to the City that the Approved Organic Waste Processing Facility has and will continue to have the capabilities to Process and recover plastic bags when it recovers Green Container Waste.

vi. A list of Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services in the City, as those terms are defined in 14 CCR Section 18982(a).

c. *Implementation Record.* Contractor shall provide information and documentation needed for the City's implementation record related to its performance of this Agreement with respect to waivers and exemptions as required under 14 CCR Section 18984.14 and procurement of recovered organic waste as required under 14 CC Section 18993.2.

d. *Other 1383 Data.* Such information or data Contractor is required to provide for reporting under this Agreement, as requested by City or CalRecycle and required for City's reporting compliance under 14 CCR Section 18994.2.

14.5 Adverse Information. The Contractor shall submit to City copies of all pleadings, applications, notifications, communications, and documents of any kind, submitted by the Contractor, as well as copies of all decisions, correspondence, and actions by, any Federal, State, and local courts, regulatory agencies, and other government bodies that adversely affect Contractor's ability to perform services pursuant to this Agreement. All reports and records required under this or any other section shall be furnished at the sole expense of the Contractor.

## **15. REVIEW OF PERFORMANCE, QUALITY OF SERVICE, AND SYSTEM AND SERVICE REVIEW**

15.1 At City's sole option, within ninety (90) calendar days of the first anniversary of the Effective Date of this Agreement, or each five (5) years thereafter throughout the term of this Agreement, City may hold a public hearing at which the Contractor shall be present and shall participate, to review the Contractor's performance and quality of service, collection and Recycling systems, and other services. In addition, any Customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

15.2 At any time, upon written request from the City, the Contractor shall, within sixty (60) calendar days, submit a report to City indicating the following:

a. All Discarded Materials collection, Composting, and Recycling services reported in collection, and Recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the United States with comparable populations, that are not provided to City.

b. Changes recommended to improve the City's ability to meet state-mandated Diversion goals.

c. The value of recyclables, the revenue obtained through the sale of Recyclables, and the expense of collecting and transporting the Recyclables.

15.3 Not later than sixty (60) days after the conclusion of each system and service review hearing, or review of information submitted by Contractor, City shall issue a report.

## **16. CONTRACTOR'S COMPENSATION**

16.1 Contractor Service Rates. Contractor shall provide the services described in this Agreement in accordance with the rates approved by City from time to time in accordance with Proposition 218 for Customers at Residential, Commercial and Multi-Family Premises. The Service Rates are set forth in the Exhibit "C" (Schedule of Rates) as they are effective as of the Commencement Date, and as those rates may be amended by resolution of City Council (the "Service Rates").

a. *Extraordinary Adjustments.* In addition to annual rate adjustments under Section 16.3, Contractor may propose Service Rate adjustments in an amount equal to Contractor's extraordinary changes in performing its cost of collection, Landfilling, Recyclables or Organics Waste processing/Disposal services. Such proposals for adjusting Service Rates to cover extraordinary cost increases shall be subject to City Council approval; provided, however, that Contractor acknowledges that such extraordinary, non-inflationary adjustments shall be subject to Proposition 218 requirements. Such extraordinary increases or decreases in its costs of providing services shall include, by way of example and not by way of limitation: (i) a change in the location of the sites/Facilities to which the Contractor transports Discarded Materials for processing/Disposal; (ii) new or increased taxes, charges, surcharges, or fees payable by Contractor based on its operations hereunder by a governmental body; (iii) changes in the local, State, or Federal laws governing collection, separation, transportation or Disposal of Discarded Materials; (iv) material increases in fuel and/or labor costs, (v) changes in services requested by the City, or (vi) material adverse changes in the market value of Recyclables or recovered organic waste products.

b. *Notice.* The Contractor shall provide the City written notice of the implementation of changes to any of its Service Rates, charges or fees that are not subject to regulation by the City or requirements of Proposition 218. This notice shall include a statement of the reasons for the rate increase or decrease, which shall be approved by the City before distribution, unless it is determined by the City that the proposed increase or any portion thereof is subject to a Proposition 218 process.

