2022-021

# FRANCHISE AGREEMENT FOR SOLID WASTE HANDLING SERVICES

# BETWEEN CITY OF CARPINTERIA AND E.J. HARRISON & SONS, INC.

**CITY OF CARPINTERIA**
May 2022

**Agreement Effective Date: July 1, 2022**

# TABLE OF CONTENTS


ARTICLE 1 DEFINITIONS AND CONTRACT INTERPRETATION .....1

Section 1.1 Definitions. .....1

Section 1.2 Interpretation. .....1

1.2.1 Conflict of Definitions. .....1
1.2.2 Gender. .....1
1.2.3 Headings, Font. .....1
1.2.4 References to this Agreement. .....1
1.2.5 Specific Not Limitation on Generalities. .....1
1.2.6 Inconsistent or Conflicting Terms. .....1

Section 2.1 Binding Agreement. .....2

Section 2.2 Grant of Franchise; Scope. .....2

2.2.1 Exclusive Franchise. .....2

Section 2.3 Limitations on Scope of Exclusive Franchise. .....2

2.3.1 Contractor Approval Not Required. .....2

Section 2.4 Enforcement of Exclusivity. .....3

2.4.1 Enforcement by Contractor. .....3
2.4.2 Enforcement by City. .....3

Section 2.5 Boundary Changes. .....3

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR AND CITY 3

Section 3.1 Contractor Representations and Warranties. .....3

3.1.1 Corporate Status. .....3
3.1.2 Corporate Authorization. .....3
3.1.3 Agreement Duly Executed. .....3
3.1.4 No Conflict with Applicable Law or Other Documents. .....4
3.1.5 No Litigation. .....4
3.1.6 Financial Condition. .....4
3.1.7 Insurance and Bonds. .....4
3.1.8 Ability to Perform. .....4
3.1.9 Contractor's Investigation. .....4
3.1.10 Statements and Information Submitted by Contractor. .....5

Section 3.2 City Representations and Warranties. .....5

3.2.1 City Status. .....5
3.2.2 City Authorization. .....5
3.2.3 Agreement Duly Executed. .....5

ARTICLE 4 EFFECTIVE DATE AND TERM .....5

Section 4.1 Effective Date. .....5

Section 4.2 Conditions to Effectiveness of Agreement. .....5

4.2.1 Accuracy of Representation. .....5

4.2.2 Absence of Litigation. ....6
4.2.3 Effectiveness of City Council Action. ....6

Section 4.3 Notice of Failure to Satisfy Condition. ....6

Section 4.4 Term. ....6

Section 4.5 Extension of Term. ....6

4.5.1 Satisfactory Performance. ....6
4.5.2 Diversion Compliance. ....6
4.5.3 Customer Satisfaction. ....7
4.5.4 Timely Payment of Fees. ....7
4.5.5 No Transfer. ....7

Section 4.6 Survival of Certain Provisions. ....7

ARTICLE 5 FRANCHISED SERVICES ....7

Section 5.1 General. ....7

Section 5.2 Residential Cart Collection Services – Single-Family Dwellings (SFD). 7

5.2.1 SFD Solid Waste Cart Service. ( ....7
5.2.2 SFD Recyclables Cart Service. ....8
5.2.3 SFD Organic Waste Cart Service. ....8
5.2.4 SFD Backyard Cart Service/Pull-out or Valet Service. ....9

Section 5.3 Residential Cart Collection Services – Multi-Family Dwellings (MFD). 9

5.3.1 MFD Solid Waste Cart Service. ....9
5.3.2 MFD Recyclables Cart Service. ....10
5.3.3 MFD Organic Waste Cart Service. ....10

Section 5.4. Additional Residential Cart Services ....11

5.4.1 Go-Back Service. ....11

Section 5.5 Residential Bin Collection Services – Single-Family Dwellings.11

5.5.1 SFD Solid Waste, Recyclables and Organic Waste Bin Service. (All Programs are State Mandated) ....11

Section 5.6 Residential Bin Collection Services – Multi-Family Dwellings.11

5.6.1 MFD Solid Waste Bin Service. ....11
5.6.3 MFD Organic Waste Bin Service. ....12

Section 5.7 Additional Residential Bin Services. ....13

5.7.1 Padlock Rental and Padlock or Bar Lock Installation Service. ....13
5.7.2 Overloaded Bin Collection Service. ....13
5.7.3 Bin Steam Cleaning Services. ....13

Section 5.8 Additional Residential Collection Services ....13

5.8.1 Bulky Items Collection. ....13
5.8.2 Electronic Waste. ....14
5.8.3 Holiday (Christmas) Trees Collection. ....14
5.8.4 Household Battery Collection. ....14
5.8.5 Sharps Waste Collection. ....14
5.8.6 Annual Household Goods Collection ....15

Section 5.9 Commercial Cart Collection Services. ....15

5.9.1 Commercial Solid Waste Cart Service. ....15

5.9.2 Commercial Recyclables Cart Service. 15
5.9.3 Commercial Organic Waste Cart Service. 15

Section 5.10 Additional Commercial Cart Services. 16

5.10.1 Padlock Rental and Installation Service. 16
5.10.2 Go-Back Service. 16

Section 5.11 Commercial Bin Collection Services. 16

5.11.1 Commercial Solid Waste Bin Service. 16
5.11.2 Commercial Recyclables Bin Service. 16
5.11.3 Commercial Organic Waste Bin Service. 16

Section 5.12 Additional Commercial Bin Services. 16

5.12.1 Padlock Rental and Padlock or Bar Lock Installation Service. 16
5.12.2 Overloaded Bin Collection Service. 17
5.12.3 On-Call Recycling Bin Collection Service. 17
5.12.4 Bin Steam Cleaning Services. 17

Section 5.13 Commercial Roll-Off Collection Services. 17

Section 5.14 Additional Commercial Roll-Off Services. 17

5.14.1 Compactor Steam Cleaning Services. 17

Section 5.15 City Owned and/or Operated Facilities Services (Not for private service). 18

Section 5.16 Other Services. 18

Section 5.17 City-Sponsored Events, Programs and Construction Projects. 18

Section 5.18 Community Cleanup Projects. 19

Section 5.19 Abandoned Items. 19

Section 5.20 Mulch Give-Away. 19

Section 5.21 Community Development Review Services. 19

Section 5.22 Street Sweeping Debris. 19

Section 5.24 Recovered Organics Procurement. 20

Section 5.25 Designated Approved Facilities. 20

ARTICLE 6 OPERATIONS. 21

Section 6.1 Collection Hours and Collection Schedule. 21

6.1.1 Residential Collection Regular Hours of Collection. 21
6.1.2 Commercial and City Facilities Collection Regular Hours of Collection. 21
6.1.3 Holiday Schedule. 21
6.1.4 Noise Exceptions to Regular Hours of Collection. 21
6.1.5 Emergency Exception to Regular Hours of Collection. 21
6.1.6 Collection Schedule Changes. 21

Section 6.2 Service Exceptions and Non-Collection Notices. 22

6.2.1 Contaminated Materials. 22
6.2.2 Setting Container Out on a Day Other Than Customer's Collection Day. 22
6.2.3 Uncontainerized Solid Waste. 22
6.2.4 Excess Weight. 22

6.2.5 Hazardous Waste....22
6.2.6 Improper Set-Out Site. ....23
6.2.7 Health or Safety Threat. ....23

Section 6.3 Route Maps, Schedules and Audits. ....23

6.3.1 Route Maps and Schedules. ....23
6.3.2 Route Audits/Route Reviews. ....23

Section 6.4 Collection Vehicles. ....23

6.4.1 Air Emissions. ....24
6.4.2 Vehicles. ....24
6.4.3 Leak Containment. ....24
6.4.4 Maintenance and Safety. ....24
6.4.5 Appearance. ....25
6.4.6 Spare Vehicles. ....25
6.4.7 Sanitary Operation. ....25

Section 6.5 Personnel. ....25

6.5.1 Key Personnel. ....25
6.5.2 Workers' Compensation Modification Factor Documentation. ....26
6.5.3 Drivers. ....26
6.5.4 Route Supervisor. ....26
6.5.5 Identification, Appearance and Conduct. ....26
6.5.6 Gratuities. ....26
6.5.7 Nondiscrimination and Compliance with Law. ....27

Section 6.6 Interruption of Service. ....27

Section 6.7 Hazardous Waste Handling. ....27

ARTICLE 7 CITY'S ABILITY TO CONTROL FLOW OF SOLID WASTE ....27

Section 7.1 Flow Control Option. ....27

ARTICLE 8 DIVERSION ....28

ARTICLE 9 HAZARDOUS WASTE NOTIFICATIONS ....28

Section 9.1 Hazardous Waste Inspection and Notifications ....28

Section 9.2 Hazardous Waste Diversion Records ....28

ARTICLE 10 CUSTOMER SERVICE ....28

Section 10.1 Customer Service Policy. ....28

Section 10.2 Container Service. ....28

10.2.1 Containers Provided by Contractor. ....28
10.2.2 Container Inventory. ....29
10.2.3 Delivery of Containers. ....29
10.2.4 Pick-Up, Exchange, Decrease or Increase Number of Containers. ....29
10.2.5 Maintenance, Repair or Replacement of Containers. ....29
10.2.6 Collection and Emptying of Containers. ....29

Section 10.3 Contractor Service Standards. ....29

10.3.1 General Service Requirements. ....29
10.3.2 Customer Litter. ....30
10.3.3 Contractor Litter. ....30

Section 10.4 Respect for Property. ....30
10.4.1 Property Damage. ....30
10.4.2 Pavement Damage. ....30
10.4.3 Utilities. ....31
Section 10.5 Customer Service Complaints, Standards and Violations. ....31
10.5.1 Customer Service Complaints. ....31
10.5.2 Resolution of Customer Complaints ....31
10.5.3 Reimbursement of City Cost. ....31
Section 10.6 Customer Privacy and Customer Mailings. ....31
Section 10.7 Means of Communicating with Customers and City. ....32
10.7.1 Office Hours. ....32
10.7.2 Telephone Numbers. ....32
10.7.3 Posting Contact Information. ....32
10.7.4 Web Site. ....32
Section 10.8 Education and Public Relations. ....33
10.8.1 Customer Orientation Packet. ....33
10.8.2 Customer Service Summary. ....33
10.8.3 Quarterly Newsletter. ....33
10.8.4 Customer Satisfaction Survey. ....33
10.8.5 Additional Information. ....33
ARTICLE 11 OWNERSHIP OF SOLID WASTE ....33
ARTICLE 12 RATES, FEES AND BILLING ....34
Section 12.1 Maximum Rates. ....34
Section 12.3 Escalation. ....34
Section 12.4 Adjustment of Rates. ....35
Section 12.5 Rate Adjustment Dispute. ....35
Section 12.6 Competitive Rate Guarantee. ....36
Section 12.7 Franchisee Quarterly Fees. ....36
12.7.1 Calculation of Franchisee Quarterly Fees. ....36
12.7.2 Payment of Franchisee Quarterly Fees. ....36
Section 12.8 Customer Billing. ....36
12.8.1 Contractor to Bill. ....36
12.8.2 Frequency. ....36
12.8.3 Automated Billing and Payment. ....37
12.8.4 Bill Format. ....37
12.8.5 Refunds. ....37
12.8.6 Returned Check. ....37
12.8.7 Termination of Service; Restart Service. ....37
ARTICLE 13 RECORDS AND REPORTING ....37
Section 13.1 Record Retention. ....37

Section 13.2 Audits. ....38
Section 13.3 Overpayment or Underpayment. ....38
Section 13.4 Quarterly Reports. ....38
Section 13.6 Financial Statement. ....40
Section 13.7 Reporting Adverse Information. ....40
Section 13.8 Failure to Report. ....40
Section 13.10 Costs. ....40
Section 13.11 Certification ....40
Section 13.12 Submission of Reports ....40
Section 13.13 CERCLA Defense Records ....41
Section 13.14 PERIODIC REVIEW ....41
Section 13.15 DETAILED PERFORMANCE REVIEW ....41
ARTICLE 14 CALRECYCLE REPORTING REQUIREMENTS ....42
ARTICLE 15 COMPLIANCE WITH LAWS AND REGULATIONS ....42
ARTICLE 16 INDEMNIFICATION ....42
Section 16.1 Indemnification of City. ....42
Section 16.2 Hazardous Substances Indemnification. ....43
Section 16.3 Proposition 218 ....44
Section 16.4 Indemnification. ....44
ARTICLE 17 INSURANCE AND BONDS ....45
Section 17.1 General Insurance Requirements. ....45
Section 17.2 General Liability and Automobile Liability Insurance. ....46
Section 17.3 Workers' Compensation and Employers' Liability Insurance ....46
Section 17.4 Evidence of Insurance Coverage; Insurance Repository. ....46
Section 17.5 Self-Insurance. ....46
Section 17.6 Faithful Performance Bonds. ....47
Section 17.7. Transportation pollution liability insurance ....47
ARTICLE 18 EMERGENCY SERVICE ....47
ARTICLE 19 ADMINISTRATIVE REMEDIES; TERMINATION ....48
Section 19.1 Notice; Response; Resolution; Appeal. ....48
19.1.1 Notice of Deficiencies; Response ....48

19.1.2 Review by Director. ....48
19.1.3 Notice of Appeal. ....48
19.1.4 Review by City Manager. ....49
19.1.5 Appeal. ....49

Section 19.2 City Council Hearing. ....49

Section 19.3 City Council Determination. ....49

Section 19.4 Reservation of Rights by City. ....50

19.4.1 Right to Terminate. ....50

Section 19.5 Cumulative Rights. ....50

ARTICLE 20 APPEAL TO JUDICIAL COURT; HEARING PROCEDURES ....51

ARTICLE 21 ADDITIONAL REMEDIES ....51

ARTICLE 22 TRANSFER OF RIGHTS; CITY CONSENT; FEES ....51

Section 22.1 Transfer. ....51

22.1.1 Transfer Prohibited Without City Approval. ....51
22.1.2 Corporate Transfers. ....51
22.1.3 Transfer Approved; Payment of Transfer Fee. ....52

ARTICLE 23 GENERAL PROVISIONS ....52

Section 23.1 Acceptance and Waiver. ....52

Section 23.2 Force Majeure. ....53

Section 23.3 Computer Hardware and Software. ....53

Section 23.4 Independent Status. ....53

Section 23.5 Law to Govern; Venue. ....53

Section 23.6 Act Amendments. ....53

Section 23.7 Amendments. ....54

Section 23.8 Notices. ....54

Section 23.9 Savings Clause and Entirety ....54

Section 23.10 Joint Drafting. ....55

Section 23.11 Attorney's Fees. ....55

Section 23.12 Entire Agreement. ....55

# ARTICLE 1 DEFINITIONS AND CONTRACT INTERPRETATION

## Section 1.1 Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth in the definitions contained in Exhibit A.

## Section 1.2 Interpretation.

### 1.2.1 Conflict of Definitions.

Whenever any term used in this Agreement has been defined by Chapter 8.08 of Title 8 of the Carpinteria Municipal Code and/or the Act, specifically California Public Resources Code Sections 40100, *et seq.*, the definitions in the Carpinteria Municipal Code and the Act shall apply unless the term is otherwise defined in Exhibit A. In the event of a conflict between the definition of a term in the Carpinteria Municipal Code and/or the Act and in this Agreement, the definition in this Agreement shall prevail.

### 1.2.2 Gender.

Words importing the masculine gender include correlative words of the feminine and neuter genders and vice versa.

### 1.2.3 Headings, Font.

Any captions or headings are for convenience of reference only and do not control or affect scope, intent, meaning, construction, interpretation or effect of this Agreement. Any underlined, italicized, bold-faced, upper captioned or other font styles are for ease of reading and contract administration only and do not in any way imply relative importance or unimportance of any provision of this Agreement.

### 1.2.4 References to this Agreement.

References to Articles, Sections, Subsections and Exhibits refer to this Agreement, unless otherwise specified. All programs, policies, and protocols that are to be submitted by Contractor and referred to in this Agreement are incorporated by reference as though fully set forth herein.

### 1.2.5 Specific Not Limitation on Generalities.

The mention of any specific obligation under this Agreement may not be construed to limit or restrict any general liability or duty imposed upon Contractor elsewhere in this Agreement or under law.

### 1.2.6 Inconsistent or Conflicting Terms.

In the event of any contradictions or inconsistencies between any attached documents or exhibits incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control. Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement.

## ARTICLE 2 GRANT OF FRANCHISE; SCOPE OF AGREEMENT

### Section 2.1 Binding Agreement.

In consideration of the mutual promises contained herein, City and Contractor agree to be bound by and comply with all of the obligations and requirements of this Agreement.

### Section 2.2 Grant of Franchise; Scope.

#### 2.2.1 Exclusive Franchise.

Through this Agreement, City grants to E.J. Harrison & Sons, Inc. ("Contractor") the exclusive right and privilege, except as provided in Section 2.3, to collect the following materials within the Service Area, as set forth in Article 5:

a. Solid Waste generated at Residential Premises, Commercial Premises and City Facilities Premises.
b. Source Separated Recyclables generated at Residential Premises, Commercial Premises and City Facilities Premises.
c. Organic Waste generated at Residential Premises, Commercial Premises, and City Facility Premises
d. Source Separated Food Waste generated at Residential Premises and Commercial Premises.
e. Unscheduled roll off and bin rental located at Residential Premises and Commercial Premises.

### Section 2.3 Limitations on Scope of Exclusive Franchise.

#### 2.3.1 Contractor Approval Not Required.

City may permit the Collection, Recycling and/or Disposal of any of the following by Persons other than Contractor without seeking or securing approval from Contractor:

a. Solid Waste, Recyclables, and Organic Waste which are transported personally by the Owner or Occupant of the Residential Premises or Commercial Premises at which they are generated to a Disposal Site or a Transfer and Processing Facility; and
b. Recyclables and Organic Wastes which are Source Separated by the Generator and sold or donated, including donations to youth, civic, or charitable organizations; and
c. Recyclable beverage containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, California Public Resources Code Sections 14500, *et seq.*; and
d. Animal waste and remains from slaughterhouse or butcher shops, grease waste, and used cooking oil; and
e. By-products of sewage treatment including sludge, sludge ash, grit and screenings; and
f. Hazardous Waste and Household Hazardous Waste; and
g. Source Separated E-Waste and Source Separated U-Waste; and
h. Organic Waste composted at Residential Premises and Commercial Premises; and
i. Materials generated by State facilities; and
j. Unscheduled roll off and bin rental services offered by another approved contractor; and
k. The incidental removal of Solid Waste when the primary service performed is either of the following:
    i. Landscaping, gardening, weed or refuse abatement, yard clean-up, or grading of a lot; or

ii. Construction, remodeling or demolition of a building or structure; and

l. Self-hauling is only permitted if an exemption of services letter from the property owner is on file with the Contractor and meets criteria defined by the Director, and pursuant to Section 16.3 of this Agreement. The letters shall be submitted annually to the Contractor to remain in effect.

**Section 2.4 Enforcement of Exclusivity.**

**2.4.1 Enforcement by Contractor.**

Contractor shall be responsible for enforcing the exclusivity of this Agreement.

**2.4.2 Enforcement by City.**

City shall reasonably assist Contractor in any efforts to enforce the exclusivity herein. City shall adopt such ordinances or other regulations as City deems to be necessary or desirable to protect the exclusive rights granted herein. City shall have the right, but not the obligation, to enforce the exclusivity herein, including by instituting appropriate legal proceedings and/or to request that Contractor do so. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. Contractor shall reimburse City for its reasonable legal costs, extraordinary administrative costs, including staff time, or other expenses incurred in connection with City's actions to either enforce the exclusivity herein, or to assist Contractor in doing so.

**Section 2.5 Boundary Changes.**

Territory that is annexed into or detached from City boundaries shall be added to or removed from the Service Area covered by this Agreement.

**ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR AND CITY**

**Section 3.1 Contractor Representations and Warranties.**

Contractor hereby covenants, represents, and warrants the following to City for the purpose of inducing City to enter into this Agreement, all of which shall be true as of the Effective Date of this Agreement:

**3.1.1 Corporate Status.**

Contractor is a corporation, duly organized, validly existing and in good standing under the laws of the State of California, and is qualified to do business in the State of California.

**3.1.2 Corporate Authorization.**

Contractor has the authority to enter into and perform its obligations under this Agreement. The directors of Contractor have taken all actions required by law, the articles of incorporation and bylaws or otherwise to authorize the execution of this Agreement.

**3.1.3 Agreement Duly Executed.**

The Persons signing this Agreement on behalf of Contractor have been authorized to do so and this Agreement constitutes a legal, valid and binding obligation of Contractor.

### 3.1.4 No Conflict with Applicable Law or Other Documents.

Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations hereunder:

a. Conflicts with, violates or results in a breach of any existing Applicable Law;
b. Conflicts with, violates or results in a breach or constitutes a default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound; or
c. Will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

### 3.1.5 No Litigation.

There is no action, suit or other proceeding as of the Effective Date of this Agreement, at law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor, or otherwise affecting Contractor, which is likely to result in an unfavorable decision, ruling or finding, in any single case or in the aggregate, which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Contractor or the entity providing the guaranty of Contractor's performance.

### 3.1.6 Financial Condition.

Contractor has made available to City information on its financial condition. Contractor recognizes that City has relied on this information in evaluating the sufficiency of Contractor's financial resources to perform this Agreement. To the best of Contractor's knowledge, this information is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

### 3.1.7 Insurance and Bonds.

Contractor has the ability to procure all insurance policies and bonds or other security of performance required and as described in Article 17 and shall have procured all such insurance policies and bonds or other security of performance, which shall be in full force and effect on and as of the Services Initiation Date.

### 3.1.8 Ability to Perform.

Contractor has the expertise and professional and technical capability to perform all of its obligations under this Agreement.

### 3.1.9 Contractor's Investigation.

Contractor has made an independent investigation and analysis, the results of which are satisfactory to Contractor, of the conditions and circumstances surrounding this Agreement,

its content and preparation, and the work to be performed by Contractor under this Agreement. Contractor is satisfied that those conditions and circumstances will not impair Contractor's ability to perform the work and satisfy the obligations required by this Agreement. This Agreement accurately and fairly represents the intentions of Contractor and Contractor enters into this Agreement on the basis of that independent investigation and analysis.

**3.1.10 Statements and Information Submitted by Contractor.**

The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Exhibits of this Agreement, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and complete in all material respects on and as of the Effective Date of this Agreement.

**Section 3.2 City Representations and Warranties.**

City hereby covenants, represents, and warrants the following to Contractor for the purpose of inducing Contractor to enter into this Agreement, all of which shall be true as of the Effective Date of this Agreement:

**3.2.1 City Status.**

City is a municipal corporation, duly organized and validly existing under the Constitution and laws of the State.

**3.2.2 City Authorization.**

City has full legal right, power and authority to execute, deliver and perform its obligations under this Agreement.

**3.2.3 Agreement Duly Executed.**

The Persons signing this Agreement on behalf of City have been duly authorized to do so and this Agreement constitutes a legal, valid and binding obligation of City.

## ARTICLE 4 EFFECTIVE DATE AND TERM

**Section 4.1 Effective Date.**

The Effective Date of this Agreement shall be July 1, 2022 subject to the conditions set forth in Section 4.2.

**Section 4.2 Conditions to Effectiveness of Agreement.**

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this Agreement, and a condition of Contractor's continued right to the benefits conveyed herein:

**4.2.1 Accuracy of Representation.**

All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true, and correct.

#### 4.2.2 Absence of Litigation.

There shall be no litigation pending in any court challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.

#### 4.2.3 Effectiveness of City Council Action.

City Council's Resolution approving this Agreement shall have become effective pursuant to California law on or before the Effective Date.

### Section 4.3 Notice of Failure to Satisfy Condition.

If either Party asserts that a condition precedent to the effectiveness of this Agreement set forth in Section 4.2 has not been satisfied and has not been waived, it must deliver written notice to that effect to the other Party immediately.

### Section 4.4 Term.

The Term of this Agreement shall begin on the Services Initiation Date and shall end at midnight on June 30th, 2038 unless this Agreement is terminated sooner pursuant to Article 19 or extended pursuant to Section 4.5.

### Section 4.5 Extension of Term.

No later than two years prior to the expiration of the Term or extended term, Contractor may submit to City a written request for an extension of the Term of up to five (5) years, along with the information, data, records and reports documenting to satisfaction of City that Contractor has met each of the conditions set forth in this Section during the Term (or the portion thereof if less than the entire Term). Contractor is required to include with its request full information, data, records and reports documenting satisfaction of the conditions set forth in sections 4.5.1 through 4.5.5, inclusive: Only two (2) five (5) year extensions are allowed under this agreement. Within one hundred twenty (120) Days of the date the request for an extension of the Term is received, City shall provide written notice to Contractor as to whether City accepts or rejects Contractor's request. If City determines that Contractor has satisfied the conditions set forth in this Section, City may accept Contractor's request and may extend the Term by a period of not to exceed five (5) years as requested by Contractor. If City fails to provide such notice within said time period, Contractor's request shall be deemed accepted and City shall extend the Term by a period not to exceed five (5) years as requested by Contractor.

#### 4.5.1 Satisfactory Performance.

Contractor has performed the terms and obligations of this Agreement to the satisfaction of City. A performance review prior to any five (5) year extension may be conducted two (2) years prior to the end of the initial term of the contract as described in Section 13.15. Cost of the review shall be paid as specified in that section.

#### 4.5.2 Diversion Compliance.

Contractor has complied with the Diversion requirements set forth in Section 8.

#### 4.5.3 Customer Satisfaction.

Pursuant to Customer satisfaction surveys conducted according to Subsection 10.8.4, City must determine that Customers are generally satisfied with Collection services provided by Contractor under this Agreement.

#### 4.5.4 Timely Payment of Fees.

Contractor has not been delinquent in the payment of any money due to City under this Agreement more than once each Fiscal Year or at any time longer than five (5) calendar days. City has not received written notice that Contractor has been delinquent in the payment of any sums or amounts due third parties with respect to Solid Waste Disposal and processing fees.

#### 4.5.5 No Transfer.

This Agreement has not been transferred pursuant to Article 22.

### Section 4.6 Survival of Certain Provisions.

The following provisions shall survive the Term of this Agreement: the Parties' representations and warranties set forth in Article 13; the Indemnification provisions set forth in Article 16; any and all outstanding payments that Contractor owes City as set forth in Article 12; the reporting requirements set forth in Article 14; and any other rights or obligations of the Parties expressly state to survive the Term of this Agreement.

## ARTICLE 5 FRANCHISED SERVICES

### Section 5.1 General.

To protect the public health and safety, Contractor shall provide all labor, equipment, material, supplies, supervision and all other items necessary to perform the work and provide the services described at the times and in the manner required by this Agreement, including the Collection of all Solid Waste generated or accumulated within City from Residential Premises, Commercial Premises and City Facilities Premises covered by this Agreement not less often than once per week. The enumeration of, and specification of requirements for, particular items of labor, equipment, material, supplies or supervision shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated elsewhere in this Agreement or not.

The work performed and the services provided by Contractor under this Agreement shall be in a thorough and professional manner so that all Customers are provided at all times with reliable, courteous and high-quality Solid Waste Handling Services.

Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section and as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law.

### Section 5.2 Residential Cart Collection Services – Single-Family Dwellings (SFD).

#### 5.2.1 SFD Solid Waste Cart Service. (

Contractor shall Collect Solid Waste from SFD Customers according to the following:

a. Contractor shall provide SFD Solid Waste Collection Service on the Customer's Collection Day not less than once per week; and
b. Contractor shall provide each Customer with one (1) Solid Waste Cart. Contractor shall provide each Customer with the choice of the following Cart capacities: thirty-two (32), sixty-four (64) or ninety-six (96) gallons; and
c. Upon request by a Customer, Contractor shall provide the Customer with additional Solid Waste Carts at capacities requested by the Customer; and
d. Contractor shall Collect all Solid Waste placed for Collection at Curbside using automated Collection vehicles, unless Backyard Cart Service is provided pursuant to Subsection 5.2.4 or the Customer has a Permitted Set-Out Site. In the event that a Customer has additional waste that does not fit in the cart, Customer shall call Contractor to request an additional pick-up. If a Customer routinely places for Collection Solid Waste outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional or larger Solid Waste Carts; and
e. Contractor shall provide SFD Solid Waste Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the capacity and number of Carts.

### 5.2.2 SFD Recyclables Cart Service.

Contractor shall Collect Source Separated Recyclables from SFD Customers according to the following:

a. Contractor shall provide SFD Recyclables Collection Service on the Customer's Collection Day not less than once per week; and
b. Contractor shall provide each Customer with one (1) Recyclables Cart of a capacity of ninety-six (96) gallons, unless customer requests Cart with a capacity of sixty-four (64) gallons; and
c. All requests by customers for a Recyclable Cart of a sixty-four (64) gallon capacity shall be documented and submitted to the City; and
d. Customer may call for one (1) additional container at no cost to the customer; and
e. Upon request by a Customer, Contractor shall provide the Customer with additional Recyclables Carts at the capacity of ninety-six (96) gallons, unless the Customer requests Cart at a capacity of sixty-four (64) gallons; and
f. Contractor shall Collect all Source Separated Recyclables placed for Collection at Curbside using automated Collection vehicles, unless Backyard Cart Service is provided pursuant to Subsection 5.2.4 or the Customer has a Permitted Set-Out Site. In the event that a Customer occasionally places Source Separated Recyclables adjacent to Carts, Contractor shall also Collect those Recyclables. If a Customer routinely places for Collection Source Separated Recyclables outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional Recyclables Carts; and
g. Contractor shall provide SFD Recyclables Collection Service to Customers at no additional charge to City or Customers according to Article 12.

### 5.2.3 SFD Organic Waste Cart Service.

Contractor shall Collect Organic Waste from SFD Customers according to the following:

a. Contractor shall provide SFD Organic Waste Collection Service on the Customer's Collection Day not less than once per week; and
b. Contractor shall provide each Customer with one (1) Organic Waste Cart of a capacity of ninety-six (96) gallons; and

c. Upon request by a Customer, Contractor shall provide the Customer with additional Organic Waste Carts at the capacity of ninety-six (96) gallons; and
d. Contractor shall Collect all Source Separated Green Waste and other Organic Waste placed for Collection at Curbside using automated Collection vehicles, unless Backyard Cart Service is provided pursuant to Subsection 5.2.4 or the Customer has a Permitted Set-Out Site. If a Customer routinely places for Collection Organic Waste outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional Green Waste Carts; and
e. Contractor shall provide SFD Organic Waste Collection Service to Customers at no additional charge to City or Customers according to Article 12.
f. Contractor to provide SFD Food Waste Collection Services on the Customers Collections not less than once per week. This program is to be implemented as defined by the Contractor; any program changes must be approved by the City.

### 5.2.4 SFD Backyard Cart Service/Pull-out or Valet Service.

Upon request by any eligible SFD Customer, Contractor shall provide Backyard Cart Service at no additional charge to City or Customers according to Article 12. SFD Customers eligible for Backyard Cart Service at no additional charge include only those SFD Customers that are receiving Cart services under this Section and that:

a. Submit documentation (e.g., a form signed by a doctor or documentation of qualification for or issuance of a Disabled Person (DP) or Disabled Veteran (DV) parking placard or license plate by the California Department of Motor Vehicles) of their inability to perform the generally applicable Curbside set-out requirements for Collection; and/or
b. Are eighty (80) years of age or older.

Upon request by any other (ineligible) SFD Customer, Contractor shall provide Backyard Cart Service for compensation paid by the Customer up to the Maximum Rates according to Article 12 based on the Cart capacity and number of Carts.

## Section 5.3 Residential Cart Collection Services – Multi-Family Dwellings (MFD).

### 5.3.1 MFD Solid Waste Cart Service.

For MFD Customers that do not have space for or do not generate enough Solid Waste to require the use of Bins for Collection, Contractor shall Collect Solid Waste from MFD Customers according to the following:

a. Contractor shall provide MFD Solid Waste Collection Service on the Customer's Collection Day not less than once per week; and
b. Contractor shall provide each Customer with one (1) Solid Waste Cart. Contractor shall provide each Customer with the choice of the following Cart capacities: thirty-two (32), sixty-four (64) or ninety-six (96) gallons; and
c. Upon request by a Customer, Contractor shall provide the Customer with additional Solid Waste Carts at capacities requested by the Customer; and
d. Contractor shall Collect all Solid Waste placed for Collection at Curbside using automated Collection vehicles, unless the Customer has a Permitted Set-Out Site. In the event that a Customer has additional waste that does not fit in the cart, Customer shall call Contractor to request an additional pick-up. If a Customer routinely places for Collection Solid Waste outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional or larger Solid Waste Carts; and

e. Contractor shall provide MFD Solid Waste Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Cart capacity and number of Carts.

### 5.3.2 MFD Recyclables Cart Service.

For MFD Customers that do not have space for or do not generate enough Recyclables to require the use of Bins for Collection, Contractor shall Collect Source Separated Recyclables from MFD Customers according to the following:

a. Contractor shall provide MFD Recyclables Collection Service on the Customer's Collection Day not less than once per week; and
b. Contractor shall provide each Customer with one (1) Recyclables Cart of a capacity of ninety-six (96) gallons; and
c. Customer may call for one (1) additional container at no cost to the customer; and
d. Upon request by a Customer, Contractor shall provide the Customer with additional Recyclables Carts at the capacity of ninety-six (96) gallons, unless the Customer requests Carts at a capacity of sixty-four (64) gallons; and
e. Contractor shall Collect all Source Separated Recyclables placed for Collection at Curbside using automated Collection vehicles, unless the Customer has a Permitted Set-Out Site. In the event that a Customer occasionally places Source Separated Recyclables adjacent to Carts, Contractor shall also Collect that Recyclables. If a Customer routinely places for Collection Source Separated Recyclables outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional Recyclables Carts; and
f. Contractor shall provide MFD Recyclables Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Cart capacity and number of Carts.

### 5.3.3 MFD Organic Waste Cart Service.

Contractor shall Collect Organic Waste from MFD Customers according to the following:

a. Contractor shall provide MFD Organic Waste Collection Service on the Customer's Collection Day not less than once per week; and
b. Contractor shall provide the Customer with Organic Waste Carts at the capacity of ninety-six (96) gallons, unless the Customer requests Carts at a capacity of sixty-four (64) gallons. Customers with space constraints are eligible for thirty-two (32) gallon containers following approval by the Contractor; and
c. Contractor shall collect all Organic Waste placed for Collection at Curbside or at set-out site using automated Collection vehicles. In the event that a Customer occasionally needs additional Organic Waste service, Customer shall call Contractor to request an additional pick-up. If a Customer routinely places for Collection additional Organic Waste outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional Organic Waste Carts; and
d. Contractor shall provide MFD Organic Waste Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Cart capacity and number of Carts.
e. Contractor to provide MFD Food Waste Collection Services on the Customers Collections not less than once per week. This program is to be defined by the Contractor and approved by the City in advance of program changes.

## Section 5.4. Additional Residential Cart Services.

### 5.4.1 Go-Back Service.

In the event that a Residential Customer has forgotten or otherwise missed the designated time on Customer's Collection Day to place a Cart at Curbside or a Permitted Set-Out Site for Collection, Contractor shall provide a Go-Back Service to return to the Residential Premises the same Day, if the Customer contacts Contractor pursuant to Section 10.7 before noon on the Customer's Collection Day, or the following Business Day, if the Customer contacts Contractor pursuant to Section 10.7 after noon on the Customer's Collection Day, to provide Collection services. Contractor shall provide the Go-Back Service for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each occurrence.

## Section 5.5 Residential Bin Collection Services – Single-Family Dwellings.

### 5.5.1 SFD Solid Waste, Recyclables and Organic Waste Bin Service. (All Programs are State Mandated)

Upon request by any SFD Customer, Contractor shall Collect Solid Waste, Source Separated Recyclables and Organic Waste from SFD Customers according to the following:

a. Contractor shall provide SFD Solid Waste Collection Service on the Customer's Collection Day not less than once and up to six (6) times per week, except that the Customer may schedule additional Bin Collections; and
b. An additional Bin Collection may be requested by the Customer for any Business Day; and
c. Contractor shall provide each Customer with one (1) Solid Waste Bin. Contractor shall provide each Customer with the choice of the following Bin capacities: 1.5, 2, or 3 cubic yards; and
d. Upon request by a Customer, Contractor shall provide the Customer with additional Bins at capacities requested by the Customer; and
e. Customers shall have adequate space for a Bin on the Customer's premises and not within the public right-of-way; and
f. Contractor shall Collect all Solid Waste placed for Collection at a Permitted Set-Out Site; and
g. Contractor shall provide SFD Solid Waste Collection Service and any additional bin collections to Customers for compensation paid by Customers up to the Maximum Rates according to Article 12 based on the bin capacity and number of collections per week; and
h. In addition to the provision of bins for Solid Waste Collection, Contractor shall provide Carts for Source Separated Recyclables and Organic Waste and shall Collect Source Separated Recyclables and Organic Waste as provided under SFD Cart services pursuant to Subsections 5.3.2 and 5.3.3, respectively.

## Section 5.6 Residential Bin Collection Services – Multi-Family Dwellings.

### 5.6.1 MFD Solid Waste Bin Service.

Contractor shall Collect Solid Waste from MFD Customers according to the following:

a. Contractor shall provide MFD Solid Waste Collection Service on the Customer's Collection Day not less than once and up to six (6) times per week, except that the Customer may schedule additional Bin Collections; and

b. An additional bin collection may be requested by the Customer for any Business Day; and
c. Contractor shall provide each Customer with one (1) Solid Waste Bin. Contractor shall provide each Customer with the choice of the following bin capacities: 1.5, 2, or 3 cubic yards; and
d. Upon request by a Customer, Contractor shall provide the Customer with additional Bins at capacities requested by the Customer; and
e. Customers shall have adequate space for a Bin on the Customer's premises and not within the public right-of-way; and
f. Contractor shall Collect all Solid Waste placed for Collection at a Permitted Set-Out Site; and
g. Contractor shall provide MFD Solid Waste Collection Service and any additional Bin Collections to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Bin capacity and number of Collections per week.

**5.6.2 MFD Recyclables Bin Service.**

Contractor shall Collect Source Separated Recyclables from MFD Customers according to the following:

a. Contractor shall provide each Customer at a minimum thirty percent (30%) of the Customer's Solid Waste Bin capacity for Source Separated Recyclables for compensation paid by the Customers up to the Maximum Rates according to Article 12 ; and
b. Contractor shall determine and provide the equivalent Recyclables Cart or Bin with a capacity of no less than the thirty percent (30%) capacity of the Solid Waste Bin; and
c. In addition to the above, Contractor shall provide the Customer with one (1) Recyclables Bin. Contractor shall provide the Customer with the choice of the following Bin capacities: 1.5, 2, or 3 cubic yards; and
d. Contractor shall provide the Customer with additional Bins at capacities requested by the Customer; and
e. Contractor shall provide MFD Recyclables Collection Service on the Customer's Collection Day not less than once up to six times per week, except that the Customer may schedule additional Bin Collections; and
f. An additional Bin Collection may be requested by the Customer for any Business Day; and
g. Customers shall have adequate space for a Bin on the Customer's premises and not within the public right-of-way; and
h. Contractor shall Collect all Source Separated Recyclables placed for Collection at a Permitted Set-Out Site; and
i. Contractor shall provide MFD Recyclables Collection Service and any additional Bin Collections to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Bin capacity and number of Collections per week.

**5.6.3 MFD Organic Waste Bin Service.**

Contractor shall Collect Organic Waste and/or Source Separated Green Waste from MFD Customers according to the following:

j. Contractor shall provide MFD Organic Waste Collection Service on the Customer's Collection Day not less than weekly or as arranged; and

k. Contractor shall provide each Customer with one (1) Organic Waste Cart or bin of an adequate size for organic waste generated on site; and
l. Contractor shall provide the Customer with additional Organic Waste Carts at the capacity requested by the customer; and
m. Contractor shall Collect all Organic Waste placed for Collection at Curbside or at set-out site using automated Collection vehicles. In the event that a Customer occasionally places Organic Waste adjacent to Carts, Customer shall call Contractor to request an additional pick-up, subject compensation paid by the Customers up to the Maximum Rates according to Article 12. If a Customer routinely places for Collection Organic Waste outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional Organic Waste Carts or larger bin; and
n. Contractor shall provide MFD Organic Waste Collection Bin Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12.
o. Contractor to provide MFD Food Waste Collection Services on the Customers Collections not less than once per week. This program is to be defined by the Contractor and approved by the City in advance of program changes.

## Section 5.7 Additional Residential Bin Services.

### 5.7.1 Padlock Rental and Padlock or Bar Lock Installation Service.

Upon request by a Residential Customer, Contractor shall provide a padlock or bar lock installation service, which includes providing a Bin with lockable lids and a padlock or bar lock, and unlocking and re-locking the Bin each time it is serviced. Contractor shall provide the padlock or bar lock installation service for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin. Contractor shall provide padlocks for rental on a monthly basis for compensation up to the Maximum Rates according to Article 12.

### 5.7.2 Overloaded Bin Collection Service.

Contractor shall provide Collection services of Overloaded Bins for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin.

### 5.7.3 Bin Steam Cleaning Services.

Upon request by a Residential Customer, Contractor shall provide steam cleaning services of Bins. All Bin steam cleaning services shall be provided on Contractor-owned or -leased premises. Contractor shall provide Bin steam cleaning services once per Fiscal Year at no additional charge to City or Customers and for two more times per Fiscal Year for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin.

## Section 5.8 Additional Residential Collection Services.

### 5.8.1 Bulky Items Collection.

Contractor shall provide on-Call Bulky Item Collection Services as defined below:

a. Two (2) free on-call bulky item collection services per calendar for single family homes, and;

b. Free on-call bulky items collection services for Multi-Family Dwelling Customers based on 50% of the units in a Multi-Family Dwelling Complex. For example, if a complex has ten (10) units, they will receive five (5) free on-call pickups.

These pickups will be provided at no additional charge to City or Customers . Upon receiving a request from a Customer, Contractor shall collect Bulky Items on a Day and at a time designated by Contractor. Requests must be made a week in advance. Additional pickups and specialty items may be subject to an additional fee according to Article 12. Note: charges will apply to any item containing Freon and tires are not accepted.

Bulky waste collected by the Contractor may not be landfilled or disposed of until the following Hierarchy has been followed by the Contractor:

a. Reuse as is (if energy efficient)
b. Disassemble for reuse and recycling.
c. Recycle (through participation of charitable organizations).
d. Disposal.

**5.8.2 Electronic Waste.**

Contractor shall provide unlimited Electronic Waste (e-waste) Collections from the City Hall ABOP Facility. Upon receiving a request from City, Contractor shall Collect E-Waste within seven (7) Days on a Day and at a time designated by Contractor. Contractor shall provide E-Waste Collection to the City at no additional charge to City according to Article 12.

**5.8.3 Holiday (Christmas) Trees Collection.**

Contractor shall Collect Holiday (Christmas) Trees from Residential Premises and multi-family dwellings placed Curbside or at a Permitted Set-Out Site for Collection on the Customer's Collection Day. The holiday tree collection shall commence on the first collection after December 25 and will conclude the end of the second (2nd) week of January. Holiday (Christmas) Trees shall be free of all ornamentation and the stands shall be removed. Contractor shall provide Holiday (Christmas) Trees Collection to Residential Customers at no additional charge to City or Customers according to Article 12. Contractor shall work with the City for the promotion of this program.

**5.8.4 Household Battery Collection.**

Contractor shall, at no additional cost to the City, collect household batteries, including but not limited to, nicad, alkaline, lead acid, lithium, button, rechargeable, and other non-alkaline batteries at 2 (two) drop-off sites, not including the City-operated ABOP facility, within city limits. One site shall be the Carpinteria Library and the other to be approved by City. All batteries collected shall be recycled or disposed of in a manner approved by the City. Contractor shall be responsible for collection and processing of batteries and disposal of incidental Solid Waste deposited at each site at least bi-weekly. Contractor shall be responsible for maintaining and servicing each location, including but not limited to application of container content information and prompt removal of graffiti.