c. *Cost Factors.* For any proposed adjustment to the Service Rates subject to Proposition 218, Contractor shall present each individual cost factor supporting such proposed adjustment by the February 15 prior to the effective date of any Service Rate adjustment, subject to the availability of CPI and Landfill, Recyclables, and Organic Waste processing or disposal cost information. The Contractor shall provide supporting documentation and calculations to justify the presented cost factors and any findings legally needed to support the proposed adjustment in Service Rates. Contractor's failure to provide such information on a timely basis does not waive its right to pursue the proposed Service Rate adjustment, provided that the parties understand and agree that the effective date of a Rate adjustment may be delayed in order to provide the City adequate time to review and act upon the information presented (including any time periods needed for Proposition 218 processing if applicable).

16.2 Proposition 218 Generally. To the extent applicable, adjustments and/or increases to the Service Rates, including extraordinary requests, requests based on increased costs of providing service passed-through the Service Rates, and any other request for rate increases under this Agreement, are strictly subject to the assent of the City and compliance with Proposition 218 and Government Code Section 53756. The City intends to comply with all Applicable Laws (including without limitation Proposition 218 to the extent the City maintains the position that Proposition 218 is applicable to the Services Rates) concerning the setting of adjustments to the Service Rates under this Agreement. Should a majority protest exist for any requested Service Rate increases to which Proposition 218 is applicable, Contractor acknowledges that City may not proceed to implement such requested increase.

a. *Failure of Service Rate Passage.* If a majority protest hearing or other application of Proposition 218 prevents a proposed adjustment to Service Rates and/or increase from being implemented, the dispute resolution process described in Section 16.4 below shall apply.

b. *Decreases in Service Rates.* Decreases in Service Rates to an amount less than those set in a Proposition 218 approved Service Rate Schedule do not require a majority protest process or any other notice other than that notice to the City described in Section 16.1.b.

16.3 Annual Inflationary Rate Adjustments (CPI) Subject to Government Code § 53756. Subject to adoption in accordance with Proposition 218 and this Agreement, the Service Rates may be adjusted to account for annual inflationary increases to all Service Rates for Residential, Multi-Family and Commercial Premises Customers in an amount equal to the annual percent change in the Consumer Price Index ("CPI"). This annual CPI adjustment will be calculated as an average over the 12-month period ending December 31 of the year prior to the date the CPI adjustment is to take effect. However, no annual CPI adjustment to Service Rates shall exceed a 5% maximum. Should any year be greater than the 5% cap, that amount in excess will not be held over to subsequent contract years. Any fees, charges, or surcharges paid to the City, including, without limitation, the Franchise Fees and administrative fees under Section 9, shall not be included in the 5% Service Rate cap and shall be passed-through to Customers by Contractor.

a. Annual CPI adjustments to the maximum Service Rates can occur automatically over a five (5) year period pursuant to the following requirements:

i. The CPI adjustment may take effect only after the Service Rates schedule has first been adopted and passed pursuant to a Proposition 218 hearing and/or protest process. To this end, the CPI adjustment shall start to accrue consistent with Government Code § 53756, such that the CPI adjustments may not exceed a period of five (5) years.

ii. Commencing from the date of adoption for the Service Rates, CPI adjustments shall continue automatically on a year-to-year basis for a period not to exceed five (5) years after the date the rate schedule subject to adjustments were adopted in accordance with Proposition 218.

iii. At the end of the five-year period, there shall be no further CPI escalations or other automatic adjustments to the maximum Service Rates unless or until further automatic adjustments are adopted through a subsequent Proposition 218 process as required by Government Code § 53756.

iv. Contractor shall give notice of automatic inflationary adjustments in accordance with Government Code § 53756. Further, if during any five (5) year period of automatic CPI adjustments Contractor requests new, non-inflationary increases to the Service Rates (e.g., extraordinary adjustments, or adjustments to cover new programs or legal requirements), then such request shall be subject to a new Proposition 218 majority protest process, which if successful may restart start the five (5) year period for automatic adjustments.