**5.8.5 Sharps Waste Collection.**

Contractor shall provide for Collection of Sharps Waste from Residential and Multi-Family Premises by mail. Upon a Residential Customer request, Contractor shall deliver to the Customer mail-in Sharps Waste containers on the next Business Day. The mail-in Sharps

Waste containers shall be one-gallon containers with postage-paid return packaging. Contractor shall provide Sharps Waste Collection to Residential Customers at no additional charge to City or Customers according to Article 12. Contractor shall work with the City for the promotion of this program.

### 5.8.6 Annual Household Goods Collection

Contractor shall provide and assist with the annual Household Goods Collection event held in the spring. Tasks include the coordination with the City Public Works Department for the collection of hazardous wastes, bulky items, e-waste, etc. from the residents of the City. This program must comply with all applicable regulatory and permitting requirements, be scheduled on a date mutually acceptable to Contractor and City, and impose no additional cost upon the City or service recipients. Contractor will be responsible for assisting the City with all aspects of the program, including but not limited to selecting the location, obtaining all applicable permits, traffic control, on-site security, and public information, as well as collection, packing, transportation, and safe disposal of all household goods and hazardous waste collected. Neither City nor City residents will be designated as the generator. A detailed report shall be provided of materials collected.

## Section 5.9 Commercial Cart Collection Services.

### 5.9.1 Commercial Solid Waste Cart Service.

For Commercial Customers that do not have space for or do not generate enough Solid Waste to require the use of Bins for Collection, Contractor shall provide Commercial Solid Waste Collection Service according to the same Solid Waste Cart Collection services provided for MFD Customers in Subsection 5.3.1. Contractor shall provide Commercial Solid Waste Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Cart capacity and number of Carts.

### 5.9.2 Commercial Recyclables Cart Service.

For Commercial Customers that do not have space for or do not generate enough Recyclables to require the use of Bins for Collection, Contractor shall provide Commercial Recyclables Collection Service according to the same Recyclables Cart Collection services provided for MFD Customers in Subsection 5.3.2, except that Contractor shall provide Commercial Recyclables Collection Service on the Customer's Collection Day not less than once per week. Contractor shall provide Commercial Recyclables Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12, except that Contractor shall provide additional Recyclables Carts at no additional charge to City or Customers according to Article 12.

### 5.9.3 Commercial Organic Waste Cart Service.

Contractor shall Collect Organic Waste from Commercial Customers who do not have enough material for a bin. This service shall be provided according to Organic Waste cart services provided for MFD customers in Subsection 5.3.3, except that Contractor shall provide Commercial Organic Waste Collection Service on the Customer's Collection Day not less than once per week. The City may increase this service level if problems are encountered. Contractor shall provide Commercial Organic Waste Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12, except

that Contractor shall provide additional Organic Waste Carts at no additional charge to City or Customers according to Article 12.

**Section 5.10 Additional Commercial Cart Services.**

**5.10.1 Padlock Rental and Installation Service.**

Upon request by a Commercial Customer, Contractor shall provide a padlock installation service, which includes providing a Cart with lockable lids and a lock, and unlocking and re-locking the Cart each time it is serviced. Contractor shall provide the padlock installation service for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Cart. Contractor shall also rent padlocks on a monthly basis for compensation up to the Maximum Rates according to Article 12.

**5.10.2 Go-Back Service.**

In the event that a Commercial Customer has forgotten or otherwise missed the designated time on Customer's Collection Day to place a Cart at Curbside or a Permitted Set-Out Site for Collection, Contractor shall provide a Go-Back Service to return to the Commercial Premises the same Day, if the Customer contacts Contractor pursuant to Section 10.7 before noon on the Customer's Collection Day, or the following Business Day, if the Customer contacts Contractor pursuant to Section 10.7 after noon on the Customer's Collection Day, to provide Collection services. Contractor shall provide the Go-Back Service for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each occurrence.

**Section 5.11 Commercial Bin Collection Services.**

**5.11.1 Commercial Solid Waste Bin Service.**

Contractor shall provide Commercial Solid Waste Collection Service to Commercial Customers according to the same Solid Waste Bin Collection services provided for MFD Customers in Subsection 5.6.1.

**5.11.2 Commercial Recyclables Bin Service.**

Contractor shall Collect Source Separated Recyclables from Commercial Customers according to the same Recyclable Bin Services provided for MFD customers in Subsection 5.6.2.

**5.11.3 Commercial Organic Waste Bin Service.**

Contractor shall provide Commercial Organic Waste Collection Service to Commercial Customers according to the same Organic Waste Bin Collection services provided for MFD Customers in Subsection 5.6.3.

**Section 5.12 Additional Commercial Bin Services.**

**5.12.1 Padlock Rental and Padlock or Bar Lock Installation Service.**

Upon request by a Commercial Customer, Contractor shall provide a padlock or bar lock installation service, which includes providing a Bin with lockable lids and a padlock or bar lock,

and unlocking and re-locking the Bin each time it is serviced. Contractor shall provide the padlock or bar lock installation service for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin. Contractor shall provide padlocks for rental on a monthly basis for compensation up to the Maximum Rates according to Article 12.

**5.12.2 Overloaded Bin Collection Service.**

Contractor shall provide Collection services of Overloaded Bins for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin.

**5.12.3 On-Call Recycling Bin Collection Service.**

Contractor shall provide On-Call Services for the Collection of Source Separated Recyclables Bins from Commercial Premises. On-Call Services for Bin Collection may be requested by the Customer for any Business Day. Contractor shall provide On-Call Services for Bin Collection for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Collection.

**5.12.4 Bin Steam Cleaning Services.**

Upon request by a Commercial Customer, Contractor shall provide steam cleaning services of Bins. All Bin steam cleaning services shall be provided on Contractor-owned or -leased premises. Contractor shall provide Bin steam cleaning services once per Fiscal Year at no additional charge to City or Customers and for two more times per Fiscal Year for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin.

**Section 5.13 Commercial Roll-Off Collection Services.**

Upon request by a Commercial Customer, Contractor shall provide Roll-Off Collection services according to this Section. Contractor shall provide Roll-Off Boxes at capacities of 3, 10, 25 or 40 cubic yards for rental on a monthly basis for compensation up to the Maximum Rates according to Article 12. Contractor shall provide Collection services to the Designated Transfer and Processing Facility, Contractor's Facilities and the Designated Disposal Site for compensation up to the Maximum Rates according to Article 12 on the basis of the capacity of the Roll-Off Box, the destination of the Collected load and whether the load is compacted or non-compacted. Roll-Off Collection services include Disposal services for compensation up to the Maximum Rates according to Article 12, which such compensation shall be the same regardless of whether the load is compacted or non-compacted.

**Section 5.14 Additional Commercial Roll-Off Services.**

**5.14.1 Compactor Steam Cleaning Services.**

Upon request by a Commercial Customer, Contractor shall provide steam cleaning services of Contractor owned compactors. All compactor steam cleaning services shall be provided on Contractor-owned or -leased premises. Contractor shall provide compactor steam cleaning services once per Fiscal Year at no additional charge to City or Customers and for two or more times per Fiscal Year for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each compactor.

**Section 5.15 City Owned and/or Operated Facilities Services** (Not for private service).

Contractor shall Collect all Solid Waste, Source Separated Recyclables and Source Separated Green Waste and other Organic Waste put in Containers for Collection at City Facilities Premises. Contractor shall provide Collection services at City Facilities, Parks and Open Spaces and Public Receptacles within the City Service Area as are identified in Exhibit D at no charge to City. Contractor shall provide service to all City Barrels. All materials collected from the City barrels shall be processed at Contractor's designated processing facility. Contractor shall provide Collection services at least at service levels, based on quantity and capacity of Containers and number of Collections, as provided in Exhibit D. If service levels are not sufficient to ensure Containers do not become full, service levels shall be increased at no charge to City. The Director may change the level of service, and may revise the list of City Owned or otherwise identified Public Facilities, Parks and Open Spaces, or Public Receptacles, as identified within Exhibit D, during the Term at no charge to City. The Director shall provide any such changes to Contractor in writing. Collections shall be scheduled on Days and at times mutually agreed upon by Contractor and the Director.

**Section 5.16 Other Services.**

Should Contractor expand the services available to Carpinteria customers to include services such as portable toilets, temporary fencing, or portable generators, the City may choose at that time to amend this section of the Agreement to include such services. This shall in no way affect other sections of the Agreement. Upon the direction of the Director, if program is started, the Contractor shall provide Collection of any liquid waste and Solid Waste at the portable toilets no less than once per week. All portable toilets shall be wheelchair accessible and shall be maintained to the satisfaction of City. The Director may change the service levels after the program is started and may add or change the location of equipment serviced during the Term at no charge to City. The Director shall provide any such changes to Contractor in writing. Collections shall be scheduled on Days and at times mutually agreed upon by Contractor and the Director.

**Section 5.17 City-Sponsored Events, Programs and Construction Projects.**

Contractor shall provide Solid Waste, Source Separated Recyclables and liquid waste (future) Collection for those City-sponsored events set forth in Exhibit E. Contractor shall provide Containers (Bins, Roll-off Boxes, clearly labeled Recyclables Containers and Organics Containers and cardboard waste boxes with liners) to Collect all Solid Waste, Source Separated Recyclables and Organics. Contractor and the Director shall mutually agree upon the number and location of Containers necessary for each City-sponsored event prior to the event. Contractor shall provide these services at City-sponsored events at no charge to City. The Director may replace any City-sponsored events set forth in Exhibit E that are discontinued with events requiring comparable levels of service.

At the request of the City, Contractor shall, in addition to the events set forth in Exhibit D, provide solid waste containers for City programs and construction projects not to exceed ten (10) forty yard boxes in a given year. Boxes can be used either separately or as a onetime combination and cannot exceed four (4) tons in weight.

For commercial customers enrolled in a City sponsored New Business Incentive Program, Contractor shall provide, free of charge, Commercial Solid Waste Collection services for the first 6 months of the businesses operation, at which time customer will be expected to begin paying current commercial rates for Solid Waste Service.

**Section 5.18 Community Cleanup Projects.**

Contractor shall provide Solid Waste Collection service for up to six (6) community cleanup projects per Fiscal Year. A community cleanup project shall consist of City employees and/or volunteers working to pick up Solid Waste from public places over a one- or two-Day period. Community cleanup projects shall be determined by the Director. Contractor shall deliver Roll-Off Boxes and/or Bins to locations determined by the Director for the community cleanup projects upon two (2) Business Days' notice from the Director. Contractor shall Collect all Roll-Off Boxes and Bins within one (1) Business Day of completion of the community cleanup project.

**Section 5.19 Abandoned Items.**

Upon request by the Director, Contractor shall Collect no more than forty-five (45) times per Fiscal Year up to a Fiscal Year total of fifteen (15) tons of all Bulky Items and/or other Solid Waste discarded legally or illegally in the public right-of-way or on other City-owned property. The public right-of-way shall include highways, streets, alleys, sidewalks or any other public right-of-way owned, operated or maintained by City, the County, or the State of California. If the Director contacts Contractor before noon on a Business Day, Contractor shall Collect the abandoned item(s) that same Business Day. If the Director contacts Contractor after noon on a Business Day or on a Day that is not a Business Day, Contractor shall Collect the abandoned item(s) by the end of the following Business Day. Contractor shall provide this service at no charge to City for the first 45 requests. For requests beyond this, an estimate is required to be provided to the Director before collecting.

**Section 5.20 Mulch Give-Away.**

Upon request from the Director, Contractor shall provide mulch (i.e. recovered organic material) for the use and benefit of City and/or its residents at a volume to allow the City to comply with SB 1383 (14 CCR 18993.1). Mulch material shall meet the requirements of SB 1383 Regulations 14 CCR Section 19003.1(f)(40. Volume of mulch provided to be tracked by Contractor to comply with SB 1383 requirements. The Director shall provide the location for the placement of the Roll-Off Boxes and will establish limits for the residents. Contractor shall provide this service at no charge to City.

**Section 5.21 Community Development Review Services.**

Upon request from the Director, Contractor shall review building permit applicants' plans and advise applicants regarding adequacy of Container storage space and access, particularly to accommodate the Collection of Refuse and Source Separated Recyclables. Contractor shall provide this service at no charge to City.

**Section 5.22 Street Sweeping Debris.**

Upon request from the Director, Contractor shall continually provide a Roll-Off Box at a location designated by the Director for the Collection of street sweeping debris at no charge to City. Contractor shall Collect all street sweeping debris from the Roll-Off Box no less than once every other week. Collections shall be scheduled on days and at times mutually agreed upon by Contractor and the Director. Contractor shall provide this service at no charge to City.

**Section 5.23 Meet and Confer Regarding Additional Recycling Programs.**

Upon City request, Contractor shall meet and confer with City regarding additional solid waste, recycling and organics service programs, including, but not limited to, mandatory commercial recycling, composting program, sharps program, organic waste diversion program, etc. Contractor shall meet and confer with City at any time and as often as City requests during the Term of this Agreement. Contractor and City shall consider the following: the design and implementation of an outreach and education program to communicate with businesses, restaurant establishments and other Customers and the potential Recycled uses of the materials collected as part of these programs, including composting, biomass, for use as animal feed, or some other beneficial use.

The City may direct the Contractor to perform additional services (including new diversion programs, etc.), or to modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services that may entail new collection methods, different kinds of services or new requirements for customers, are included among the kinds of changes that the City may direct. The Contractor may be entitled to an adjustment in its compensation for providing those additional or modified services provided the need for such compensation is demonstrated to the City's satisfaction.

In conjunction with the requirements above, the Contractor must present, within 30 days of a request from the City, a proposal to provide additional or expanded diversion services. The proposal must contain a complete description of the following:

a. Collection methodology to be employed (equipment, manpower, etc.).
b. Equipment to be used (vehicle number, types, capacity, age, etc.).
c. Labor requirements (number of employees by classification).
d. Type of containers to be used.
e. Program publicity, education, and marketing.
f. Three-year projection of the financial results of the program's operations in an operating statement format, including documentation of the key assumptions underlying the projections and the support for those assumptions.

**Section 5.24 Recovered Organics Procurement**

In accordance with SB 1383, City is required to procure a defined tonnage of Recovered Organic Material. This amount is provided to the City by CalRecycle. Contractor to assist the City in meeting the procurement goal and the tracking of any SB 1383 organics materials procured.

**Section 5.25 Designated Approved Facilities**

All facilities shall be identified to the City as any one or combination of processing services provided for approval. This includes but is not limited to: Solid Waste Disposal, Construction & Demolition Debris Recycling, Recyclable Material and Organic Material processing facilities and transfer facilities. Any changes in facility use to be approved by the City.

# ARTICLE 6 OPERATIONS

## Section 6.1 Collection Hours and Collection Schedule.

### 6.1.1 Residential Collection Regular Hours of Collection.

Solid Waste, Source Separated Recyclables and Source Organic Waste, including all additional services provided to Residential Premises, shall be Collected from Residential Premises on Business Days between 7:00 a.m. and 6:00 p.m. on Monday through Saturday.

### 6.1.2 Commercial and City Facilities Collection Regular Hours of Collection.

Solid Waste, Source Separated Recyclables and Organic Waste, including all additional services provided to Commercial Premises, shall be Collected from Commercial Premises and City Facilities Premises on Business Days between 6:00 a.m. and 6:00 p.m.

### 6.1.3 Holiday Schedule.

Contractor shall provide Collection services scheduled for a Holiday on the Business Day immediately following the Holiday. Contractor shall provide affected Customers advance written notice of that change in the following manners:

a. An insert in the Bill immediately preceding the Holiday; and
b. By email to Customers that have provided an email address; and
c. In a newsletter sent to Customers before the Holiday; and
d. Notice in the local newspaper.

### 6.1.4 Noise Exceptions to Regular Hours of Collection.

City may restrict or require modifications to hours for Collection from Commercial Premises and City Facilities Premises to resolve noise Complaints. If any City ordinances, resolutions or other regulations that regulate noise limits or limit the hours of Collection more restrictively than the preceding Subsections, the terms of the City ordinance, resolution or other regulation shall govern.

### 6.1.5 Emergency Exception to Regular Hours of Collection.

In the event of an emergency in which City may request the assistance of Contractor pursuant to Article 18, Contractor shall provide Collection service that may or may not be within the regular hours of Collection.

Contractor shall coordinate all emergency requests using site specific work orders and/or details provided by the City. All work shall be itemized, and billed by work order using approved hourly rates and rate structure, in order that all expenses are eligible for reimbursement by state or federal emergency management agencies.

### 6.1.6 Collection Schedule Changes.

Contractor shall notify each Customer of any change in that Customer's Collection Day in each of the following manners:

a. On a tag attached to each Residential Customer's Container on that Customer's Collection Day immediately preceding the change; and

b. By phone or in person to each Commercial Customer the week preceding the change; and
c. By email to Customers who have provided an email address; and
d. Notice in the local newspaper; and
e. By any other manner and time requested by City.

**Section 6.2 Service Exceptions and Non-Collection Notices.**

Contractor shall not be required to provide Collection services in the following events when Contractor shall take the following action:

**6.2.1 Contaminated Materials.**

Customer has discarded other than Recyclables in the Recyclables Container and other than Organic Waste in the Organic Waste Container. Contractor shall attach a non-Collection notice to the Container. The notice shall explain the reason for the non-Collection and provide information listing examples of Recyclables and Organic Waste and how to discard these materials. Contractor may also issue fees for contamination according to the fee schedule in Exhibit B.

**6.2.2 Setting Container Out on a Day Other Than Customer's Collection Day.**

Customer has set a Container out on a Day that is not the Customer's Collection Day. Contractor shall attach a non-Collection notice to the Container. The notice shall explain the reason for the non-Collection.

**6.2.3 Uncontainerized Solid Waste.**

Customer discards Solid Waste outside a Container, unless otherwise allowed under this Agreement, such as Bulky Items, e-waste, white goods and Holiday (Christmas) Trees. Contractor shall attach a non-Collection notice to the uncontainerized Solid Waste or Customer's adjacent Container. The notice shall explain the reason for the non-Collection and explain when, where and what uncontainerized Solid Waste the Customer may discard for Collection. Contractor may also issue fees for contamination according to the fee schedule in Exhibit B.

**6.2.4 Excess Weight.**

Customer's Container is in excess of weight limits posted on the Container. Contractor shall attach a non-Collection notice to the Container. The notice shall explain the reason for the non-Collection. Contractor may also issue fees for contamination according to the fee schedule in Exhibit B.

**6.2.5 Hazardous Waste.**

In the event Contractor determines that Containers contain Hazardous Waste, other than Household Hazardous Waste not discovered and identified by Contractor acting under its Hazardous Waste Handling Protocol submitted to City pursuant to Section 6.7. Contractor shall implement its Hazardous Waste Handling Protocol. Contractor shall attach a non-Collection notice to the Container if Contractor determines that it is safe to not Collect the Hazardous Waste. The notice shall explain the reason for non-Collection and shall provide the Customer with written information about the proper Disposal of Hazardous Waste.

Contractor shall report such non-Collection to City in the Quarterly Report provided to City pursuant to Section 13.4.

**6.2.6 Improper Set-Out Site.**

Customer has not set out the Container Curbside or at a Permitted Set-Out Site, excluding Customers provided Backyard Cart Service. Contractor shall attach a non-Collection notice to the Container. The notice shall explain the reason for non-Collection.

**6.2.7 Health or Safety Threat.**

Contractor determines that any condition at or near any Set-Out Site presents a health or safety threat to Contractor's employees or the public. Contractor shall immediately notify the Customer in person, by phone, email or other means available to Contractor. Upon authorization by the Director, Contractor shall discontinue Collection until the threat is eliminated.

**Section 6.3 Route Maps, Schedules and Audits.**

**6.3.1 Route Maps and Schedules.**

Contractor shall provide route maps to the City upon request by the City.

Within seven (7) Days of City request, Contractor shall provide City any or all of the following:

a. Maps showing Contractor's Solid Waste, Recyclables and Organic Waste Collection routes; and
b. Route sheets listing the Customers' names, addresses, levels of service, day and approximate time of Collection.

At least thirty (30) Days prior to any route changes, Contractor shall give City revised maps and route sheets.

**6.3.2 Route Audits/Route Reviews.**

Contractor shall cooperate with City route audits of vehicles that Collect Solid Waste, Source Separated Recyclables and Organic Waste in City, including allowing City to follow the vehicles and, with Contractor's consent, ride in the vehicles.

Contractor shall perform route reviews in accordance with 14 CCR 18982(a)(65). This includes detailed tracking of the audit, issues encountered, actions taken etc. Route reviews are a visual inspection along a hauler route for the purpose of evaluation of container contamination.

**Section 6.4 Collection Vehicles.**

Contractor warrants that it shall provide an adequate number of collection vehicles and equipment for the Collection, Disposal and transportation services for which it is responsible under this Agreement.

### 6.4.1 Air Emissions.

All Contractor's collection vehicles operating in the City shall meet the current California Air Resources Board's emission standards. If a vehicle that meets the current California Air Resources Board (CARB) standards is unavailable due to unscheduled or non-routine maintenance, another vehicle from the Contractors fleet may be used. Contractor shall document and report all cases in which collection vehicles that do not meet the current CARB standards are used in the City.

### 6.4.2 Vehicles.

Identification: Contractor shall place the following information on every Collection vehicle in letters and figures at least three inches (3") high in colors that contrast with the background:

a. Contractor's name, unless Contractor immediately notifies the Director that Contractor has substituted another vehicle without Contractor's name to temporarily provide Collection services when the vehicle that Contractor usually uses for Collection is undergoing service and/or repair; and
b. Contractor's toll-free telephone number; and
c. A unique vehicle number.

Contractor may place safety instructions on Collection vehicles. Contractor shall not place any other words or pictures, except as provided herein, on Collection vehicles without City consent.

### 6.4.3 Leak Containment.

All collection vehicles, carts, and bins shall be leak-proof. Contractor shall not allow any hazardous or non-hazardous liquids or other materials to leak from any vehicle. If leaks do occur, clean-up shall be in accordance with the City of Carpinteria's Watershed Management Program policies. Contractor shall ensure that spill containment kits are provided to all collection vehicles operating in the City and operators are trained on how to use them. This includes protecting nearby storm drains immediately to prevent materials entering the storm drain system and properly disposing of the cleanup materials. At City's request, Contractor shall provide other cleaning services, such as steam cleaning sidewalks where Contractor's cart has leaked, pursuant to Section 10.3.3.

Contractor shall keep a record of leaks including type, amount, action taken to clean it up, employee(s) responsible for clean-up, date and time. Contractor shall report such leaks to City within twenty four (24) hours of any occurrence and also indicate incidents in the Quarterly Report provided to City pursuant to Section 13.4.

### 6.4.4 Maintenance and Safety.

Contractor shall maintain Collection vehicles in clean condition and good repair to ensure that Collection vehicles operate properly and safely according to the following.

a. **Leaks.** Contractor shall not allow hydraulic fluid or other liquid to leak from any vehicle and shall immediately clean up any leaks. Contractor shall have a spill remediation kit on board all vehicles operating within the city. Contractor shall immediately protect any storm drain inlet from receiving hydraulic fluid or other liquids. Contractor shall photograph any incident.

Contractor shall keep a record of leaks including type, amount, action taken to clean it up, employee(s) responsible for clean-up, date and time. Contractor shall report such leaks to City within twenty four (24) hours of any occurrence and also indicate incidents in the Quarterly Report provided to City pursuant to Section 13.4.

b. **Inspections.** Contractor shall have the California Highway Patrol inspect each vehicle under law. Contractor shall conduct additional inspections, such as brake testing, within seven (7) Days of a request from the Director. Contractor acknowledges that City may inspect any vehicle.

c. **Maintenance Log and Safety Compliance Report.** Within two (2) Business Days of a request from the Director, Contractor shall provide City a copy of its vehicle maintenance log and any safety compliance report, including, but not limited to, any report issued under California Vehicle Code Sections 34500, *et seq.* and the biennial "BIT" inspections conducted by the California Highway Patrol.

d. **Oil Recycling, Re-refined Oil.** Contractor shall Recycle all used oil from its vehicle maintenance operations and make reasonable business efforts to use re-refined oil.

### 6.4.5 Appearance.

Contractor acknowledges that it is important to City that Contractor presents a professional and well-maintained image. Contractor shall wash vehicles as often as necessary to preserve and maintain a professional and pleasing image, and within two (2) Days of a request from the Director. Contractor shall paint vehicles within thirty (30) Days of a request from the Director.

### 6.4.6 Spare Vehicles.

Contractor shall maintain a sufficient number of vehicles, fully fueled and ready to dispatch, to replace any vehicle that breaks down enroute so that Customer service is minimally delayed.

### 6.4.7 Sanitary Operation.

Contractor shall comply with all laws, regulations and procedures promulgated by all agencies having jurisdiction over the safe and sanitary operation of Contractor's equipment.

## Section 6.5 Personnel.

### 6.5.1 Key Personnel.

Contractor acknowledges that providing services under this Agreement is personal in nature because it requires continuous and extensive communication between Contractor's personnel and City staff, and knowledge of City streets, terrain and requirements under this Agreement. Contractor shall use reasonable business efforts to provide City with thirty (30) Days' notice of a change in the following personnel:

a. Route supervisor, and
b. City liaison in Contractor's financial accounting department responsible for submitting reports with respect to Franchisee Quarterly Fees; and
c. City liaison in any Contractor department responsible for submitting reports with respect to Contractor's Diversion of Solid Waste in City.

In its notice to City, Contractor shall include the name and professional qualifications of the replacement personnel. The Director may request, upon thirty (30) Days prior notice, that Contractor use reasonable business efforts to appoint an alternative individual as the City

liaison in any Contractor department responsible for submitting reports with respect to Contractor's Diversion of Solid Waste in City

### 6.5.2 Workers' Compensation Modification Factor Documentation.

Within two (2) Business Days of a request from the Director, Contractor shall provide City with Contractor's Workers' Compensation Experience Modification Factor documentation.

### 6.5.3 Drivers.

Contractor shall provide appropriate and applicable operational and safety training, including on-job-training by supervisors, to all employees that drive Collection vehicles and/or operate equipment for Collection. Contractor shall train a sufficient number of employees to drive all Collection routes to ensure there is no lapse of Solid Waste Handling Services under this Agreement. Contractor shall keep complete training records. Contractor shall use reasonable business efforts to assign the same employees to drive identified routes in order to encourage accountability and enhance Customer relations. Contractor shall provide a cell phone or an equivalent communication device to each employee that drives a Collection vehicle to keep in contact with Contractor's Customer service representatives, operation and maintenance personnel and the route supervisor. Contractor shall carry out drug and alcohol testing of employees that drive Collection vehicles in compliance with Department of Transportation 49 CFR Part 40 and shall keep complete testing records. Contractor shall make certain that all employees that drive Collection vehicles have in full force and effect a valid driver's license of the appropriate class issued by the California Department of Motor Vehicles and keep copies of such licenses.

### 6.5.4 Route Supervisor.

Contractor shall assign qualified personnel to supervise field operations in the Service Area, including:

a. Checking that Collection meets specifications under this Agreement; and
b. Making Collection improvements; and
c. Resolving field problems, such as reports of commingling Organic Waste or Recyclables with Solid Waste; and
d. Responding to Complaints of Customers in person or by telephone, such as missed pickups, noise, litter, etc.

Contractor shall provide the route supervisor a cell phone or an equivalent communication device to keep in contact with Contractor's Customer service representatives, operation and maintenance personnel, City and drivers.

### 6.5.5 Identification, Appearance and Conduct.

Contractor shall ensure that all of its employees who come into contact with the public present a neat, tidy and orderly appearance and clear identification as an employee of Contractor.

### 6.5.6 Gratuities.

Contractor shall not, nor shall it permit any officer, agent or employee to, request, solicit, or demand, either directly or indirectly, any gratuity from Customers for the Collection of Solid Waste required to be Collected under this Agreement.

### 6.5.7 Nondiscrimination and Compliance with Law.

Contractor shall comply with all applicable nondiscrimination laws and shall not discriminate against any Person as an employee or potential employee on the basis of his or her race, color, national origin, ancestry, religion, creed, physical handicap, medical condition, marital status or sexual orientation. Contractor shall comply with all applicable labor laws and other applicable laws relating to Contractor as an employer.

### Section 6.6 Interruption of Service.

Contractor shall maintain a Back-Up Plan for interruption of service and provide to the City no less than two (2) business days following a request. The Back-Up Plan shall set forth the procedures that Contractor shall follow in the event of an interruption of services provided under this Agreement. In the event that an interruption of services provided under this Agreement occurs, within twenty-four (24) hours of a request from the Director, Contractor shall implement the Back-Up Plan.

### Section 6.7 Hazardous Waste Handling.

Contractor shall maintain a Hazardous Waste Handling Protocol, to be submitted to the City upon request. The Hazardous Waste Handling Protocol shall set forth procedures that Contractor shall follow to identify and Collect Hazardous Waste for proper Disposal. The Hazardous Waste Handling Protocol shall include the manner in which Contractor shall use reasonable business efforts to screen all Solid Waste for Hazardous Waste when tipping Containers into vehicles, such as using driver observation in mirrors when tipping Carts in front of the vehicle. In the event Contractor inadvertently delivers Solid Waste to any Disposal Site or Transfer and Processing Facility that includes Hazardous Waste, Contractor shall make a good faith effort to identify and contact the Customer that discarded the Hazardous Waste and recover the Hazardous Waste handling costs and cooperate with the Disposal Site or Transfer and Processing Facility owners or operators to arrange for proper Disposal under law.

## ARTICLE 7 CITY'S ABILITY TO CONTROL FLOW OF SOLID WASTE

### Section 7.1 Flow Control Option.

City shall have the absolute ability to choose the location for the delivery and/or Disposal of all Solid Waste (including Recyclables and Organic waste) Collected pursuant to this Agreement. Contractor expressly consents to City's ability to direct the location for Disposal of Solid Waste hereunder and waives any and all rights to challenge City's ability to do so, including without limitation any rights under the Commerce Clause of the United States Constitution.

At any time during the Term of this Agreement, the Director may notify Contractor in writing that City desires to invoke its flow control option. In the event that the Director so notifies Contractor of the desire to change the City's flow control option, the written notification shall include the change, including whether the change is to Solid Waste, Source Separated Recyclables and/or Source Separated Organic Waste and whether the change involves the Designated Disposal Site, the Designated Transfer and Processing Facility and/or any specific one of Contractor's Facilities. In the event the Director so notifies Contractor of the desire to cease exercising the City's flow control option, Contractor shall have the absolute discretion to utilize any Disposal Site, Transfer and Processing Facility, Material Recovery Facility, or other facility of its choosing to retain, Recycle, process, and Dispose of Solid Waste, Source Separated Recyclables and/or Source

Separated Organic Waste generated within City, provided the use of such facility by Contractor enables it to meet all other requirements of this Agreement.

## ARTICLE 8 DIVERSION

a. Contractor shall ensure through the delivery of its programs and services under this contract that City's overall diversion rate meets or exceeds the State mandated minimum requirement, currently set at 50%.
b. Contractors compliance with the diversion requirements and goals above shall be reported by sector through the Quarterly reports to the City.

## ARTICLE 9 HAZARDOUS WASTE NOTIFICATIONS

### Section 9.1 Hazardous Waste Inspection and Notifications.

Contractor reserves the right and has the duty under law to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Household Hazardous Waste and the right not to Collect Household Hazardous Waste put out with Solid Waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Household Hazardous Waste, found or observed in Solid Waste anywhere within City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Household Hazardous Waste unlawfully Disposed of or released on any City property, including storm drains, streets or other public rights-of-way, Contractor shall immediately notify the Director.

### Section 9.2 Hazardous Waste Diversion Records.

Contractor shall maintain records showing the types and quantities, if any, of Household Hazardous Waste found in Solid Waste, which was inadvertently Collected from Customers within City, but Diverted from the Designated Disposal Site or other Disposal Sites.

## ARTICLE 10 CUSTOMER SERVICE

### Section 10.1 Customer Service Policy.

Contractor shall provide a Customer Service Policy to City upon request. The Customer Service Policy shall include procedures, to the satisfaction of the Director, for communicating with Customers and taking, responding to and resolving Customers' questions, Complaints and disputes. Notwithstanding the Customer Service Policy, Contractor shall be subject to the Customer service requirements set forth in this Article.

### Section 10.2 Container Service.

#### 10.2.1 Containers Provided by Contractor.

Contractor shall provide Customers with the following Containers meeting the requirements of SB 1383 and the industry quality standards for storage of discarded Solid Waste, Source Separated Recyclables and Organic Waste pending Collection by Contractor:

a. All Carts, Bins and Roll-Off Boxes (not compactors) for City and all Customers consistent with Article 5; and

b. Sharps Waste Containers for Residential Customers consistent with Subsection 5.8.5.

**10.2.2 Container Inventory.**

Contractor shall store unused Containers in a secure location. Contractor shall update its Container inventory within seven (7) Days of a request by the Director.

**10.2.3 Delivery of Containers.**

Upon a Customer request, for reasons of service commencement or lost or stolen Containers, Contractor shall deliver Containers to the Set-Out Site no later than the day following Customer's Collection Day. Delivery of Containers pursuant to this Subsection shall be provided by Contractor at no charge to City or the Customers.

**10.2.4 Pick-Up, Exchange, Decrease or Increase Number of Containers.**

Upon a Customer request, for reasons of service termination or change in service, Contractor shall pick-up, exchange, increase or decrease the number of Containers at the Set-Out Site no later than the day following Customer's Collection Day. Pick-up, exchange, increase or decrease the number of Containers pursuant to this Subsection shall be provided by Contractor at no charge to City or the Customers.

**10.2.5 Maintenance, Repair or Replacement of Containers.**

Contractor shall maintain and repair all Containers. Upon a Customer request or request by the Director, Contractor shall repair or replace Containers that are damaged or constitute a threat to public health and safety, including keeping out rodents, flies and other vectors. A determination by the Director that a Container shall be repaired or replaced shall bind Contractor to do so. Contractor agrees to maintain its Solid Waste containers in City free of graffiti. In addition, any emergency Containers placed at schools and at City Hall or other City Facilities Premises pursuant to Article 18 must likewise be kept free of graffiti.

**10.2.6 Collection and Emptying of Containers.**

After emptying each Container as part of the Collection services provided by Contractor under this Agreement, Contractor shall replace it in its Set-Out Site.

Contractor may not randomly place bins in public areas unless they are preapproved for the location and delineated by safety cones as approved by the director.

**Section 10.3 Contractor Service Standards.**

**10.3.1 General Service Requirements.**

Contractor shall perform all services provided under this Agreement in a prompt, thorough, comprehensive, reliable, courteous and professional manner so that Customers receive high-quality Collection services at all times. Contractor shall perform all services under this Agreement regardless of weather conditions and difficulty of Collection, subject to the exceptions set forth in Sections 6.2 and 23.2.

### 10.3.2 Customer Litter.

In the event Contractor repeatedly observes littered Solid Waste outside a Container set out by a Customer for Collection, Contractor shall discuss ways to prevent littered Solid Waste directly with the Customer. In the event that this situation persists, Contractor shall report its discussion with the Customer to City.

### 10.3.3 Contractor Litter.

Contractor shall immediately clean up and Collect all Solid Waste spilled, scattered or littered while performing the services under this Agreement and pursuant to Section 6.4.4, including, but not limited to, lifting and emptying Containers and driving from or between Collection stops and tracking Solid Waste onto any alley, street or public place. Contractor shall equip each Collection vehicle with a broom, shovel and absorbent material.

## Section 10.4 Respect for Property.

### 10.4.1 Property Damage.

Contractor shall use due care in entering and exiting Residential Premises, Commercial Premises and City Facilities Premises. Contractor shall use paved surfaces where practicable and avoid crossing landscaped areas. Contractor shall not jump over hedges and fences. Contractor shall close all gates it opened after making Collections. In the event a Customer specifically directs Contractor to drive on private driveways or pavement in the course of providing Solid Waste Handling Services under this Agreement, Contractor may request that the Customer provide Contractor a waiver of damage liability and/or indemnification. Any physical damage caused by the negligent or willful acts or omissions of Contractor to public or private property shall be repaired or replaced by Contractor at Contractor's sole expense. Disputes between Contractor and its Customers as to damage to private property are civil matters and Complaints of damage shall be referred to Contractor as a matter within its sole responsibility and as a matter within the scope of Section 16.1.

Contractor shall include a description of any Customer notice of damage, including status of resolution, in its Quarterly Report set forth in Section 13.4. Except as provided in Article 16 and Subsection 10.4.2, this Agreement does not purport to affect, in any way, Contractor's civil liability to any third parties.

### 10.4.2 Pavement Damage.

Except for normal wear and tear on City streets resulting from the Contractor's reasonable operation of its collection vehicles, all damage to the City's driving surfaces, whether or not paved, which is caused by the operation of the Contractor's vehicles while providing Solid Waste Hauling Services within the City under this Agreement will be repaired or replaced by Contractor at Contractor's Sole expense. Contractor shall understand that the exercise of this Agreement may involve the operation of its collection vehicles over privately owned roads and streets. Contractor is authorized to require releases from the owner(s) of such private roads or streets as a condition precedent to the provision of curbside service to adjoining customers. Any disputes between Contractor and its Customers as to damages to private pavement are civil matters and complaints of damage will be referred to Contractor as a matter of sole responsibility and as a matter within the Scope of Section 16.1.

### 10.4.3 Utilities.

Any damage to any utilities, whether located on public or private property, resulting from the negligence of Contractor shall be repaired or replaced by Contractor at Contractor's sole expense.

## Section 10.5 Customer Service Complaints, Standards and Violations.

### 10.5.1 Customer Service Complaints.

a. All service complaints must be directed to the Contractor. Daily logs of complaints concerning collection of solid waste must be retained for a minimum of 24 months and must be available to the City at all times upon request.

b. The Contractor must log all complaints. This log must include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint, and the action taken by the Contractor to respond to and remedy complaint. All written customer complaints and inquiries must be date-stamped when received. All complaints must be initially responded to within one business day of receipt. The Contractor must log action taken by the Contractor to respond to and remedy all complaints.

c. All customer service records and logs kept by the Contractor will be available to the City upon request and at no cost to the City. The City shall, at any time during regular Contractor business hours, have access to the Contractor's customer service department for purposes that may include monitoring the quality of customer service or researching customer complaints.

### 10.5.2 Resolution of Customer Complaints

a. Disputes between the Contractor and its customers regarding the services provided under this Agreement may be resolved by the City Manager. The decision of the City Manager shall be final and binding.

b. Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this section is intended to affect the remedies of third parties against the Contractor.

### 10.5.3 Reimbursement of City Cost.

Contractor acknowledges that City is not responsible for taking, responding to or resolving Customers' questions, Complaints and disputes.

## Section 10.6 Customer Privacy and Customer Mailings.

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 Solid Waste or Source Separated Recyclables shall not be revealed to any Person, governmental unit, private agency or Contractor, unless required by law or upon authorization of the Customer.

This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of Solid Waste characterization studies or waste stream analyses that may be required by the Act.

Contractor shall not market or distribute mailing lists with the names and addresses of Customers.

The rights accorded Customers pursuant to this Section shall be in addition to any other privacy rights accorded Customers pursuant to federal and state law.

**Section 10.7 Means of Communicating with Customers and City.**

**10.7.1 Office Hours.**

Contractor shall maintain an office with assigned personnel. Contractor's office hours shall be from 8:00 a.m. to 5:00 p.m. Monday-Friday and 8:00 a.m. to 12:00 p.m. on Saturdays when Collection is occurring, excluding Holidays.

**10.7.2 Telephone Numbers.**

Contractor's office shall be accessible by a local phone number and a toll-free number. Contractor shall ensure that assigned personnel will answer the telephone during office hours. Contractor shall provide an answering or call-forwarding service system to take Customer messages outside of office hours. Contractor shall answer Customer messages no later than the following Business Day.

Contractor shall maintain an emergency telephone number for use by City personnel only outside office hours. Contractor shall have a representative, or an answering or call-forwarding service system to contact such representative, available at the emergency telephone number during all hours other than office hours.

At Contractor's expense, its regular and emergency telephone numbers shall be listed in City telephone directories under both Contractor's name and City's name. Contractor shall have the capability of responding to Customers in English, Spanish dialects and other languages necessary for communication between Contractor and its Customers.

**10.7.3 Posting Contact Information.**

Contractor shall post its contact information on all of its written communications with Customers, including, but not limited to Bills, non-Collection notices and newsletters.

**10.7.4 Web Site.**

Contractor shall maintain a web site with content acceptable to City. Contractor shall post all of the following information on its web site:

a. Explanation of the Solid Waste Handling Services provided under this Agreement; and
b. A link to City's web site; and
c. A link to programs or facilities where Customers can legally discard different wastes; and
d. Contractor's contact information; and
e. Other information related to Solid Waste management upon City request.

### Section 10.8 Education and Public Relations.

All written documents, notices and other printed materials provided to Customers pursuant to this Section shall be submitted to City for approval no less than five (5) business days prior to submission of the materials to Customers.

#### 10.8.1 Customer Orientation Packet.

Contractor shall develop and provide each Customer with a Customer Orientation Packet at the start of services under this Agreement, including the restart of service that has been terminated. The Customer Orientation Packet shall include an explanation of the Customer's current services, an explanation of the Solid Waste Handling Services provided under this Agreement and an explanation of set-out instructions.

#### 10.8.2 Customer Service Summary.

Contractor shall provide Customers a Customer service summary annually explaining the Customer's current services provided under this Agreement and notice that an explanation of the Solid Waste Handling Services provided under this Agreement are available on Contractor's web site or upon request.

#### 10.8.3 Quarterly Newsletter.

Contractor shall produce a quarterly newsletter designed to promote safe Solid Waste handling, Recycling and Diversion. Contractor shall email the newsletter to Customers that receive Bills on-line and/or request electronic communication; otherwise, the newsletter shall be distributed via United States Postal service mail as bill inserts, and/or download from the City-dedicated webpage on Contractor's website.

#### 10.8.4 Customer Satisfaction Survey.

City may conduct Customer service satisfaction surveys. Contractor may review and comment upon the survey form and content. Contractor shall cooperate with City in conducting the survey. Contractor may obtain a copy of the survey results.

#### 10.8.5 Additional Information.

Contractor shall produce and distribute additional education materials upon City request at Contractor's expense up to the Contractor monetary contribution set forth in this Section and at City's expense thereafter. Contractor may produce and distribute additional materials subject to approval by City pursuant to this Section.

#### 10.8.6 Program Outreach and Tracking

Contractor shall provide detailed outreach material and tracking data for all sectors serviced in accordance with SB 13811383, other state mandate programs and Carpinteria Municipal Code Chapter 8.08, Article V.

## ARTICLE 11 OWNERSHIP OF SOLID WASTE

Except as otherwise provided under State law, ownership and the right to possession of Solid Waste, including Organic Waste and Recyclables, shall transfer directly from the Customer to

Contractor upon Collection by Contractor. At no time shall City obtain any right of ownership or possession of Solid Waste or Hazardous Waste placed for Collection and nothing in this Agreement shall be construed as giving rise to any inference that City has any such rights.

## ARTICLE 12 RATES, FEES AND BILLING

### Section 12.1 Maximum Rates.

In consideration of and as compensation for the performance of Solid Waste Handling Services, Contractor shall, in its sole discretion, establish, charge and collect Customer Rates, which shall not exceed the Maximum Rates. The Maximum Rates shall be the maximum amount Contractor may charge Customers as full, entire and complete compensation due to Contractor pursuant to this Agreement for performance of all Solid Waste Handling Services required by this Agreement. The Maximum Rate Schedules as of the Services Initiation Date are provided in Exhibit B. Contractor is under no obligation to charge the Maximum Rates. Contractor shall impose no other charges for any services provided to Customers, unless approved in writing by City, except for those charges provided in Exhibit C: Administrative Charges pursuant to this Article.