16.4 Resolution of Disputes Regarding Rate Adjustments. Upon any dispute regarding the computation or implementation of proposed Service Rate adjustments, invoices to City for Landfill Disposal Fees or Organics Waste Disposal Fees, or any other dispute regarding Contractor's reimbursement for fees, billing, or Service Rates, the contesting party shall notify the other of such dispute in writing within thirty (30) days of being noticed of the disputed issue. Within fifteen (15) days of receiving notice of a disputed rate or fee issue, either party shall have the right to request in writing that the parties negotiate in good faith possible reductions in programs, services, or alternate fee strategies to resolve such dispute. If the parties fail to complete a negotiated resolution within one hundred eighty days (180) from a request for negotiation, the parties (either Contractor or City, as appropriate) may initiate the dispute procedures in accordance with Sections 10 and 11 hereof.

16.5 Customer Participation. The City and Contractor hereby acknowledge that the Contractor has based its Residential, Multi-Family and Commercial Premises Service Rates in Exhibit "C" and its expectation of meeting AB 939 and SB 1383 goals upon the full participation of all Customers in the Recycling Materials and Organic Waste services described herein. The City and Contractor agree to consider reasonable modifications to this Agreement in the event less than adequate Customer participation is achieved, including but not limited to the imposition of fines or penalties against Premises required by law to arrange for AB 939 and SB 1383 Regulatory compliant services that decline or neglect to participate in such programs.

16.6 Organics Waste Disposal/Processing Rate. Contractor, or its affiliate, shall directly bill the City monthly separately from the Contractor Service rates for Organics waste processing based on the following: The total rate per ton, as specified by Exhibit "C", includes all costs associated with the transportation from the City to the processing facility (excluding residual), and actual per ton cost charge imposed by the processing facility. Contractor shall submit to the City, on or before February 15, prior to the effective date of the rate adjustment, information in support of the adjustment. The City agrees to promptly review Contractor's request, and to undertake all actions required to timely implement the requested adjustment by July 1, 2026 and each July 1, thereafter. The requested adjustment will be reviewed and acted on by the City on or before the second City Council meeting prior to the effective date of the adjustment, and the City's approval may not be withheld unreasonably; provided, however, that the Contractor acknowledges that adjustments may be subject to Proposition 218 requirements. Contractor shall be entitled to pass through to the City all reasonable and documented costs associated with Organics waste processing, including but not limited to transportation, tipping, and processing fees incurred as a result of compliance with State law or regulatory requirements. The City shall be responsible for payment of such Pass-Through Costs, notwithstanding that such costs may not yet be reflected in the current solid waste collection rates. The City shall undertake the necessary Proposition 218 proceedings as soon as practicable to incorporate these costs into the approved rate schedule. The organics waste annual rate adjustment will be based on the cost per ton, contamination fees, and

other such related charges by the Organics waste processing facility. The annual adjustment to the Organics Waste Disposal/Processing Rate shall not be subject to the Service Rate cap.

## **17. DISPOSAL FACILITY RATES**

Contractor or its affiliate shall, separately from the Contractor's other services billed to the City under this Agreement, directly bill the City on a monthly basis the then-applicable per ton fee for transfer and disposal services multiplied by the total monthly tons delivered to the Disposal Facility (the "Disposal Fee"). The Disposal Fee includes all costs associated with the transportation from the City to the Disposal Facility, actual disposal operations, Riverside County import fees, and State Integrated Waste Management fee.

## **18. COLLECTION EQUIPMENT**

18.1 Sufficient Fleet; Equipment Inspections Generally. Contractor shall provide an adequate number of vehicles and equipment for the collection, transportation, Recycling, and Disposal of Discarded Materials for which it is responsible under this Agreement. The equipment of Contractor used under this Agreement shall be subject to inspection by City at a reasonable time and during normal business hours on a semi-annual basis, but shall not be subject to any permit fees therefore. All vehicles and Containers used to perform this Agreement shall be kept clean and in good appearance, in good repair and will be uniformly painted to the reasonable satisfaction of the City Manager.

18.2 Collection Hours. Collection vehicles shall not engage in collection of Discarded Materials in the City outside the hours of 6:00 a.m. and 7:00 p.m. on Business Days.

18.3 Collection Vehicle Standards. All collection vehicles shall conform to the highest industry standards and shall be maintained in a clean and efficient condition.

a. *Air Quality.* All collection vehicles shall comply with all applicable provisions of South Coast Air Quality Management District Rule 1193(d), including the implementation schedule set forth in Rule 1193(d)(4)(A) where applicable. All collection vehicles shall comply with the State Vehicle Code, including but not limited to California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements.

b. *CHP Inspections.* The City shall receive pre-inspection notice and may elect to observe any inspection of collection vehicles by the California Highway Patrol (CHP); all certificates issued by the CHP in the course of CHP vehicle inspections shall be submitted to the City Manager following the Effective Date of this Agreement and upon each anniversary date during the Term of this Agreement.

c. *DMV Registration.* All vehicles used by Contractor under this Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair, and shall be uniformly painted. A sufficient supply of parts must be kept on hand to ensure timely and continuous fulfillment of this Agreement.

18.4 Correction of Defects. Following any inspection, the City Manager shall have the right to reasonably require Contractor to take out of service any equipment not in good working order and cause Contractor to recondition or replace any equipment reasonably found to be unsafe

or unsanitary within thirty (30) days of notification of defect in such equipment. The City Manager's determination may be appealed to the City Council.

## **19. PUBLIC ACCESS TO CONTRACTOR; CONTRACTOR'S PERSONNEL**

19.1 Office Hours; Local Office. Contractor shall maintain a "local" office in a location within fifteen (15) miles of the City boundary. Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily on all collection days. A representative of Contractor shall be available during office hours for communication with the public at Contractor's office or at Contractor's regional call center. In the event that normal business problems cannot be rectified over the telephone, a representative of Contractor shall agree to meet with the Customer at a location agreeable to Contractor and the Customer. Contractor shall maintain a local or toll free telephone number during both normal office hours and after-hours, and an answering service during all hours other than normal office hours.

### **19.2 Service Complaints.**

a. *All Customer complaints shall be directed to Contractor.* Contractor shall record all complaints received by mail, by telephone, or in person (including date, name, address of complainant, and nature of complaint) and what action was taken to resolve the complaint. Contractor shall maintain all such records and make them available for inspection by the City upon request. Contractor agrees to use its best efforts to resolve all complaints by the close of the next Business Day following the date on which such complaint is received.

b. *SB 1383 Complaints.* Except with respect to contamination monitoring under Section 5.8, Contractor shall commence an investigation, within ninety (90) days of receiving a complaint in the following circumstances: (i) upon Contractor receipt of a complaint that an entity may not be compliant with SB 1383 Regulations and if City determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations; and, (ii) upon City request to investigate a complaint received by City, in which City determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations. Contractor is required to investigate complaints against Customers and Generators, but not against Food Recovery organizations or services, and other governmental entities regulated by SB 1383 Regulations. Any such investigation shall be a "desk review" of records collected and maintained by Contractor to determine the Customer's compliance with SB 1383 Regulations.

19.3 Government Liaison Person. The Contractor shall designate a "government liaison person" who shall be responsible for working with the City Manager or the City Manager's designated representative to resolve Customer complaints.

19.4 Community Involvement. It is the intent of this Agreement for the Contractor to be highly involved in community activities throughout the Term of this Agreement. The governmental liaison person identified by the Contractor shall be responsible to involve the Contractor in such activities as agreed upon between Contractor and the City Manager.

a. The general nature of these current and future activities shall be events that benefit the community in ways recognized by the general population. Said participation shall, at the very least, meet current levels and increase proportionally with increases in customers and as

the years of the Franchise extend in the future. These examples are subject to change over time with the concurrence of the City Manager.