### Section 12.2 Residential and Commercial AB 939 Fees

In addition to the amount billed by the Contractor for services rendered hereunder, each quarterly billing shall include the surcharge in the amount of 8% of gross receipts for all residential container service and 6% of gross receipts for all commercial bin services per month. This fee shall be collected by the Contractor and paid to the City quarterly in addition to the fees paid pursuant to Section 12.8.2. The fees shall be deposited by the City into the City's Solid Waste Fund.

### Section 12.3 Escalation.

All maximum rates shall be subject to escalation beginning on July 1, 2023. The rate shall be escalated only if the Contractor is in full and complete compliance with the obligations of this Agreement.

Such escalation shall be calculated by computing the percentage change in the CPI index for the twelve month annual average period ending June 30 of each year, and multiplying the applicable amount to be escalated by 100% (one hundred) of that percentage change in the CPI. The maximum annual CPI request shall not exceed 4% with a base of 0.0%.

The Consumer Price Index (CPI) used shall by the Consumer Price Index-All Urban Consumers (CPI-U) for the Los Angeles-Long Beach-Anaheim, CA, not seasonally adjusted, all items index, annual average, as published by the United States Department of Labor, Bureau of Labor Statistics.

The calculation to determine the CPI multiplier is as follows: (Example)

| | | |
|---|---|---|
| a. | Current year CPI, Annual Average | 224.6 |
| b. | Previous Year CPI, Annual Average | 221.4 |
| c. | Change in Index (Line 1 minus Line 2) | 3.2 |
| d. | % Increase | (3.2/221.4)X100 = 1.44% |

As defined, an annual average is comparing 1(one) 12 month period against another 12 month period.

The Contractor shall deliver to the City notification of the rate escalation, with supporting data and calculations, by April 1 prior to the rate increase becoming effective. Failure of the Contractor to escalate its rates pursuant this subsection in any one year shall result in the Contractor waiving its right to escalate the rates for that year.

**Section 12.4 Adjustment of Rates.**

In addition to the annual escalation provided in Section 12.3, commencing on July 1, 2024, the Contractor may apply for an increase in the maximum rates, if the Contractor can demonstrate that the Contractor's operational costs have substantially increased or there has been a material change in the law. For the purpose of this section, operational costs shall be defined as: Motor vehicle fuel, Insurance, Contractor's personnel costs (salaries and benefits), equipment repair costs, processing fees, tipping fees, and equipment purchases. When applying for an increase, the Contractor shall submit to the City, by April 1, information in support of the adjustment. Additional factors to be taken into consideration in connection with the adjustment request will include, but are not limited to:

a. Overall customer satisfaction
b. Satisfactory compliance with all provisions of this Agreement
c. Contractor has complied with solid waste diversion requirements in all sectors as defined and mandated by the state of California and implemented by the City of Carpinteria.

Contractor shall submit any and all data requested in the format prescribed by the City Manager. The City Manager shall review the information submitted by Contractor and, in the City Manager's reasonable judgment, make the final determination on the appropriate amount of the adjustment, if any. A requested adjustment may not be denied in the case of changed or additional services requested by the City, additional reporting required by the City, the City's designation of a disposal site or processing facility, any change in the Municipal Code affecting the Contractor's operations, or changes in state or local government solid waste fees and charges. Any such rate adjustment approved by the City Manager shall become effective on July 1.

Any change in in facility tipping fee or processing fee shall result in an automatic rate adjustment in an amount of the change plus applicable governmental fees. The tip fee shall be apportioned to the residential and commercial customers in accordance with the volume and frequency of their service.

Any change in governmental fees shall result in an automatic rate adjustment in the amount of the change in said governmental fee.

Contractor shall give a minimum of 15 (fifteen) days written notice to all customers as approved by the city of any such change in rates to the customers under Section 12.

**Section 12.5 Rate Adjustment Dispute.**

Any dispute regarding the computation of a rate adjustment shall be decided by City. A rate adjustment computation decision may be appealed by Contractor in accordance with the procedures provided in Article 19. The Maximum Rates in effect at the time a rate adjustment dispute is submitted to City shall remain in effect pending resolution of that dispute. The date a Maximum Rate is determined to be effective through the dispute resolution procedures provided

in Article 19, shall be the next immediate Billing cycle of Contractor after the date of dispute resolution.

**Section 12.6 Competitive Rate Guarantee.**

Contractor guarantees that upon the Services Initiation Date of this Agreement that the Customer Rates and/or the Maximum Rates shall not be greater than the Comparable Rates charged for Similar Service to Residential and Commercial Customers in the Local area.

In the event that, as of the Services Initiation Date, the Customer Rates set by Contractor and/or the Maximum Rates provided in Exhibit B are greater than any of the Comparable Rates for Similar Service, City shall notify Contractor of its obligations under this Section. Such notification shall specify the Customer Rates and/or the Maximum Rates that are greater and are subject to adjustment under this Section. Within sixty (60) Days of receipt of such notice, Contractor shall ensure that any Customer Rates are not greater than the Comparable Rates for Similar Service Area.

**Section 12.7 Franchisee Quarterly Fees.**

Contractor shall pay to City the Franchisee Quarterly Fees as set forth in this Section.

**12.7.1 Calculation of Franchisee Quarterly Fees.**

The Franchisee Quarterly Fees shall be comprised of the Franchise Fee for the Residential and Commercial sectors. Contractor shall calculate the Franchisee Quarterly Fees as follows:

a. Calculate the Total Billings for the preceding quarter broken out into Residential Container Service and Commercial Bin Service; and
b. Multiply the Residential Gross Receipts by 0.08 (Franchise Fee); and
c. Multiply the Commercial Gross Receipts by 0.08 (Franchise Fee);

**12.7.2 Payment of Franchisee Quarterly Fees.**

Contractor shall pay the Franchisee Quarterly Fees for the prior quarter to City on or before the thirtieth (30th) Day of the following month. Should any such due date fall on a weekend or Holiday in which City Hall is closed, payment shall be due on the first business Day thereafter. Franchisee Quarterly Fees shall be submitted to City with the calculation form provided in Exhibit F, which includes a statement certified by an officer of Contractor attesting to the accuracy of the amounts paid.

**Section 12.8 Customer Billing.**

**12.8.1 Contractor to Bill.**

Contractor shall prepare and mail Bills for services provided by Contractor and shall receive Customer payments according to this Section.

**12.8.2 Frequency.**

Contractor shall Bill Residential Customers for Cart services bi-monthly in advance of services provided. Contractor shall Bill Residential Customers for Bin services and Commercial

Customers for all services monthly in arrears of services provided. Contractor shall submit Bills to Customers no sooner than the first day of the Billing period.

**12.8.3 Automated Billing and Payment.**

Contractor shall make available to all Customers a web site-based electronic Billing and payment system. This system should allow Customers to view and pay Bills through Contractor's web site. Contractor shall ensure that Customers may choose to cease receiving paper Bills and receive all Bills through email and/or Contractor's web site. Contractor shall ensure that the web site-based electronic Billing and payment system conforms to industry-standard practice for electronic commerce security.

**12.8.4 Bill Format.**

Contractor shall Bill Customers using a Bill format approved by City, if Customer does not choose to cease receiving paper Bills. Bills shall be payable solely to Contractor and no other Person, including any Affiliate. Contractor shall provide City a sample Bill upon request from City. Contractor shall include inserts, announcements or other written materials with Bills according to Section 10.8.

**12.8.5 Refunds.**

Contractor shall refund to Customers any overcharges, including advance payments for services that Customer subsequently canceled, within thirty (30) Days of Contractor's receipt of Customer payment or Contractor's discovery of the overcharge. Contractor shall pay interest at ten percent (10%) per annum from the date originally overcharged until the date refunded, or lesser amount acceptable to City.

**12.8.6 Returned Check.**

Contractor may charge a Customer a return check charge as set forth in Exhibit C for any payment made in the form of a check and the check could not be processed for any reason, including, but not limited to insufficient funds available, by the Customer's financial institution and, therefore, is returned to Contractor unpaid.

**12.8.7 Termination of Service; Restart Service.**

Contractor may send a notice of termination of service for non-payment upon sixty (60) Days of non-payment of the Bill. Contractor may terminate Collection service no sooner than five (5) Days after sending the sixty (60) Day termination notice and may discontinue service until payment in full has been received. Contractor shall provide City a list of delinquent accounts upon request. After a Customer's service is terminated for non-payment, Contractor may charge the Customer a restart service charge as set forth in Exhibit C to resume services.

## ARTICLE 13 RECORDS AND REPORTING

### Section 13.1 Record Retention.

In addition to the record retention requirements of Sections 9.2, 13.13 and 17.4, Contractor shall maintain, in electronic form at a minimum, all records relating to the services provided hereunder, including, but not limited to, route maps, customer lists, Billing records, weight tickets, maps, the Act records, and Customer Complaints, for the period during which Collection services are

provided pursuant to this Agreement, and an additional period of not less than three (3) years after expiration or termination of this Agreement, or any longer period required by law. In addition, summaries of weight tickets identifying the disposition of Solid Waste Collected in City shall be kept for a period of thirty (30) years.

**Section 13.2 Audits.**

City shall have the right, upon reasonable advance notice, to inspect, audit and copy all of Contractor's records relating to Contractor's provision of services pursuant to this Agreement, including, but not limited to, route maps, customer lists, billing records, weight tickets, the Act records and Customer Complaints, Contractor's payment of fees to City and records which may be relevant in the event of an action under CERCLA or related Claims. In the absence of extraordinary circumstances, five (5) Business Days' notice shall be considered reasonable. Such records shall be made available to City (or City's designated representative) at Contractor's regular place of business. City shall maintain any confidential or proprietary records of Contractor in confidence and shall not disclose such records except as required by any applicable public records disclosure law. Prior to destruction of records relating to the services provided pursuant to this Agreement, Contractor shall provide copies or originals of such records to City.

**Section 13.3 Overpayment or Underpayment.**

Should any examination or audit of Contractor's records reveal an overpayment or underpayment by Contractor, the amount of underpayment, plus interest compounded monthly at the maximum lawful rate, shall be paid by Contractor to City within thirty (30) Days. The amount of any overpayment shall be paid by City to Contractor in the ordinary course of business.

**Section 13.4 Quarterly Reports.**

The following information is the minimum required to be reported quarterly: Tons of solid waste collected by the Contractor for the previous quarter, sorted by type of service (solid waste, recycling, organic waste, roll-off) and type of account, and itemized by percentage in the total tonnage collected, and the facilities where the tonnage was processed or disposed. Quarterly reports shall include the following information:

a. Number of residential accounts billed by the Contractor, including the number of residential accounts participating in the recycling program.
b. Number of multi-family residential accounts billed by the Contractor, including the number of multi-family residential accounts participating in the recycling program
c. Number of commercial accounts billed by the Contractor, including the number of commercial accounts participating in the recycling program
d. Identify any residential, multi-family or commercial establishment that does not subscribe for service.
e. Gross revenue received during the quarter, franchise fees, and AB 939 fees.
f. Provide diversion data for Contractors accounts. This may include recycling, source reduction and reuse of materials. Third Party data shall be used in calculating diversion rates.
g. Materials recovered. Statement showing kinds of recyclable materials collected and the quantity sold by sector (in tons).
h. Number of missed collections reported to Contractor
i. Narrative summary of problems encountered (including scavenging) and actions taken with recommendations to the City, as appropriate.
j. Copies of promotional and public education materials sent during the preceding quarter.
k. Copies of hazardous waste diversion records showing types and quantities, if any, of hazardous waste that was inadvertently collected, but diverted from landfilling.
l. Complaint log/summary for the quarter, on a computer disc, identifying the nature of complaints and their resolution.
m. List of any instances of leaking vehicles/equipment to be identified.
n. Other information or reports that the City may reasonably request.

**Section 13.5 Additional Reporting.**

Upon request, Contractor shall provide additional information to the City not less that two (2) weeks following an inquiry from the Director or their Designee. Additional information requested includes, but is not limited to:

a. A list of all accounts billed by the Contractor, including service address, billing address, and service levels, i.e., number of carts/bins in service by type of service (solid waste, recycling, green waste), size (32, 65, or 95-gallon, bin size) and additional cart charges; and for bins and roll-off service -- number and size of containers, type and frequency of service.

b. Disposal records and all other requested information required under Section 13.4.

c. A complete inventory of equipment used to provide all services (such as vehicles, containers by size, and the waste stream from each type of container).

d. General information about the Contractor, including a list of officers and directors, the most recent annual report and other periodic public financial reports of the Contractor, its subsidiaries and affiliated companies, that may perform services under this Agreement.

e. An explanation of any changes in integrated waste management, including projections and proposed implementation dates and costs, recommended by Contractor or this Agreement, based on developments in the law or technology. Contractor's recommendations with respect to compliance with the Act shall state the specific requirement of the Act that the implementation of the recommendation is intended to satisfy

**Section 13.6 Financial Statement.**

Contractor shall prepare a financial statement with respect to the Solid Waste Handling Services provided under this Agreement for each Fiscal Year within one hundred (100) Days of the close of the Fiscal Year. Contractor shall attach to the financial statement the following:

a. The accountant's representation that Contractor's financial statement was audited in accordance with generally accepted auditing principles;
b. That the financial statement was prepared in accordance with generally accepted accounting principles, which were consistently applied;
c. The financial statement fairly presents the financial position, the results of operations, the cash flow of Contractor, and contract profitability;
d. The Contractor's Chief Financial Officer's statement that no events subsequent to the preparation of the last financial statement submitted under this Agreement have materially changed Contractor's financial status or condition or describing any material changes in Contractor's financial status or conditions since the preparation of the last financial statement.

**Section 13.7 Reporting Adverse Information.**

Contractor shall provide City two (2) copies (one to the City Manager, one to the City Attorney) of all Claims, reports, pleadings, applications, notifications, notices of violation, communications or other material relating specifically to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, CalRecycle, any local enforcement agency, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to City simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

**Section 13.8 Failure to Report.**

The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of this Agreement and shall subject Contractor to all remedies which are available to City under this Agreement or otherwise, provided that City must follow the procedures for dispute resolution found in Article 19 before declaring any such material breach.

**Section 13.10 Costs.**

All reports and records required under this Agreement shall be furnished at the sole expense of Contractor.

**Section 13.11 Certification.**

Contractor shall provide a certification statement, under penalty of perjury, by the responsible corporate official, that each report submitted pursuant to this Article is true and correct.

**Section 13.12 Submission of Reports.**

Reports shall be submitted to:

City Manager [or designated representative]
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

Contractor agrees that cooperation between Contractor and City is critical to the success of this program. City reserves the right to request from Contractor additional information reasonably and directly pertaining to this Agreement on an "as-needed" basis.

**Section 13.13 CERCLA Defense Records.**

City and Contractor agree that the ability to defend against CERCLA and related litigation is of great importance. For this reason, City and Contractor regard the ability to prove where Solid Waste Collected in City was taken for disposal, as well as where it was not taken, to be relevant. Contractor shall maintain data retention and preservation systems which, in the event of litigation, can establish where Solid Waste Collected in the City was Disposed (and therefore establish where it was not Disposed) and will provide a copy of the reports required by Sections 9.1, "Hazardous Waste Inspection and Notification," 9.2, "Hazardous Waste Diversion Records," 13.4, 13.4, "Quarterly Reports," to the City Clerk. In addition, Contractor agrees to maintain electronic copies of the foregoing reports for thirty (30) years after the end of the period during which Collection services are to be provided pursuant to this Agreement. Contractor agrees to notify City's Risk Manager and City Attorney before destroying Contractor's copies of such records and Contractor shall provide copies or originals of such records to City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

**Section 13.14 PERIODIC REVIEW**

The City will periodically review the Contractor's performance based on subscriber complaints, timely payment of sums due, statistical reporting, program progress, etc. This review will be conveyed to the City Council, and the Contractor may review the report and submit its own statement.

**Section 13.15 DETAILED PERFORMANCE REVIEW**

The City, at its sole discretion, may require a Performance Review subject to the terms and conditions of this Section 13.15. A qualified firm chosen by the City and under contract to City shall perform the Performance Review. The City, in it's the sole discretion, shall select the qualified firm to conduct the Performance Review.

a. The costs of the Performance Review shall be borne by the Contractor, except that (i) Contractor shall not be obligated to pay more than $30,000.00 for any one Performance Review, and (ii) the total amount that Contractor shall be obligated to pay for Performance Reviews during the Term of this Agreement shall not exceed $50,000.00. Notwithstanding the preceding sentence, if the Performance Review finds a material breach or default in Contractor's performance, Contractor shall in a timely manner reimburse City the total cost of the Performance Review within ten (10) days of written demand from City and the amount shall not count against the maximum reimbursement due to City for the term of this Agreement.
b. The Performance Review shall address all appropriate areas, including, but not limited to, the following areas, and shall provide specific recommendations, as appropriate, for improvement in each area:

i. Compliance with the terms of this Agreement and Applicable Law.
ii. Overall organizational structure and management systems and procedures.
iii. Efficiency of collection operations, including an analysis of routes, schedules and the impact to Agreement requirements.
iv. Staffing practices, including the deployment of management and supervisory personnel.
v. Financial management practices, including Contractor's billing and collection system and its policies with regard to uncollected accounts.
vi. Personnel management practices, including compensation policies and the resolution of employee grievances.
vii. Employee job and safety training, and management of Hazardous Waste.
viii. Procedures for receiving and resolving subscriber complaints and concerns.
ix. Procedures for the acquisition, maintenance, safety check, and replacement of equipment.
x. Utilization and management of facilities, equipment and personnel.

c. The Contractor shall cooperate fully with the Performance Review, and provide within thirty (30) days of request, all operational, financial and other information deemed reasonable or convenient by City or the firm for purposes of conducting the Performance Review. The Contractor's failure to cooperate or provide all requested information shall be considered an event of Default.
d. In conjunction with any Performance Review, City reserves the right to require changes to Contractor's operations, which City determines to be necessary or appropriate by reason of the findings or results of the Performance Review to carry out the intent of the terms and conditions of this Agreement.

## ARTICLE 14 CALRECYCLE REPORTING REQUIREMENTS

Contractor shall cooperate with City in Solid Waste Disposal characterization studies and waste stream audits and shall implement measures adequate to achieve City's source reduction, Recycling and waste stream Diversion goals for the Solid Waste stream covered by this Agreement. During the period in which Collection services are provided pursuant to this Agreement, Contractor at Contractor's sole expense, shall submit to City information and reports necessary for City to meet its reporting obligations imposed by the State, and the regulations implementing the AB 939 and SB 1383, for the waste stream covered by this Agreement. Contractor agrees to submit such reports and information on computer discs, or by modem, in format compatible with City's computers, at no additional charge, if requested by City.

## ARTICLE 15 COMPLIANCE WITH LAWS AND REGULATIONS

Contractor and City shall comply with all Applicable Laws, specifically including, but not limited to, RCRA, CERCLA, the Act and all applicable ordinances, resolutions, rules and other regulations of City, County and State.

## ARTICLE 16 INDEMNIFICATION

### Section 16.1 Indemnification of City.

Contractor shall protect, defend (with counsel reasonably approved by City), indemnify and hold harmless the Indemnitees from and against any and all Claims arising out of or resulting in any way from Contractor's performance of its obligations, including the provision of services, under this Agreement, unless such Claim is due to the sole or active negligence or willful acts of the Indemnitees.

Contractor shall protect City and appear in and defend the Indemnitees in any Claims and actions by third parties, whether judicial, administrative or otherwise, arising out of or resulting in any way from City's grant of this Agreement and Contractor's performance of this Agreement, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclables" or the limits of City's authority with respect to the grant of licenses or agreements, exclusive or otherwise, asserting rights under the Commerce Clause (including the Dormant Commerce Clause and federal or state legislation governing the process for the award of Solid Waste contracts) to provide Solid Waste Handling Services, or the necessity or propriety of notice and hearing procedures required to effect any increase in Customer Rates for Contractor's services hereunder (to the extent arising from the acts or omissions of Contractor in connection with any notice and hearing process). This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement, for Claims arising prior to the expiration of the period during which Collection services are to be provided pursuant to this Agreement.

**Section 16.2 Hazardous Substances Indemnification.**

Subject to the limitation provided below, Contractor agrees to indemnify, defend (with counsel reasonably approved by City), protect and hold harmless the Indemnitees from and against any and all Claims of any kind whatsoever paid, suffered or incurred by or against the Indemnitees resulting from any repair, cleanup, removal action or response action undertaken pursuant to CERCLA, the H&S Code or other similar federal, state or local law or regulation, required as a result of Solid Waste Collected, transported and Disposed of by Contractor. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA and Section 25364 of the H&S Code to defend, protect, hold harmless and indemnify the Indemnitees from all forms of liability under CERCLA, the H&S Code or other similar federal, state or local law or regulation.

Notwithstanding any provision herein to the contrary, the foregoing indemnity is expressly conditioned upon the implementation by City of an effective program for minimization and proper Recycling, treatment and Disposal of Hazardous Waste generated or accumulated by Residential Premises in compliance with the Act, specifically Sections 41500 and 41802(b)(2) of the Public Resources Code. City's implementation of a program for minimization and proper Recycling, treatment and Disposal of Hazardous Waste generated or accumulated by Residential Premises shall be presumed to be in compliance with the Act, specifically Sections 41500 and 41802(b)(2) of the Public Resources Code, unless Contractor or an agency with jurisdiction has notified City that its program is not in compliance, and a final determination has been made that City's program is not in compliance with the Act, specifically Sections 41500 and 41802(b)(2) of the Public Resources Code.

With respect to Hazardous Waste Collected by Contractor pursuant to this Agreement which has been Disposed of at places owned or operated by Contractor, or by an entity under the same ownership and control of Contractor, Contractor shall deliver a Hazardous Substances Indemnification in a form satisfactory to and approved by City.

With respect to Hazardous Waste collected by Contractor pursuant to this Agreement which has been disposed of at places not owned or operated by Contractor or by an entity under the same ownership and control of Contractor, Contractor shall cause the owner or operator of the alternate facility to deliver a Hazardous Substances Indemnification in a form satisfactory to and approved by City. f such indemnification is unavailable, then Contractor shall perform due diligence environmental site assessments of the facility in accordance with current standard practices as accepted by the American Society for Testing and Materials. Contractor shall provide copies of

any Environmental Site Assessments to City and shall maintain such for no less than thirty (30) years after termination or expiration of this Agreement.

**Section 16.3 Proposition 218.**

City intends to comply with all applicable laws concerning the Maximum Rates provided under this Agreement. Upon thorough analysis, the Parties have determined and agree that the Maximum Rates and the Customer Rates for the Solid Waste Handling Services provided under this Agreement are not subject to California Constitution Articles XIIIC and XIIID because, among other reasons, such services are provided by a private corporation and not by City pursuant to Article 5, Contractor independently establishes, charges and collects the Customer Rates for said services within the limits established in this Agreement pursuant to Article 12, the receipt of said services is voluntary and not required of any property within City and any Owner or Occupant of property within City has the opportunity to avoid the services provided under this Agreement either through self-hauling or use of property in such a manner that Solid Waste is not generated pursuant to Article 2 and consistent with Chapter 8 of the Carpinteria Municipal Code concerning disposal of solid waste. Nevertheless, this is a legal determination which is subject to changes in the law and further interpretations of the law.

Accordingly, Contractor shall defend, indemnify and hold harmless the Indemnitees from and against any and all Claims of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against the Indemnitees resulting in any form from the Maximum Rates provided for the Solid Waste Handling Services under this Agreement or in connection with the application of California Constitution Article XIIIC and Article XIIID to the imposition, payment or collection of the Customer Rates under this Agreement.

Notwithstanding the foregoing, this indemnity shall not extend to any portion of the Maximum Rates or the Customer Rates under this Agreement that is not associated with Contractor's costs in providing service, such as governmental fees, Franchisee Quarterly Fees or charges. Nothing herein is intended to imply that California Constitution Articles XIIIC and XIIID apply to the provision of Maximum Rates for the Solid Waste Handling Services provided under this Agreement or the Customer Rates, rather this section is provided merely to allocate risk of loss as between the Parties. This section shall survive the expiration or termination of this Agreement for claims arising prior to the expiration or termination of this Agreement.

**Section 16.4 Indemnification.**

Contractor's duty to defend and indemnify herein includes payment of all fines and/or penalties imposed by CalRecycle, subject to the requirements set forth in Public Resources Code Section 40059.1, if the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 and similar reenactments or corresponding regulations are not met by the City or Contractor, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement, or, (ii) due to Contractor delays in providing information that prevents Contractor or City from submitting reports required by AB 939, AB 341, AB 1826, and/or SB 1383 and similar reenactments or corresponding regulations in a timely manner. In the event CalRecycle provides an administrative process to challenge the imposition of a compliance order or a fine or fines, the Contractor shall be responsible for engaging consultants and/or attorneys to represent the City in any challenge. The Contractor shall also be responsible for the retention of and payment to any consultants engaged to perform waste generation studies (diversion and disposal). All consultants and/or attorneys engages hereunder are subject to the mutual agreement of the City and Contractor. The provisions of this Section shall survive the termination or expiration of this Agreement.

The Contractor's indemnification of the City is subject to all of the following restrictions:

a. The Contractor's obligation to indemnify the City shall not be enforceable if the CalRecycle-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Sections 41000 et seq. of the Public Resources Code.
b. No payment required under the Contractor's obligation to indemnify the City may exceed that portion of any penalty assessed by the CalRecycle against the City that was attributable to the Contractor's breach of or noncompliance with an express obligation or requirement. Further, the Contractor shall not be liable under the indemnity obligation to the extent that the Contractor's breach or noncompliance resulted from the City's action or failure to act, determined as a result of judicial review, hearing or appeal to the CalRecycle.

## ARTICLE 17 INSURANCE AND BONDS

### Section 17.1 General Insurance Requirements.

Contractor shall secure and maintain insurance coverage meeting the requirements set forth in this Article. Contractor may use a combination of primary and excess or Umbrella insurance coverage to satisfy these requirements. If Contractor fails to fully satisfy the coverage requirements set forth herein, Contractor agrees that it shall be liable for any loss, injury, damage, attorney's fees or defense costs, or expenses, that City incurs that would have been insurable under the required coverage, if such coverage was obtained. Contractor further agrees that any failure of City to verify the placement and continued existence of all insurance required under this Article, or City's knowledge that such requirements are not fully satisfied, shall not be considered a waiver of such requirements, or in any way alter Contractor's obligations to provide such coverage, unless the coverage requirements have been amended in writing properly executed by both City and Contractor.

Contractor further agrees that the General Liability Insurance and Automobile Liability Insurance required within this Article shall each include provisions, either by blanket endorsement(s), or by specific endorsement(s), satisfying the requirements of Carpinteria Municipal Code § 8.08.230 and the following:

a. "The City of Carpinteria, and its agents, officers, and employees" shall be an additional insured under an ISO CG 2010 11/85 form, or a functional equivalent; and
b. All such insurance shall include a waiver of any subrogation rights of that insurer against "The City of Carpinteria, and its agents, officers and employees"; and
c. All such insurance shall contain provisions that the insurance is primary and non-contributing with any other insurance or self-insurance programs maintained by the City of Carpinteria, and its agents, officers, and/or employees.

Contractor further agrees that the General Liability Insurance and Automobile Liability Insurance required within this Article shall each include provisions that make Contractor responsible for the payment of any deductible or self-insured retention such that City and its agents, officers and employees shall be entitled to a dollar-one defense and indemnity as additional insured.

In addition, to the extent that any primary or excess liability policy issued to Contractor with limits of liability in excess of the minimum limits stated in this Article provides coverage to an additional

insured to the extent required by contract, this Agreement shall be construed to obligate Contractor to obtain additional insured protection for City under that/those policy(ies).

The insurance policies required by this Article shall be issued by an insurance Contractor or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner and with a rating in the most recent edition of Best's Insurance Reports of size category XV or larger and a rating classification of A+ or better.

**Section 17.2 General Liability and Automobile Liability Insurance.**

Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of five million dollars ($5,000,000.00) aggregate and two and a half million dollars ($2,500,000.00) per occurrence and a Commercial Automobile Liability Insurance policy with a minimum limit of two and a half million dollars ($2,500,000.00). Said insurance shall protect Contractor and City from any claims for damages for bodily injury, including accidental death, as well as from any claim for property damage, which may arise from operations, performed pursuant to this Agreement.

**Section 17.3 Workers' Compensation and Employers' Liability Insurance.**

Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement full workers' compensation insurance and Employers' Liability Insurance with a minimum limit of one million dollars ($1,000,000.00) in accord with the provisions and requirements of the Labor Code of the State of California. Copies of policies and endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the term of this Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (ten (10) days in the event of termination for non-payment) by certified mail, return receipt requested, has been given to City. The policy shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, or agents for losses that arise from work performed by the named insured for the City

**Section 17.4 Evidence of Insurance Coverage; Insurance Repository.**

Simultaneously with the execution of this Agreement, Contractor shall file certificates and/or endorsements of insurance evidencing the above-required insurance coverage with the City Clerk. From time to time thereafter, Contractor shall provide substitute certificates or endorsements at least thirty (30) Days prior to any changes in coverage or limits, or a change in the carrier. In addition, City shall have the right of inspection of all insurance policies required by this Agreement. Contractor also agrees to establish an insurance policy repository and to maintain copies of insurance policies required pursuant to this Agreement for ten (10) years after the end of the Term during which Collection services are to be provided pursuant to this Agreement. Contractor shall notify City's Risk Manager and City Attorney before destroying copies of such policies, and Contractor shall provide copies or originals of such policies to City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

**Section 17.5 Self-Insurance.**

To the extent provided by law, all or any part of any required insurance may be provided under a plan of self-insurance approved by the State of California.

**Section 17.6 Faithful Performance Bonds.**

a. Within 15 days after the Service Initiation Date, the Contractor must provide to the City a faithful performance bond ("Performance Bond") in the amount of Two Hundred Thousand Fifty Dollars ($250,000) for the protection of the City. The Performance Bond must be on terms acceptable to the City Manager and the City. The Performance Bond shall serve as security for the faithful performance by Contractor of all of its obligations under this Agreement.
b. Upon Contractor's failure to faithfully perform its obligations under this Agreement, the Bonds may be assessed by City, for purposes including, but not limited to:
    i. Reimbursement of costs borne by the City to correct violations of the Agreement not corrected by Contractor, after City provides notice in accordance with Article 19.
    ii. To provide monetary remedies or to satisfy damages assessed against Contractor due to a material breach of this Agreement; or
    iii. To satisfy an order of the City Council, or a federal or state agency.
c. Contractor shall deposit a sum of money or a replacement instrument sufficient to restore the Bonds to the original amount within thirty (30) Days after notice from the City that any amount has been withdrawn from the Bonds. Contractor shall be relieved of the foregoing requirement to replenish the Bonds during the pendency of an appeal from City's decision to draw on the Bonds.
d. In the event City draws on the Bonds, all of City's costs of Collection and enforcement of the provisions relating to the Bonds called for by this Article, including reasonable attorneys' fees and costs, shall be paid by Contractor.
e. Any decision or order of City under this Article may be appealed by Contractor through the dispute resolution procedures provided by Article 19.

**Section 17.7. Transportation pollution liability insurance.**

Coverage shall be in an amount not less than $5,000,000 combined single limit per accident and shall include Pollution Liability (CA9948) and MCS-90 Endorsements. The policy shall provide coverage for transportation of pollutants/contaminants to and from the job site and the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

## ARTICLE 18 EMERGENCY SERVICE

Should Contractor, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 23.2, "Force Majeure," below, refuse or be unable for a period of more than forty-eight (48) hours, to Collect a material portion or all of the Solid Waste which it is obligated under this Agreement to Collect, and as a result, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager, in the reasonable exercise of the City Manager's discretion, should find that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right to contract with another Solid Waste enterprise to collect and transport any or all Solid Waste which Contractor is obligated to collect and transport pursuant to this Agreement. City shall provide twenty-four (24) hours prior written notice to Contractor during the period of such emergency, before contracting with another solid waste enterprise to collect and transport any or all Solid Waste which Contractor would otherwise collect and transport pursuant to this Agreement, for the duration of period during which Contractor is unable to provide such services. In such event Contractor shall identify sources from which such substitute solid waste services are immediately available, and shall reimburse City for all of its expenses for such substitute services during period

in which Contractor is unable to provide collection and transportation services required by this Agreement.

Contractor shall assist City in the event of local emergency, such as an earthquake, storm, flood, fire, riot or civil disturbance, by providing Collection vehicles and drivers normally assigned to the City at no charge to City.

## ARTICLE 19 ADMINISTRATIVE REMEDIES; TERMINATION

### Section 19.1 Notice; Response; Resolution; Appeal.

#### 19.1.1 Notice of Deficiencies; Response

If the Director determines that Contractor's performance pursuant to this Agreement may not be in conformity with the provisions of this Agreement, the Act (including, but not limited to, requirements for Diversion, source reduction and Recycling as to the waste stream subject to this Agreement) or any other applicable federal, state or local law or regulation, including but not limited to, the laws governing transfer, storage or Disposal of Solid Waste and Hazardous Waste, the Director may advise Contractor in writing of such suspected deficiencies, specifying the deficiency in reasonable detail. The Director, in any written Notification of Deficiencies, shall set a reasonable time within which Contractor is to respond. Unless the circumstances necessitate correction and response within a shorter period of time, Contractor shall respond to the written Notification of Deficiencies within thirty (30) Days from the receipt by Contractor of such written notice. Contractor may request additional time to correct deficiencies. City shall approve reasonable requests for additional time.

#### 19.1.2 Review by Director.

The Director shall review any written response from Contractor and decide the matter. If the Director's decision is adverse to Contractor, the Director may order remedial actions to cure any deficiencies, assess the Cash Bond or invoke any other remedy in accordance with this Agreement and, in the event the Director determines that there has been a material breach and that termination is the appropriate remedy, terminate the Agreement. The Director shall promptly inform Contractor of the Director's decision. In the event the decision is adverse to Contractor, the Director shall inform Contractor, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of the Agreement or other laws for the Director's decision and any remedial action taken or ordered. An adverse decision by the Director shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk (with copies to the City Manager and City Attorney) within thirty (30) Days of receipt of the notification of the adverse decision by the Director.

#### 19.1.3 Notice of Appeal.

In any "Notice of Appeal" Contractor shall state its factual contentions and include any relevant affidavits, documents, photographs and videotapes which Contractor may choose to submit. In addition, Contractor shall include all of its legal contentions, citing provisions of the Agreement or other laws to support its contentions. Contractor shall bear the costs of preparing any submittal to the City.

**19.1.4 Review by City Manager.**

Within thirty (30) Days of receipt by the City Clerk of a Notice of Appeal, the City Manager shall decide the matter. If the City Manager's decision is adverse to Contractor, the City Manager may order remedial actions to cure any deficiencies, assess the Cash Bond or invoke any other remedy in accordance with this Agreement; and, in the event the City Manager determines that there has been a material breach and that termination is the appropriate remedy, terminate the Agreement. In addition to the foregoing actions, the City Manager may refer the matter to the City Council for proceedings in accordance with Sections 19.2 and 19.3, below. The City Manager shall promptly inform Contractor of the City Manager's decision. In the event the City Manager's decision is adverse to Contractor, the City Manager shall inform Contractor, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of the Agreement or other laws for the City Manager's decision and any remedial action taken or ordered.

**19.1.5 Appeal.**

An adverse decision by the City Manager shall be final and conclusive unless Contractor files a "Notice of Appeal to the City Council" with the City Clerk (and serves a copy, by mail, on the City Manager and the City Attorney) within ten (10) Days of receipt of the decision of the City Manager. A "Notice of Appeal to the City Council" shall state the factual basis and all legal contentions and shall include all relevant evidence, including affidavits, documents, photographs and videotapes, which Contractor may choose to submit.

**Section 19.2 City Council Hearing.**

If a matter is referred by the City Manager to the City Council, or an adverse decision of the City Manager is appealed to the City Council by Contractor, the City Council will set the matter for an administrative hearing and act on the matter. If the City Council elects to hear the matter, the City Clerk shall give Contractor fourteen (14) Days written notice of the time and place of the administrative hearing. At the hearing, the City Council shall consider the administrative record, consisting of the following:

a. A Staff Report by the City Manager, summarizing the proceedings to date and outlining the City Council's options.
b. The Director's written Notification of Deficiencies;
c. Contractor's response to the Notification of Deficiencies;
d. The Director's written notification to Contractor of adverse decision;
e. Contractor's Notice of Appeal;
f. The City Manager's written notification to Contractor of adverse decision; and
g. The Notice of Appeal to the City Council.

Contractor's representatives and other interested persons shall have a reasonable opportunity to be heard.

**Section 19.3 City Council Determination.**

Based on the administrative record, the City Council shall determine by resolution whether the decision or order of the City Manager should be upheld. If, based upon the administrative record, the City Council determines that the performance of Contractor is in breach of any term of this Agreement or any provision of any applicable federal, state or local statute or regulation, the City Council, in the exercise of its discretion, may order Contractor to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement. The City Council may

not terminate the Agreement unless it determines that Contractor is in material breach of a material term of this Agreement or any material provision of any applicable federal, state or local statute or regulation. Contractor's performance under the Agreement is not excused during the period of time prior to a final determination by City Council. The decision or order of the City Council shall be final and conclusive. Contractor has the right to seek judicial review from an appropriate court solely as indicated in Article 20. With the exception of draws on the Cash Bond, the execution of any of City's remedies under this Article shall be stayed until Contractor has exhausted its appeals under this Article and Article 20.

**Section 19.4 Reservation of Rights by City.**

**19.4.1 Right to Terminate.**

Subject to Contractor's rights and exhaustion of its appeals under this Article and Article 20, City further reserves the right to terminate this Agreement in the event of any material breach of this Agreement, including, but not limited to any of the following:

a. If Contractor practices, or attempts to practice, any fraud or deceit upon City, or practiced any fraud or deceit or made any intentional misrepresentations in the negotiations which preceded the execution of this Agreement upon which City relied;
b. If Contractor becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding;
c. If Contractor fails to provide or maintain in full force, effect and amount, the workers compensation, liability and indemnification coverage, Cash and Performance Bonds as required by this Agreement;
d. If Contractor violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement, in any material manner, provided that Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to Contractor is entered, and (ii) the violation is not corrected or remedied within the time set forth in the written Notification of Deficiencies
e. If Contractor ceases to provide Solid Waste Handling Services as required under this Agreement over a substantial portion of the Service Area for a period of two (2) Days or more, for any reason within the control of Contractor;
f. If Contractor fails to make any payments required under this Agreement or refuses to provide City with required information, reports or test results as to a material matter in a timely manner as provided in this Agreement, and the violation is not corrected or remedied within the time set forth in the written Notification of Deficiencies
g. Any other act or omission by Contractor which materially violates the terms, conditions or requirements of this Agreement and which is not corrected or remedied within the time set forth in the written Notification of Deficiencies or if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such alleged deficiencies within the time set forth in such notice and diligently effect such correction or remedy thereafter.

**Section 19.5 Cumulative Rights.**

City's rights of termination are in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

## ARTICLE 20 APPEAL TO JUDICIAL COURT; HEARING PROCEDURES

Either party to this Agreement at any time after exhaustion of administrative remedies, if applicable, and following the appeal procedures set forth in Articles 19, if applicable, may appeal a disputed matter to the appropriate Judicial Court having Jurisdiction pursuant to California Code of Civil Procedure section 1094.5. The venue of any proceeding hereunder shall be as indicated in Section 23.5.

## ARTICLE 21 ADDITIONAL REMEDIES

In addition to the remedies set forth above, City shall have the following rights in the event of Contractor's material breach and failure to cure following written notice from the City and as provided in Article 19:

The right to contract with others to perform the services otherwise to be performed by Contractor; and

The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach under the terms of this Agreement by Contractor, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief to enforce the provisions of this Agreement and to enjoin the breach thereof. These listed additional remedies shall not be exclusive.

## ARTICLE 22 TRANSFER OF RIGHTS; CITY CONSENT; FEES

### Section 22.1 Transfer.

#### 22.1.1 Transfer Prohibited Without City Approval.

The rights granted by this Agreement shall not be transferred, sold, hypothecated, sublet or assigned (collectively "transferred"), nor shall any of the rights or privileges herein be 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, either by act of Contractor or by operation of law, without the prior written consent of City expressed by a resolution of the City Council, except as otherwise provided in Subsection 22.1.2. The decision to consent to any transfer shall be at the sole discretion of City. Any attempt to do any of the foregoing with respect to any of the rights herein without the consent of City shall be void.

#### 22.1.2 Corporate Transfers.

Any dissolution, merger, consolidation, change in control or other reorganization of Contractor resulting in the transfer of more than fifty percent (50%) of the voting stock in Contractor shall be deemed a transfer of this Agreement, provided that the following transfers shall not be considered in computing whether a cumulative total of more than fifty percent (50%) of the voting stock has been transferred:

a. Transfers to persons who are related by blood or marriage to the transferring shareholder or to a trust established for the benefit of the transferring shareholder or such or such persons; and
b. Transfers resulting from the death of the shareholder whether such transfers are made pursuant to the will of the deceased shareholder, an inter-vivos trust instrument or the laws of intestacy.

### 22.1.3 Transfer Approved; Payment of Transfer Fee.

In the event of a transfer of this Agreement, each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Contractor shall be binding upon any transferee.

In the event of a transfer of this Agreement, Contractor shall pay to City a transfer fee within thirty (30) Days of the date the transfer is effective. The amount of the transfer fee paid to City shall depend upon the number of years remaining in the Term of this Agreement as of the date of the transfer according to the table below. Therefore, if the Term of the Agreement is extended, the amount of the transfer fee shall be determined based upon the number of years then remaining in the Term as of the date of the transfer. If City does not receive the transfer fee within thirty (30) Days of the date of the transfer, City shall have the right to terminate this Agreement.

| Number of Years Remaining in the Term of Agreement | Amount of Transfer Fee |
|---|---|
| More than 7 | $350,000 |
| Between 6 and 7 | $300,000 |
| Between 5 and 6 | $280,00 |
| Between 4 and 5 | $250,000 |
| Between 3 and 4 | $225,000 |
| Between 2 and 3 | $200,000.00 |
| Between 1 and 2 | $150,000 |
| Less than one year | $100,000 |

## ARTICLE 23 GENERAL PROVISIONS

### Section 23.1 Acceptance and Waiver.

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives any right or claim to serve City or any part of City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code. Additionally, by and upon the execution of this Agreement, Contractor agrees to the termination of the Prior City Franchise Agreement with E.J. Harrison as of the Services Initiation Date, agrees to waive any and all rights under the Prior City Franchise Agreement with E.J. Harrison, and agrees to release and hold City harmless from any of City's obligations under that agreement (excepting, however, the right to compensation for services provided at any rates approved by City up to the Services Initiation Date); provided, however, nothing contained in this provision is intended to or shall relieve Contractor from any obligation existing under the Prior City Franchise Agreement with E.J. Harrison pertaining to insurance, indemnification, or other legal obligations to City or Customers (as opposed to obligations to provide service pursuant to the terms thereof), or from any obligation set forth in the Prior City Franchise Agreement with E.J. Harrison which are called out as surviving the termination thereof, and all such obligations, including specifically those indemnification obligations relating to environmental laws, general liability, and the Act shall survive the termination of the Prior City Franchise Agreement with E.J. Harrison.