19.5 Contractor's Personnel. Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required by this Agreement in a courteous, safe and efficient manner. Contractor shall comply with and be governed by the law of the State of California having to do with working hours as set forth in the Labor Code of the State of California, as the same may be amended from time to time.

a. *Driver Qualifications*. All drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

b. *Employee Appearance and Conduct*. All employees, while engaged in the collection of Discarded Materials within the City or otherwise engaged in services described in this Agreement, shall be attired in uniform. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures.

c. *Safety Training*. Contractor shall provide suitable operational and safety training for all its employees who use or operate vehicles or equipment for collection of Discarded Materials or who are otherwise directly involved in such collection. Contractor shall train its employees involved in Discarded Materials collection to identify, and not to collect, Excluded Waste and to properly handle Prohibited Container Contaminates.

d. *Safety*. All work performed pursuant to this Agreement shall be performed in a manner that provides safety to the public and meets or exceeds safety standards outlined by the California Construction Safety Orders under the State of California Code of Regulations ("CAL-OSHA"). City reserves the right to issue restraint or cease and desist orders to Contractor when unsafe or harmful acts are observed or reported to City. Contractor shall instruct its employees to report immediately any Hazardous Wastes they observe within the City during the course of their work to the City.

e. *No Gratuities*. Contractor shall not permit its employees, affiliates or subcontractors to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the work performed by those employees or subcontractors pursuant to this Agreement.

## **20. RESOLUTION OF DISPUTED CUSTOMER COMPLAINTS**

20.1 Complaint Review. A Customer dissatisfied with Contractor's handling of a complaint may ask the City to review the complaint. To obtain this review, the Customer must request City review within thirty (30) days of receipt of Contractor's response to the complaint, or within forty-five (45) days of submitting the complaint to the Contractor, if the Contractor has failed to respond to the complaint. The City may extend the time to request review for good cause.

20.2 Contractor Review. Before reviewing the complaint, the City Manager shall refer it to the Contractor. If the Contractor fails to cure the complaint within ten (10) days or other such reasonable time if the complaint cannot reasonably be cured by Contractor within such ten (10) day period, the City Manager shall review the Customer's complaint and determine if further action is warranted. The City Manager may request written statements from the Contractor and Customer, and/or oral presentations.

20.3 Complaint Remedy. The City Manager shall determine if the Customer's complaint is unresolved and, if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of Customer charges related to the period of breach.

20.4 Duty Delegation. The City Manager may delegate these duties to a designee. The decision of the City Manager or designee shall be final on any matter under Five Thousand Dollars (\$5,000.00). In the event of a decision on a matter awarding Five Thousand Dollars (\$5,000.00) or more, Contractor may seek review pursuant to Section 11 above.

## **21. OWNERSHIP OF WASTE**

Once Discarded Materials are placed in a Container for collection, ownership shall transfer to Contractor, subject to the terms of this Agreement and by operation of law. Contractor is hereby granted the right to retain, Recycle, Compost, Dispose of, and otherwise use such Discarded Materials, or any part thereof, in any lawful fashion or for any lawful purpose desired by Contractor in accordance with Applicable Law. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit or profit resulting therefrom. The Discarded Materials or any part thereof, which are delivered at a Facility shall become the property of the owner or operator of the Facility once delivered there by Contractor. At no time does City obtain any right of ownership or possession of Discarded Materials placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that City has such rights.

## **22. INDEMNIFICATION, INSURANCE AND BONDS**

22.1 Indemnification of City. Contractor agrees that it shall protect, defend with counsel reasonably approved by City, indemnify, and hold harmless City, its officers, employees, and agents and at no cost to City, from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities, (including reasonable attorney's fees) (collectively "Claims"), to the extent attributable to Contractor's acts or omissions in the performance of its obligations pursuant to this Agreement, except to the extent of the sole negligence or willful misconduct of the City, its officers, employees, agencies, or contractors. This provision is in addition to all other provisions of this Agreement and is intended to apply to Contractor's actions during the term of this Agreement and survive the end of the term of this Agreement.