**Section 23.2 Force Majeure.**

Contractor shall not be in default under this Agreement in the event that the Collection, transportation and/or Disposal services of Contractor are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting City; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; or other catastrophic events which are beyond the reasonable control of Contractor. "Other catastrophic events" does not include the financial inability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public entity where such failure occurs where Contractor has failed to exercise reasonable diligence. In the event a labor disturbance interrupts collection and transportation of Solid Waste, and/or disposal of Solid Waste by Contractor as required under this Agreement, City may elect to exercise its rights under Article 19.

**Section 23.3 Computer Hardware and Software.**

Contractor will be required to obtain all necessary computer software, hardware, supplies, personnel and training at Contractor's expense to comply with the City's reporting requirements. Contractor will incur all costs of moving computers, including phone lines in the event they need to relocate. Contractor will maintain a computerized data base, with the capacity to maintain an account history of at least eighteen months. Any older account information will be maintained on diskettes, tape, zip drive, or other electronic format for the full term of the contract and a period of three (3) years after termination or expiration of this Agreement, except as otherwise expressly provided for herein. City shall have access to these records during regular business hours.

**Section 23.4 Independent Status.**

Contractor is an independent entity and not an fficer, 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, nor an arrangement for the disposal of hazardous substances. Contractor nor its officers, employees, agents or sub-contractors shall obtain any rights to retirement or other benefits, which accrue to City employees.

**Section 23.5 Law to Govern; Venue.**

The law of the State of California shall govern this Agreement without regard to any otherwise governing principles of conflicts of laws. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the District of California in which City is located.

**Section 23.6 Act Amendments.**

This Agreement is part of City's efforts to comply with the provisions of the California Integrated Waste Management Act of 1989, ("Act") as it from time to time may be amended and as implemented by the regulations of CalRecycle its successor agency ("Regulations"), as they from time to time may be amended, and the City's Source Reduction and Recycling Element, as it may be amended from time to time. In the event that the Act or other state or federal laws or regulations enacted or amended after this Agreement has been executed prevent, preclude, or eliminate the need for compliance with one or more provisions of this Agreement, or significantly increase Contractor's costs, such provisions of this Agreement shall be modified or suspended as may be

necessary to comply with such state or federal laws or regulations. In the case of an amendment to the laws which has the effect of eliminating the need for a service provided for in this Agreement and City informs Contractor that City desires to discontinue the service, City and Contractor shall negotiate a reduction in rates. In the case of an amendment to the laws that increases the cost of Contractor's service, Contractor may seek a rate increase to offset the costs directly attributable to the amended or newly enacted provision of law or regulations.

**Section 23.7 Amendments.**

All amendments to this Agreement shall be in writing, duly executed by the parties. Purported oral amendments shall be void and of no force or effect.

**Section 23.8 Notices.**

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City Manager
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

Copy to: Public Works Director
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

Copy to: Carpinteria City Attorney
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

To Contractor: Mr. Daniel Harrison, Contract Manager
E.J. Harrison & Sons, Inc.
P.O. Box 4009
Ventura, CA 93007

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or, if mailed, upon the date of the return receipt.

**Section 23.9 Savings Clause and Entirety.**

If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

**Section 23.10 Joint Drafting.**

This Agreement was drafted jointly by the parties to this Agreement.

**Section 23.11 Attorney's Fees.**

In the event that litigation is brought by any Party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing Party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions herein.

**Section 23.12 Entire Agreement.**

This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

**IN WITNESS WHEREOF**, City and Contractor have caused this Agreement to be executed as of the date last written below.

**CITY:**

**City of Carpinteria**,
a California municipal corporations

By: _____
Wade Nomura, Mayor

Date: May 23, 2022

ATTEST:

_____
Brian Barrett, City Clerk

APPROVED AS TO ADMINISTRATION:

_____
David Durflinger, City Manager

APPROVED AS TO FORM:

_____
Jena Shoaf Acos, on behalf of Brownstein Hyatt Farber Schreck, LLP acting as City Attorney of the City of Carpinteria

**CONTRACTOR:**

**E.J. Harrison & Sons, Inc.**,
a California corporation

By: _____
Daniel Harrison, Contracts Manager

Date: May 23, 2022

By: _____

Title: _____

Date: _____

# EXHIBIT A
# DEFINITIONS

**A-1 AB 341.**

"AB 341" means the Assembly Bill approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded and replaced from time to time.

**A-2 AB 876.**

"AB 876" means the Assembly Bill approved by the Governor of the State of California on October 8, 2015, which added Section 418214 to the Public Resources Code, relating to Solid Waste as amended, supplemented, superseded, and replaced from time to time.

**A-3 AB 901.**

"AB 901" means Assembly Bill approved by the Governor of the State of California on October 10, 2015, which amended Section 41821.5 of, amended, renumbered and added Section 41821.6 of, and added Sections 41821.7 and 41821.8 to, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

**A-4 AB 939/The Act.**

"AB 939," also referred to as the "Act"", means the California Integrated Waste Management Act of 1989, California Public Resources Code Sections 40000, et. seq., as currently in force and as it may hereafter be amended from time to time or superseded, and as implemented by the regulations of the CalRecycle.

**A-5 AB 1594**

"AB 1594" means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which amended Sections 40507 and 41781.3 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

**A-6 AB 1826**

"AB 1826" means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

**A-7 Affiliate.**

"Affiliate" means a Person which is related to Contractor by virtue of direct or indirect ownership interest in common management. An Affiliate includes a Person in which Contractor has a direct or indirect ownership interest, a Person which has a direct or indirect ownership interest in Contractor and/or a Person which is also owned, controlled or managed by any Person or individual which has a direct or indirect ownership interest in Contractor.

**A-8 Agreement.**

"Agreement" means this Agreement, including all exhibits, programs, policies, and protocols as may be amended.

**A-9 Applicable Law.**

"Applicable Law" means all federal, State, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals or other requirements of any governmental agency having jurisdiction over the Collection, transportation, processing and Disposal of Solid Waste, Recyclables, Organic Waste and other materials Collected pursuant to this Agreement that are in force on the Effective Date and as they may be enacted, issued or amended during the Term.

**A-10 Approved Facilities.**

"Approved Facility" means any one of or any combination of the: Approved Construction & Demolition (C&D) Processing Facility; Approved Disposal Facility; Approved High Diversion Organic Waste Processing Facility; Approved Organic Waste Processing Facility; Approved Source Separated Recyclable Materials Processing Facility; and, Approved Transfer Facility.

**A-11 Backyard Cart Service.**

"Backyard Cart Service" means the provision of Collection services to a SFD in the rear or side of the SFD or other Set-Out Site of the Cart instead of Curbside.

**A-12 Bill or Billing.**

"Bill" or "Billing" means statements of charges for services rendered by Contractor to Customers for the Collection of Solid Waste, Recyclables, Organic Waste and other services provided by Contractor.

**A-12 Bin.**

"Bin" means a metal or plastic Container with a hinged lid(s) and wheels and capacity of one (1) to fifteen (15) cubic yards, which is emptied by a front-loading Collection vehicle. Includes Bins with compactors attached to increase the capacity of the bin. Bins are also known as dumpsters.

**A-13 Blue Container.**

"Blue Container" has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and Collection of Source Separated Recyclable Materials.

**A-14 Brown Container**

"Brown Container" has the same meaning as in 14 CCR Section 18982.2(a)(5.5) and shall be used for the purpose of storage and Collection of Source Separated Food Waste.

**A-15 Bulky Items.**

"Bulky Items" means large Solid Waste or other discarded waste that cannot or would not typically be accommodated within a Cart including, but not limited to, furniture (including chairs, sofas, mattresses, and rugs) and major appliances (washing machines, clothes dryer, hot water heaters, dehumidifiers, conventional ovens, microwave ovens, stoves, refrigerators, freezers, air-

conditioners, trash compactors and residential furnaces).. Bulky Items do not include abandoned automobiles or Construction and Demolition Debris.

**A-16 Business Day.**

"Business Day" means days (i.e., Monday through Saturday) during which Contractor's office is open to do business with the public. Business Days do not include Holidays or Sundays.

**A-17 CalRecycle.**

"CalRecycle" means the California Department of Resources, Recycling and Recovery, or any successor agency, formally the California Integrated Waste Management Board which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations.

**A-18 Cart.**

"Cart" means a plastic Container with a hinged lid and wheels and approximate (±10%) capacities of thirty-two (32), sixty-four (64) and ninety-six (96) gallons on size.

**A-19 CERCLA.**

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, *et seq.*, as may be amended and regulations promulgated thereunder.

**A-20 City.**

"City" means the City of Carpinteria, California, a municipal corporation, as it currently exists, or as such boundaries may be adjusted.

**A-21 City Facilities Premises.**

"City Facilities Premises" means premises that are owned and/or operated by City or are otherwise public facilities, including, but not limited to, City facilities, parks and opens spaces and City and the Metropolitan Transit District bus shelters and public receptacles identified at the locations set forth in Exhibits D.

**A-22 Claim.**

"Claim" means a claim, actual damages, natural resources damages, injuries, costs, response, remediation and removal costs, losses, liabilities, causes of action, judgments, fines, penalties, interest, and expenses, including, but not limited to, reasonable attorney's and expert's fees.

**A-23 Collect or Collection.**

"Collect" or "Collection" means to take physical possession, transportation, and removal of Discarded Materials at Single-Family, Multi-Family, or Commercial Premises within the Jurisdiction and from Jurisdiction facilities, and Transporting the Discarded Materials to an Approved/Designated Facility for Processing, Transfer, or Disposal.

**A-24 Commercial or Commercial Premises.**

"Commercial" or "Commercial Premises" means any premises that is not a Residential Premises or City Facility Premises upon which Solid Waste is generated or accumulated.

**A-25 Commercial Recyclables Collection Service.**

"Commercial Recyclables Collection Service" means Collection of Source Separated Recyclables from Commercial Customers in the Service Area and the delivery of the Recyclables to the Designated Transfer and Processing Facility.

**A-26 Commercial Solid Waste Collection Service.**

"Commercial Solid Waste Collection Service" means Collection of Solid Waste from Commercial Customers in the Service Area and the delivery of the Solid Waste to the Designated Disposal Site or Contractor's Facilities.

**A-27 Comparable Rate.**

"Comparable Rate" means the portion of the rate received by the Solid Waste Handling Services provider, whether it be Contractor or another Person, for Similar Services.

**A-28 Complaint.**

"Complaint" means a distinct grievance, criticism, or objection in the form of a written letter, email or telephone call either to City or to Contractor regarding Contractor's performance of its duties and obligations under this Agreement. Typical "Complaints" concern missed pick-ups that are not corrected, property damage caused by Contractor, unresponsiveness to requests, billing errors, and similar issues. "Complaints" exclude normal or standard service requests (e.g., exchanging a Bin or Cart), and criticisms directed at City's Solid Waste Ordinance and its provisions.

**A-29 Construction and Demolition Debris.**

"Construction and Demolition Debris" means discarded building materials, recyclable construction and demolition materials, wood, packaging, plaster, rock or brick, soil, drywall, cement and rubble resulting from construction, remodeling, and repair and demolition operations.

**A-30 Consumer Price Index (CPI).**

"Consumer Price Index" or "CPI" means the Consumer Price Index for All Urban Consumers for the Los Angeles-Riverside-Orange County Area not seasonally adjusted.

**A-31 Container.**

"Container" means any receptacle used for temporary storage of Solid Waste, Recyclables, Organic Waste and other materials Collected pursuant to this Agreement including, but not limited to, metal or plastic cans, Carts, Bins, tubs and Roll-Off Boxes.

**A-32 Compost**

"Compost" has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the Effective Date of this Agreement, that "Compost" means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized Facility.

**A-33 Contractor.**

"Contractor" means E.J. Harrison & Sons, Inc., a California corporation, or any successors.

**A-34 Contractor's Facilities.**

"Contractor's Facilities" means the E.J. Harrison & Sons, Inc. facilities.

**A-35 Construction and Demolition Debris (C&D)**

"Construction and Demolition Debris" means the nonhazardous waste building material, Inerts, soil, packaging, Yard Trimmings, rubble, and other used or Discarded Materials resulting from construction or demolition.

**A-36 County.**

"County" means the County of Santa Barbara.

**A-37 Curbside.**

"Curbside" means the Set-Out Site for Collection where Carts, Bins or loose materials are placed on the street or alley against the face of the curb, or where no curb exists, placed not more than five (5) feet from the outside edge of the street or alley.

**A-38 Customer.**

"Customer" means a Generator of Solid Waste receiving Solid Waste Handling Services from Contractor within City pursuant to this Agreement. Customer includes the Occupant, Owner, and Owner Representative, of any Residential or Commercial Premises.

**A-39 Customer Rates.**

"Customer Rates" means Contractor's charges to Customers for the provision of Solid Waste Handling Services under this Agreement.

**A-40 Customer's Collection Day.**

"Customer's Collection Day" means the day of a week that Contractor regularly Collects Solid Waste from a Residential Premises or Commercial Premises.

**A-41 Day.**

"Day" means calendar day unless otherwise specified.

**A-42 Designated C&D Processing Facility**

"Designated C&D Processing Facility" means the Gold Coast Recycling Center, which is owned and operated by Gold Coast Recycling, Inc, that is a C&D Processing Facility.

**A-43 Designated Disposal Site.**

"Designated Disposal Site" means the Toland Landfill located at 3500 N. Toland Road, Santa Paula, California, which is owned and operated by the County of Ventura. Contractor shall inform the city in advance if any issue is to be discussed by the County of Ventura regarding the City's ability to dispose of waste at the Toland Landfill. This shall be done ten (10) days in advance so that the City can determine attendance at any required meetings.

**A-44 Designated Organic Waste Processing Facility**

"Designated Organic Waste Processing Facility" means the multiple Agromin facilities at Simi Valley Landfill, Limoneira, and Mountain View, which is owned and operated by California Wood Recycling, Inc, that is an Organic Waste Processing Facility.

**A-45 Designated Transfer and Processing Facility.**

"Designated Transfer and Processing Facility" means Gold Coast Recycling & Transfer Station; 5275 Colt St # 2 , Ventura, CA 93003. This is owned and operated by: E.J. Harrison and Sons.

**A-46 Director.**

"Director" means the Director of the City's Public Works Department or his/ her designee.

**A-47 Discarded Materials**

"Discarded Materials" are a form of Solid Waste, and shall be regulated as such. For purposes of this Agreement, material is deemed to have been discarded, without regard to whether it is destined for Recycling or Disposal, and whether or not is has been separated from other Solid Wastes, in all cases where a fee or other compensation, in any form or amount, is directly or indirectly solicited from, or levied, charged, or otherwise imposed on, or paid by, the Generator or Customer in exchange for handling services. As used herein, handling services include, without limitation, the Collection, removal, Transportation, delivery, and Processing and/or Disposal of the material. Discarded Materials do not include Edible Food that is recovered for human consumption and is not discarded.

**A-48 Dispose or Disposal.**

"Dispose" or "Disposal" means the final disposition of Solid Waste Collected.

**A-49 Disposal Fee.**

"Disposal Fee" means the fee paid by Contractor to Dispose of Solid Waste at the Designated Disposal Site, otherwise known as a "tipping fee."

**A-50 Disposal Site.**

"Disposal Site" means the place, location, tract of land, area, or premises in use, intended to be used or which has been used for the landfill Disposal of Solid Waste Collected, including the Designated Disposal Site.

**A-51 Diversion.**

"Diversion" or "Divert" means activities which reduce or eliminate the amount of Solid Waste from Disposal at a Disposal Site.

**A-52 Effective Date.**

"Effective Date" means the date this Agreement becomes effective as identified in Section 4.1.

**A-53 Electronic Waste (E-Waste).**

"Electronic Waste" or "E-Waste" means "Covered Electronic Wastes" as defined in the Act, California Public Resources Code Section 42463, in addition to waste that is powered by batteries or electricity, including electronic equipment such as, but not limited to, television sets, computer monitors, central processing units (CPUs), laptop computers, and peripherals (e.g., external computer hard drives, computer keyboards, computer mice, and computer printers).

**A-54 Environmental Laws.**

"Environmental Laws" means all federal and State statutes and City ordinances concerning public health, safety, and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; the Federal Clean Water Act, 33 USC Section 1251, et seq.; the Toxic Substance Control Act, 15 USC Section 2601, et seq.; the Occupational Safety and Health Act, 29 USC Section 651, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code Section 25100, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000, et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; all as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder

**A-55 Fiscal Year.**

"Fiscal Year" means the period commencing July 1st and ending June 30th each year.

**A-56 Franchisee Quarterly Fees.**

"Franchisee Quarterly Fees" means the fees or assessments imposed by City on Contractor because of its status as party to this Agreement and which, inter alia, are intended to offset the City's expenses in administering the Franchise and to compensate City for wear, tear and damage to its streets, sidewalks, curbs and gutters and other infrastructure resulting from the exercise of the Franchise, the expenses of administering programs for Solid Waste and other environmental services, reporting requirements under the Act and other related expenses. The Franchisee Quarterly Fee is eight percent (8%) of the gross receipts as set forth in Section 12.8.

**A-57 Generator.**

"Generator" means any Person whose act or process produces Solid Waste, Recyclables or Organic Waste, or whose act first causes Solid Waste to become subject to regulation.

**A-58 Gray Container**

"Gray Container" has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and Collection of Gray Container Waste or Mixed Waste..

**A-59 Green Container**

"Green Container" has the same meaning as in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and Collection of Organics.

**A-60 Green Waste.**

"Green Waste" means untreated and unpainted wood, leaves, grass clippings, weeds, pruning, brush, branches, dead plants, tree trimmings, dead trees and other organic wastes generated from landscapes and/or gardens. Green Waste does not include materials not normally produced from gardens or landscape areas, such as brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes, oil, and painted or treated wood.

**A-61 Hazardous Waste.**

"Hazardous Waste" is a material or mixture of materials which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged, or any waste which is regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

a. "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code, regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code, all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.2, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100, *et seq.*, and future amendments to or recodification of said statutes or regulations promulgated thereunder, including Title 23 of the California Code of Regulations Sections 2521 and 2522;
b. Materials regulated under RCRA;
c. Materials regulated under the Toxic Substance Control Act;
d. Materials regulated under CERCLA;
e. Materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste; and
f. Household Hazardous Waste.

Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over Hazardous Waste, the term "Hazardous Waste" shall be construed to have the broader, more encompassing definition.

**A-62 Holiday(s).**

"Holidays" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

**A-63 Holiday (Christmas) Trees.**

"Holiday (Christmas) Trees" means trees targeted for diversion that were purchased and used in celebration of Christmas and other Holidays in December and January.

**A-64 Household Batteries.**

"Household Batteries" means disposable or rechargeable dry cells (e.g., A, AA, AAA, B, C, D, 9-volt, button-type) commonly used as power sources for household or consumer products

including, but not limited to, nickel-cadmium, nickel metal hydride, alkaline, mercury, mercuric oxide, silver oxide, zinc oxide, nickel-zinc, nickel iron, lithium, lithium ion, magnesium, manganese, and carbon-zinc batteries, but excluding automotive lead acid batteries.

**A-65 Household Hazardous Waste.**

"Household Hazardous Waste" means any Hazardous Waste generated incidental to owning or maintaining a place of residence, excluding any Hazardous Waste generated in the course of operating a business concern at a residence pursuant to California Health and Safety Code Section 25218, *et seq.*

**A-66 H&S Code.**

"H&S Code" means the California Health and Safety Code.

**A-67 Indemnitees.**

"Indemnitees" means City, its officers, employees, contractors, agents and volunteers.

**A-68 Inerts**

"Inerts" means materials such as concrete, soil, asphalt, and ceramics.

**A-69 Material Recovery Facility (MRF).**

"Materials Recovery Facility" or "MRF" means a permitted facility where Solid Waste, Recyclables, Organic Waste, and other materials are processed, sorted or separated for the purposes of recovering reusable or Recyclables. For the purposes of this Agreement, the MRF is the Designated Transfer and Processing Facility.

**A-70 Maximum Rate.**

"Maximum Rate(s)" means the maximum monetary amounts that may be charged a Customer by Contractor for providing Collection services of Solid Waste, Source Separated Recyclables, Organic Waste and other services provided Residential Premises and Commercial Premises pursuant to Section 12.1 and as shown in Exhibit B.

**A-71 MFD Recyclables Collection Service.**

"MFD Recyclables Collection Service" means Collection of Source Separated Recyclables from MFD Customers in the Service Area and the delivery of the Recyclables to the Designated Transfer and Processing Facility.

**A-72 MFD Solid Waste Collection Service.**

"MFD Solid Waste Collection Service" means Collection of Solid Waste from MFD Customers in the Service Area and the delivery of the Solid Waste to the Designated Disposal Site.

**A-73 Mulch.**

"Mulch" means a material used for landscaping, soil amendment or erosion control that results from the mechanical breakdown (chipping and/or grinding) of materials, including, but not limited to, Organic Waste, yard trimmings and wood byproducts. SB 1383 Regulations (14 CCR Section

18993.1) require that Jurisdictions procure recovered Organic Waste products to meet an annual recovered Organic Waste product procurement target. Mulch may be procured to fulfill this procurement target if the Mulch meets specific conditions specified in SB 1383 Regulations (14 CCR Section 18993.1(f)(4)).

**A-74 Multi-Family Dwelling (MFD).**

"Multi-Family Dwelling" or "MFD" means all dwelling units, whether detached or attached, of five (5) or more units, including triplexes, fourplexes, apartments, condominiums, townhomes, mobile homes or motor homes located on a permanent site intended for or capable of being utilized for residential living other than a hotel or motel.

**A-75 Multi-Family Dwelling (MFD) Complex.**

"Multi-Family Dwelling Complex" or "MFD Complex" means Multi-Family Dwellings that have centralized Collection for all dwelling units in the complex and are billed to one address.

**A-76 Occupant.**

"Occupant" means a Person who occupies a Residential Premises or Commercial Premises.

**A-77 On-Call Service.**

"On-Call Service" means Collection service provided by Contractor that is scheduled no less than twenty-four (24) hours in advance. On-Call Service is initiated by a Customer contacting Contractor pursuant to Section 10.7. On-Call Services provided pursuant to Article 5 are not Unscheduled Services.