22.2 Hazardous Substances Indemnification. Contractor shall indemnify, defend with counsel reasonably approved by City, protect and hold harmless City, its officers, employees, agents, and assignees, against all remediation and removal actions (including but not limited to attorney's and expert witness fees) incurred or suffered by, or asserted against, City or its officers, employees, agents, or Contractors arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial or response, plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Wastes



or Hazardous Substances at any place where Contractor disposes of Solid Waste pursuant to this Agreement. Nothing in this Agreement shall be construed as the City directing or arranging for the disposal of Hazardous Wastes or Hazardous Substances, whether or not such Wastes/Substances are inadvertently collected or commingled with Solid Waste, Recyclable Materials or Organic Materials. Nothing in this Agreement provides for the arrangement of Excluded Waste. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607 (e) and California Health and Safety Code Section 5364, to insure, protect, hold harmless, and indemnify City from liability. This provision is in addition to all other provisions of this Agreement and is intended to apply to Contractor's actions both during and prior to the term of this Agreement and survive the end of the term of this Agreement.

22.3 CalRecycle Indemnification. Subject to the requirements of Public Resources Code Section 40059.1, Contractor agrees to protect, defend, with counsel reasonably approved by the City, and indemnify City against all fines or penalties imposed by CalRecycle resulting from Contractor's failure to perform its obligations under this Agreement, and such failure causes the City to not meet the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 and corresponding regulations. Subject to the scope of this indemnification, Contractor further agrees to appear and represent the City in any appeals, proceedings and/or litigation brought against City for alleged failure to comply with AB 939, AB 341, AB 1826, or SB 1383 resulting from Contractor's failure to perform its obligations under this Agreement.

22.4 Insurance Coverages. Without limiting Contractor's indemnification of City, and prior to commencement of any services under this Agreement, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

a. *General liability insurance*. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office current form CG 00 01, in an amount not less than Ten Million Dollars (\$10,000,000.00) per occurrence and in the aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

b. *Automobile liability insurance*. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 20 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than Five Million Dollars (\$5,000,000.00) combined single limit for each accident.

c. *Workers' compensation insurance*. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least Five Million Dollars (\$5,000,000.00)).

d. *Pollution Liability Insurance*. Contractor shall maintain Environmental Impairment Liability insurance, written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than Five Million Dollars (\$5,000,000.00) per claim and in the aggregate. The policy shall provide coverage for the hauling

of waste from the project site to the final disposal location, including non-owned disposal sites (NODS).

Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed “by or on behalf” of the insured. Policy shall contain no language that would invalidate or remove the insurer’s duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall provide for a duty to defend on the part of the insurer. With respect to General Liability, and Contractors Pollution Liability, coverage should be maintained for a minimum of (5) five years after contract completion.

#### 22.5 General Insurance Requirements.

a. *Subcontractors.* Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

b. *Proof of Insurance.* Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers’ compensation. Insurance certificates and endorsements must be approved by City’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to inspect, but not retain any copies of, complete, certified copies of all required insurance policies, at any time.

c. *Duration of Coverage.* Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the services hereunder by Contractor, its agents, representatives, employees or subcontractors.

d. *Primary/noncontributing.* Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured. Any umbrella or excess insurance shall not have any exclusions or conditions that delete coverage from the primary policy.

e. *City’s Rights of Enforcement.* In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement or declare a default hereof.

f. *Waiver of Subrogation.* All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive

their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

g. *Enforcement of Contract Provisions (non-estoppel).* Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

h. *Requirements Not Limiting.* Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

i. *Notice of Cancellation.* Contractor agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation of coverage for each required coverage.

j. *Additional Insured Status.* General liability and automobile liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies, using ISO CG 20 10 and CG 20 37, or equivalents. This provision shall also apply to any excess/umbrella liability policies.

k. *Prohibition of Undisclosed Coverage Limitations.* None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and City-approved in writing.

l. *Separation of Insureds.* A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

m. *Pass Through Clause.* Contractor agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

n. *Agency's Right to Revise Specifications.* The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

o. *Self-Insured Retentions.* Any self-insured retentions must be declared Self-insurance will not be considered to comply with these specifications unless approved by City.

p. *Timely Notice of Claims.* Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

q. *Additional Insurance.* Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the services hereunder.