**A-78 Organic Waste**

"Organic Waste" means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, green waste, yard trimmings, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

**A-79 Overloaded.**

"Overloaded" means the amount of Solid Waste or Source Separated Recyclables placed in or adjacent to a Bin that is in excess of the Bin capacity.

**A-80 Owner.**

"Owner" means the Person holding legal title to the real property constituting the Residential Premises or Commercial Premises.

**A-81 Party.**

"Party" means City and Contractor, individually or together.

**A-82 Permitted Set-Out Site.**

"Permitted Set-Out Site" means the Set-Out Site mutually agreeable to the Customer and Contractor when it is determined by Contractor that Curbside Cart Collection by an automated Collection vehicle is not possible for reasons including, but not limited to, irregularly designed streets, lack of suitable Curbside placement or streets with no place for an automated Collection vehicle to turn around at the end, or the Set-Out Site mutually agreeable to the Customer and Contractor for Bins, which shall not be within the public right-of-way.

**A-83 Person.**

"Person" means any individual, firm, agency, Contractor, limited liability Contractor, cooperative, association, organization, partnership, limited partnership, public or private corporation, consortium, trust, joint venture, commercial entity, regulatory authority, governmental entity, including the United States, the State, counties, towns, cities, or special purpose districts, or any other legal entity.

**A-84 Process, Processed, or Processing**

Processing" means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste 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, or as otherwise defined in 14 CCR Section 17402(a)(20).

**A-85 RCRA.**

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, *et seq.*, as may be amended and related federal, State and local laws and regulations.

**A-86 Recyclables.**

"Recyclable(s)" means materials that are part of the Solid Waste stream which can be Recycled consistent with the requirements of the Act. As of the Effective Date, Recyclables includes the following items, as well as any additional materials that Contractor may request to add from time to time upon the written consent of City: newsprint (including inserts, coupons and store advertisements); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, milk and juice cartons, office ledger paper, legal pad backing, shoeboxes and telephone books); glass containers (including brown, clear, blue and green glass bottles and jars); aluminum (including beverage containers and foil products); small scrap and cast aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin" cans, aerosol cans (empty, non-toxic products) and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; all plastics (Types #1-7), except expanded Polystyrene (EPS); aseptic packaging; textiles; and Household Batteries.

**A-87 Recycle.**

"Recycle(d)(ing)" means the process of sorting, cleansing, treating and reconstituting of Recyclables, which would otherwise be Disposed of at a Disposal Site, for the purpose of returning the Recyclables to the economy in the form of raw materials for reused, remanufactured or reconstituted products. 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.

**A-88 Residential or Residential Premises.**

"Residential" or "Residential Premises" means of, from, or pertaining to Single-Family Dwellings (SFD) and Multi-Family Dwellings (MFD), including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, MFD Complexes and other dwelling units where people reside.

**A-89 Reuse**

"Reuse" or any variation thereof, means the use, in the same, or similar, form as it was produced, of a material which might otherwise be discarded, or as otherwise defined in 14 CCR Section 17402.5(b)(2).

**A-90 Roll-Off Box.**

"Roll-Off Box(es)" means a Container with a capacity from ten (10) to forty (40) cubic yards, which is typically pulled onto a roll-off vehicle used to transport Solid Waste. A Roll-Off Box may be open topped or enclosed with or without a compaction unit (compactor).

**A-91 Roll-Off Box Collection Service.**

"Roll-Off Box Collection Service" means Collection of Roll-Off Boxes from Commercial Customers in the Service Area.

**A-92 SB 1383**

"SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

**A-93 SB 1383 Regulations**

"SB 1383 Regulations" or "SB 1383 Regulatory" refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 (14 CCR 18981.1 et seq.) and amended portions of regulations of 14 CCR and 27 CCR.

**A-94 Scavenging.**

"Scavenging" means the unauthorized removal of Recyclables. Scavenging is prohibited by Public Resources Code § 41950.

**A-95 Self-Hauler (or Self-Haul/ing)**

"Self-Hauler" or "Self-Haul" means a Person who hauls Solid Waste, Organic Waste, or recovered material they have generated to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who Back-Hauls waste.

**A-96 Service Area.**

"Service Area" means the jurisdictional boundaries of City.

**A-97 Services Initiation Date.**

"Services Initiation Date" means July1, 2022.

**A-98 Set-Out Site.**

"Set-Out Site" means the location on a Residential Premises, Commercial Premises or City Facilities Premises where Carts, Bins or loose Solid Waste are placed for Collection. Set-Out Sites include Curbside and a Permitted Set-Out Site.

**A-99 SFD Organic Waste Collection Service.**

"SFD Organic Waste Collection Service" means Collection of Source Separated Organic Waste from SFD Customers in the Service Area and the delivery of the Organic Waste to the Designated Disposal Site.

**A-100 SFD Recyclables Collection Service.**

"SFD Recyclables Collection Service" means Collection of Source Separated Recyclables from SFD Customers in the Service Area and the delivery of the Recyclables to the Designated Transfer and Processing Facility.

**A-101 SFD Solid Waste Collection Service.**

"SFD Solid Waste Collection Service" means Collection of Solid Waste from SFD Customers in the Service Area and the delivery of the Solid Waste to the Designated Disposal Site or Contractor's Facilities.

**A-102 Sharps Waste.**

"Sharps Waste" means any item generated at a Residential Premises having corners, edges, or projections capable of cutting or piercing the skin to deliver injections or for medical purposes, including, but not limited to, needles (hypodermic, pen or intravenous), needles with syringes, needles with attached tubing and lancets.

**A-103 Similar Service.**

"Similar Service" means the Solid Waste Handling Services provided in similar type of service, Container capacity and frequency of Collection. Similar Service for Residential Customers shall refer to an automated Cart system utilizing one Cart for Solid Waste, one Cart for Recyclables and one Cart for Organic Waste, collected not less than once per week. Similar service for Commercial Customers shall refer to Solid Waste or Recyclables Collected using Bins in which Solid Waste and Recyclables are Collected every week.

**A-104 Single-Family Dwelling (SFD).**

"Single-Family Dwelling" or "SFD" means all dwelling units, whether detached or attached, of no more than Five (5) units, including homes, duplexes, condominiums and townhomes.

**A-105 Solid Waste.**

"Solid Waste means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, dewatered, treated, or chemically fixed sewage sludge which is not Hazardous Waste, manure, and vegetable or animal solid and semisolid wastes, but does not include abandoned vehicles, Hazardous Waste, or Construction and Demolition Debris. "Solid Waste" may include Recyclables, Organic Waste, and Bulky Items if such materials are not source separated from the Solid Waste at the site of generation or Collected for Recycling, Composting or processing.

**A-106 Solid Waste Handling Service.**

"Solid Waste Handling Service(s)" means the Collection, transportation, storage, transfer, disposition or processing of Solid Waste.

**A-107 Solid Waste AB 939 Program Fee.**

Residential and commercial surcharge means 8% of Gross Annual receipts for residential customers and 6% for commercial/bin customers.

**A-108 Source Separated.**

"Source Separated" means materials which otherwise would become Solid Waste, but have been segregated by the Generator, such as Recyclables or Organic Waste, for the purpose of Solid Waste, Recycling, or composting, to be Collected by Contractor or others.

**A-109 State.**

"State" means the State of California.

**A-110 Term.**

"Term" means the Term of this Agreement as set forth in Section 4.4.

**A-111 Ton.**

"Ton" or "Tonnage" means a unit of measure for weight equivalent to two-thousand (2,000) pounds where each pound contains sixteen (16) ounces.

**A-112 Total Billings.**

"Total Billings" means Billings for any and all monies, compensation, fees, charges, consideration, and revenue submitted to Customers for payment to Contractor, its Affiliates, subsidiaries, parents and any Person or entity in which Contractor has a financial interest, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services carried out by or on behalf of Contractor under this Agreement, in accordance with generally accepted accounting principles. Total Billings includes, without limitation, the Maximum Rates according to Article 12 and as set forth in Exhibit B and/or Customer Rates paid by Customers, without subtracting Franchisee Quarterly Fees or any fees or payments imposed on Contractor pursuant to this Agreement.

**A-113 Toxic Substance Control Act.**

"Toxic Substance Control Act" means the federal Toxic Substance Control Act, 15 U.S.C. Sections 2601, *et seq.*, as may be amended and related federal, State and local laws and regulations, including the Carpenter-Presley-Tanner Hazardous Substances Account Act, California Health and Safety Code Sections 25300, *et seq.*, as may be amended.

**A-114 Transfer and Processing Facility.**

"Transfer and Processing Facility" means a facility primarily used for the purpose of Recycling and transferring Solid Waste from Collection vehicles to transfer vehicles to more efficiently transport Solid Waste to a Disposal Site.

**A-115 Transition Plan.**

"Transition Plan" means Contractor's written transition plan as identified in and required to be submitted to City pursuant to Section 5.2 for the transition of the provision of Solid Waste Handling Services by the Previous Contractor for a portion of the Service Area to Solid Waste Handling Services provided by Contractor for the entire Service Area under this Agreement.

**A-116 Universal Waste (U-Waste).**

"Universal Waste" or "U-Waste" means all wastes defined by Title 22 of the California Code of Regulations Sections 66273.1, *et seq.*, including, but not limited to, Household Batteries, fluorescent light bulbs, mercury switches and E-Waste.

**A-117 Unscheduled Service.**

"Unscheduled Service" means services that are unscheduled or provided on an intermittent, less than monthly basis. Unscheduled Service does not include Collection services provided under this Agreement, including the services identified in Article 5 at the Maximum Rates according to Article 12 and/or Customer Rates.

# EXHIBIT B

# MAXIMUM RATE SCHEDULES

**Schedule 1**
**Residential Services**
**Single-Family Dwellings**

| **Proposed Rates for Carpinteria Effective July 1st 2022** | | | |
|---|---|---|---|
| **Residential Types** | **Description** | **Price/Month** | **Notes** |
| Minimum Service | 32 gallon trash, 96 gallon recycle, 96 gallon organics | $29.92 | |
| Basic Service | 64 gallon trash, 96 gallon recycle, 96 gallon organics | $32.71 | |
| High Volume | 96 gallon trash, 96 gallon recycle, 96 gallon organics | $50.16 | |
| Bin Service | 3 cubic yard bin, 96 gallon recycle, 96 gallon organics | $236.88 | |
| **Additional Fees** | | | |
| Returned check fee | | $25.00 | |
| Recyclable Material Contamination Fee (3 or more per year) | | $50.00 | Per occurrence |
| Organic Waste Contamination Fee (3 or more per year) | | $50.00 | Per occurrence |
| Go Back Fee | | $25.00 | Per occurrence |
| Cart Exchange (in excess of 1 per year) | | $35.00 | Per occurrence |
| Account Cancellation Fee for Non-Payment | | $35.00 | Per month |
| Start Fees | | $15.00 | |
| Re-Start Fees for non payment | | $35.00 | |
| Additional Trash cart | | $8.00 | |
| Extra Recycle cart | | $0.00 | 1st additional barrel is free |
| 2nd Additional Recycle cart | | $8.00 | |
| Extra Organics cart | | $8.00 | |
| Lost or damaged cart charge | | $60.00 | |
| Cart replacement due to damage caused by the service recipient | | $60.00 | Per Occurrence |
| Extra Collection fee (any cart) | | $25.00 | |
| Extra Large Item Pickup | | $15.00 | Per bag |
| On-Premise Collection (all carts) | | $30.00 | per month (longer distances ask supervisor) |
| **Residential Bin Rentals** | | | |
| **Type** | | **Price** | **Frequency** |
| Dump | | $111.11 | per dump |
| Rent after 7th day | | $5.00 | per day |

| Extra Hauls | | | |
|---|---|---|---|
| Two free per year (bulky item pickups) | | $0.00 | 0.00 |
| After two free hauls | Car tires under 36" | $13.36 | Each |
| | Car tires between 36" and 60" | $43.29 | Each |
| | Car tires over 60" | $272.1 | Each |
| | Pallets | $1.86 | Each |
| | Washer/Dryer/TV/Couch, etc. | $35 | Each |
| | Freon Removal | $45.00 | Each |
| | Water Heaters | $20.00 | Each |

**Schedule 2 Multi-Family/Commercial –**

| Commercial Rates for Carpinteria Effective July 1, 2022 | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Times per week** | | **1** | **2** | **3** | **4** | **5** | **6** |
| **Type** | **Size** | **Price per Month** | | | | | |
| Trash | 3 yard | $236.88 | $436.16 | $635.44 | $834.73 | $1034.01 | $1233.29 |
| Trash | 2 yard | $170.53 | $306.26 | $442.01 | $577.76 | $713.51 | NA |
| Trash | 1.5 yard | $133.49 | $237.04 | $340.58 | $444.13 | $547.68 | NA |
| **Times per week** | | **1** | **2** | **3** | **4** | **5** | **6** |
| **Type** | **Size** | **Price per Month** | | | | | |
| *Recycle | 3 yard | $168.36 | $327.10 | $488.82 | $649.07 | $809.30 | $969.55 |
| *Recycle | 2 yard | $112.07 | $218.65 | $325.24 | $431.83 | $538.40 | $644.97 |
| *Recycle | 1.5 yard | $90.04 | $169.86 | $249.69 | $329.52 | $409.33 | $489.15 |
| **Times per week** | | **1** | **2** | **3** | **4** | **5** | **6** |
| **Type** | **Size** | **Price per Month** | | | | | |
| *Green Waste | 3 yard | $160.75 | $312.33 | $466.74 | $619.75 | $772.75 | $925.76 |
| *Green Waste | 1.5 yard | $85.97 | $162.19 | $238.42 | $314.64 | $390.84 | $467.06 |
| Multi Family Recycle | 3 yard | $33.67 | $65.42 | $97.76 | $129.81 | $161.86 | $193.91 |
| Multi Family Recycle | 1.5 yard | $22.41 | $43.73 | $65.05 | $86.37 | $107.68 | $128.99 |
| **Times per week** | | **1** | **2** | **3** | **4** | **5** | **6** |
| **Type** | **Size** | **Price per Month** | | | | | |
| Organics Food Waste | 32 gallon | $40.31 | $80.62 | $120.93 | $161.24 | $201.55 | |
| Organics Food Waste | 64 Gallon | $40.31 | $80.62 | $120.93 | $161.24 | $201.55 | |
| Organics Food Waste | 1.5 cubic yard | $133.49 | $237.04 | $340.58 | $444.13 | $547.68 | |

| **Extra Dumps** | |
|---|---|
| Price: $50.00 | Per Occurrence |

| Roll Offs (Unscheduled Service) | | |
|---|---|---|
| **Item** | **Price** | **Frequency** |
| Delivery | $53.23 | Per Each |
| Hauling | $170.34 | Per Each |
| Dump/Gold Coast | Current Tip Fee | Per Ton |
| Processing Fee | $9.81 | Per load |
| Rent after 3rd day | $5.00 | Per day |
| CIWIMP tax | $0.05 | Per ton |
| Calwood | Current Tip Fee | Per ton |
| Damage to Roll off caused by Service Recipient | $400.00 | Per Occurrence |
| Dry Run/Trip Charge | $75.00 | Per Occurrence |
| Return Fee for Blocked Roll Off | $75.00 | Per Occurrence |
| Roll off Go Back or Box relocation | $80.00 | Per Occurrence |
| Roll Off (no hauls in 30 days) | $15.00 | Per Day |
| **Weekly Extra Cart Service (Unscheduled)** | | |
| **Type** | **Size** | **Price per Month** |
| Trash | 64 Gallon | $40.31 |
| Trash | 96 Gallon | $48.34 |
| Recycle/Yard Waste | 96 Gallon | $34.84 |

| Other Charges | | |
|---|---|---|
| **Type** | **Price** | **Frequency** |
| Bin Changes (One free every 12 months) | $50.00 | Each |
| Drive-ins/Walk-ins | $25.00 | Per month |
| Damage to bins caused by service recipient | $195.00 | Per occurrence |
| Bin Lock Installation | $35.00 | Per occurrence |
| Replacement Lock | $35.00 | Per Occurrence |

| Type | Notes | Price | Frequency |
|---|---|---|---|
| Recyclable Material Contamination Fee | 3+ occurrences per year | $100.00 | Per Occurrence |
| Organics Waste Contamination Fee | 3+ occurrences per year | $175.00 | Per Occurrence |
| Excess of Posted Weight | | $75.00 | Per Ton |
| Cart Exchange | In excess of 1 free per year | $35.00 | Per Occurrence |
| Cart Replacement due to damage caused by service recipient | | $60.00 | Per Occurrence |

# EXHIBIT C

## ADMINISTRATIVE CHARGES

## Administrative Charges

| Administrative Charge Description | Amount |
|---|---|
| Restart Service Charge | $ 35.00 |
| Return Check Charge | $ 25.00 |

# EXHIBIT D

# CITY FACILITIES PREMISES

| Public Facilities | | | | |
|---|---|---|---|---|
| **Facility** | **Location** | **Service** | **Quantity** | **Weekly Service** |
| City Hall | 5775 Carpinteria Ave | 40 yard | 1 | Weekly |
| | | 3 yard trash | 2 | Th |
| | | 3 yard recycle | 2 | Th |
| | | 64 gal recycle | 2 | Th |
| Vets Hall | 941 Walnut | 3 yard trash | 1 | M&&W&F |
| | | 64 gal recycle | 2 | Th |
| Community Pool | 5305 Carpinteria Ave. | 1.5 yard | 1 | F |
| | | 64 gal Recycle | 3 | Th |

| Parks & Open Spaces | | | | |
|---|---|---|---|---|
| **Park/Open Space** | **Location** | **Service** | **Quantity** | **Weekly Service** |
| El Carro Park | 5300 El Carro Lane | 3 yard | 2 | W & F |
| El Carro Park | 5300 El Carro Lane | 32 gal | 21 | M&W&F |
| Memorial Park | 1400 Santa Ynez Road | 32 gal | 3 | M&W&F |
| Monte Vista Park | 1100 Bailard Road | 32 gal | 3 | M&W&F |
| Heath Ranch Park | 1480 Charparral Drive | 32 gal | 3 | M&W&F |
| Viola Fields | 6145 Carpinteria Avenue | 32 gal | 8 | M&W&F |
| Franklin Creek Park | Sterling Avenue | 32 gal | 2 | M&W&F |
| Tar Pits Park | Access from Campgrounds | 32 gal | 5 | M&W&F |
| Salt Marsh Nature Park | 101 Ash Avenue | 32 gal | 6 | M&W&F |
| Bluffs Park | 6143 Carpinteria Avenue | 32 gal | 6 | M&W&F |
| Bluffs Park | 6143 Carpinteria Avenue | 3 yard | 1 | M&TH |
| **Beach Street Ends** | | | | |
| Ash Avenue | | 3 yard | 1 | M&Th&S |
| | | 96 gal recycle | 1 | M&Th&S |
| Holly Avenue | | 3 yard | 1 | M&TH&S |
| | | 96 gal recycle | 1 | M&Th&S |
| Elm Avenue | | 3 yard | 1 | M&TH&S |
| | | 96 gal recycle | 1 | M&Th&S |
| Linden Avenue | | 3 yard | 1 | M&TH&S |
| | | 96 gal recycle | 1 | M&Th&S |
| Palm to Linden Trail | | 32 gal | 4 | 3-4x/week |

| PUBLIC RECEPTACLES | | | |
|---|---|---|---|
| **Location/address** | **Type** | **Number of containers** | **Collection** |
| Citywide | 32 gal | Approximately 150 (subject to change) | 3-4x/week |

# EXHIBIT E

# CITY SPONSORED EVENTS

| City-Sponsored Event | Service Level |
|---|---|
| Avocado Festival | 7-36 yard bins. Must divert 75% |
| | |
| Movies in the Park | Temporary refuse containers and liners |
| Independence Day Parade | One 3 yard solid waste bin<br>One 3 yard recyclables bin<br>Temporary refuse containers and liners |
| Holiday Spirit Parade | One 3 yard solid waste bin<br>One 3 yard recyclables bin<br>Temporary refuse containers and liners |
| | |

# EXHIBIT F

## FRANCHISEE QUARTERLY FEES FORMS

**FRANCHISEE RESIDENTIAL QUARTERLY FEES PAYMENT FORM**

**FRANCHISEE NAME:** _____

| | |
|---|---|
| Total Residential Receipts for the Months of _____ | $_____ |
| Less Refunds to Customers _____ | $_____ |
| Gross Receipts | $_____ |
| 8% Franchise Fee (8% x Gross Receipts) | $_____ |
| 8% Residential AB 939 Fee (8% x Gross Receipts) | $_____ |
| 10% Penalty (If not postmarked by the 30th of the following month) | $_____ |
| **Total Fees and Penalty** | **$_____** |

The undersigned affirms to be authorized and qualified to act on behalf of franchisee, has prepared this report from official accounting records, and will maintain the source documents and related permanent financial records, subject to audit, at the following address:

Authorized Signature _____ _____
Print Name **Date**

Please mail this report and submit fees to:
City of Carpinteria: Finance Department
5575 Carpinteria Avenue
Carpinteria, CA 93013

**FRANCHISEE COMMERCIAL QUARTERLY FEES PAYMENT FORM**

**FRANCHISEE NAME:** _____

| | |
|---|---|
| Total Commercial Receipts for the Month of _____ | $ _____ |
| Less Refunds to Customers _____ | $ _____ |
| Gross Receipts | $ _____ |
| 8% Franchise Fee (8% x Gross Receipts) | $ _____ |
| 6% AB 939 Fee (6% x Gross Receipts) | $ _____ |
| 10% Penalty (If not postmarked by the 15th of the month) | $ _____ |
| **Total Fees and Penalty** | **$ _____** |

The undersigned affirms to be authorized and qualified to act on behalf of franchisee, has prepared this report from official accounting records, and will maintain the source documents and related permanent financial records, subject to audit, at the following address:

Authorized Signature
Print Name _____ _____
**Date**

Please mail this report and submit fees to:
City of Carpinteria: Finance Department
5575 Carpinteria Avenue
Carpinteria, CA 93013