22.6 City Business License. Chapter 14, Title 4, of the Chino Municipal Code requires Contractor to acquire a no fee City Business License as a condition precedent to operating as a contractor within the City.

### **23. CONTRACTOR'S AND CITY'S BONDS AND RECORDS; AUDITS**

23.1 Record Maintenance. Contractor and City shall maintain in auditable form certain records specifically relating to the services provided hereunder, including, but not limited to, customer lists, billing records, accounts receivable records, maps, AB 939 and SB 1383 compliance records, and Customer complaints, for the full Term of this Agreement, and an additional period of not less than three (3) years after the expiration or earlier termination of this Agreement. The City or the Contractor shall have the right, upon five (5) Business Days advance notice, to inspect all maps, AB 939/SB 1383 compliance records, Customer complaints, and other records collected and maintained by Contractor related to its performance of this Agreement or records collected or maintained by City which reasonably relate to either party's compliance with the provisions of this Agreement. Such records shall be made available for review to either party at such party's regular place of business.

23.2 Underpayment and Overpayment of Fees. Should examination or audit of either party's records reveal an underpayment or overpayment of any fee required under this Agreement, the amount of such underpayment or overpayment shall become due and payable to the other party with interest at the legal rate of seven percent (7%) not later than fifteen (15) days after written notice of such underpayment or overpayment is sent to either party. Should any underpayment or overpayment of more than three percent (3%) be discovered, the responsible party shall bear the entire cost of the audit.

### **24. GENERAL PROVISIONS**

24.1 Force Majeure. Contractor shall not be in default under this Agreement in the event that the collection, transportation, Recycling, Composting, and Disposal of Discarded Materials provided by the Contractor under this Agreement is interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, and fires, pandemics or epidemics (or the threat of such natural disasters), strikes, lockouts, and other labor disturbances, or other catastrophic events which are beyond the reasonable control of Contractor. Other catastrophic events do not include the financial inability of the Contractor to perform or failure of the Contractor to obtain

any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the negligent acts or omissions of the Contractor.

In the event of strikes, lockouts, and other labor disturbances, Contractor shall use best efforts, including without limitation of substitute personnel and drivers, to provide services at the frequency and scope necessary to protect human health and the environment to the extent reasonable under the circumstances.

24.2 Independent Contractor. Contractor is an independent contractor and not an officer, agent, servant, or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, contractors, and sub-contractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents, or sub-contractors shall obtain any rights to retirement or other benefits which accrue to City employees.

24.3 Pavement Damage. Contractor shall be responsible for any damage due to Contractor's negligence to City's driving surfaces, whether or not paved, resulting from vehicles providing services pursuant to this Agreement, and driving surfaces at the location of bins, roll-offs, and containers on public or private property, normal wear and tear excluded.

24.4 Property Damage. Any physical damage to public or private property, or other City property caused by the negligent or willful acts or omissions of Contractor, its employees, agents, or sub-contractors shall be repaired or replaced by Contractor at its cost.

24.5 Right of Entry. Contractor shall have the right, until receipt of written notice revoking permission to pass is delivered to Contractor, to enter or drive on any public or private street, court, place, easement, or other private property necessary for the purpose of providing the collection, transportation, Recycling, Composting, and Disposal of Discarded Materials pursuant to this Agreement.

24.6 Law to Govern; Venue. The law of the State of California shall govern this Franchise Agreement without reference to its conflicts of laws principles. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Bernardino. In the event of litigation in U.S. District Court, exclusive venue shall lie in the Central District of California.

24.7 Changes in Law and Amendment. This Agreement is intended to assist the City in carrying out its obligations to comply with the provisions of the California Integrated Waste Management Act of 1989 (AB 939, AB 341, AB 1826, and SB 1383) as may from time-to-time be amended, and as implemented by regulations of CalRecycle, as they, from time to time, may be amended. In the event that any Applicable Laws or other State or Federal laws or regulations enacted after this Agreement has been executed, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such revised Applicable Laws. Except as otherwise provided herein, no other amendment of this Agreement shall be valid unless in writing duly executed by the parties. In the event of any such change in law that impacts Contractor's performance under this Agreement Contractor shall be entitled to a rate adjustment in accordance with Section 16.1.

The City and Contractor agree that Contractor's obligations and/or scope of services under this Agreement exclude any existing requirements regarding the future conversion of fleets, or any part thereof, to Zero-emissions (ZEV) or Near-zero-emissions (NZEV) vehicle(s) or the future acquisition, hiring or use of ZEVs or NZEVs under Applicable Law, including without limitation Sections 2015 et seq. of Title 13 of the California Code of Regulations. Should such existing Applicable Law apply to any Contractor's vehicles used in the provision of services under this Agreement during the Term, then the City and Contractor agree to meet and confer in good faith to amend this Agreement to incorporate provisions and obligations reasonably necessary to comply with such Applicable Law, and Contractor shall be entitled to a rate adjustment in accordance with Section 16.1 for such change in Contractor's obligations and/or scope of services under this Agreement. In the event the City determines it is necessary to hire a qualified professional to review a rate adjustment related to the foregoing for acquisition and/or use of ZEV or NZEVs vehicles under Applicable Law, including any necessary infrastructure, City and Contractor shall equally share the cost of the qualified professional's review in an amount not to exceed Fifty Thousand Dollars (\$50,000.00); provided that prior to commencing any such review the qualified professional shall agree to a reasonable non-disclosure agreement with Contractor to protect Contractor's proprietary, confidential, and trade secret information and subject to California privacy rights to the extent permitted under Applicable Law. Any such non-disclosure agreement shall not preclude the qualified professional from providing workpapers to, or disclosing any such information to, the City. City agrees to protect any such proprietary, confidential, and trade secret information from public disclosure.

24.8 Notices. All notices, demands, requests, proposals, approvals, consents, and other communications that this Agreement requires, authorizes, or contemplates must be in writing and must either be personally delivered to a representative of the Party at the address set forth below, or be deposited in the United States mail, first class postage prepaid, addressed as follows:

To City:	City of Chino Attn: Public Works Director 13220 Central Ave. Chino, CA 91710 (909) 334-3250
To Contractor:	USA Waste of California, Inc. Attn: District Manager 13793 Redwood Street Chino, CA 91710
with copy to:	USA Waste of California, Inc. 9081 Tujunga Avenue Sun Valley, CA 91352 Attention: Assistant General Counsel

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section. Each Party shall deliver all notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return

receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only: 1) upon receipt by the receiving party and 2) if the party giving the notice has complied with the requirements of this Section.

24.9 Savings Clause and Entirety. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or un-enforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

24.10 Exhibits Incorporated. Exhibits “A” through “G” are attached to and incorporated into this Agreement by reference.

***[Signatures on Following Page]***

IN WITNESS WHEREOF, Contractor and the City have executed this agreement in Chino, California, on \_\_\_\_\_, 2025.

Approved as to Content:

By: \_\_\_\_\_  
Hye Jin Lee  
Director of Public Works

Date: \_\_\_\_\_

CITY OF CHINO:

By: \_\_\_\_\_  
Linda Reich  
City Manager

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Natalie Gonzaga  
City Clerk

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
Fred Galante  
City Attorney

Date: \_\_\_\_\_

USA WASTE OF CALIFORNIA, INC.

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## EXHIBITS

Exhibit A: City Limits  
Exhibit B: Special Wastes  
Exhibit C: Schedule of Rates  
Exhibit D: Approved Facilities  
Exhibit E: Education Plan  
Exhibit F: Accepted Recyclable Materials  
Exhibit G: Waste Management Sweeping