

1 **SECTION 7**

2 **YT & RSS SERVICES AGREEMENT**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

**YT & RSS SERVICE AGREEMENT**

**TABLE OF CONTENTS**

Article 1. DEFINITIONS..... 1  
Article 2. TERM OF AGREEMENT ..... 8  
Article 3. SERVICES PROVIDED BY CONTRACTOR..... 8  
Article 4. SERVICE UNITS ..... 10  
Article 5. YARD TRIMMINGS SERVICES ..... 12  
Article 6. ORGANIC WASTE PROCESSING ..... 34  
Article 7. RESIDENTIAL STREET SWEEPING SERVICES ..... 38  
Article 8. EQUIPMENT ..... 44  
Article 9. SERVICE ROUTES..... 47  
Article 10. CONTRACTOR’S COMPENSATION..... 51  
Article 11. DIVERSION AND PERFORMANCE STANDARDS ..... 55  
Article 12. CONTRACTOR DISPOSAL ALLOCATION ..... 56  
Article 13. SERVICE INQUIRIES AND COMPLAINTS ..... 57  
Article 14. ADDITIONAL SERVICES ..... 60  
Article 15. EMERGENCY SERVICE PROVISIONS..... 62  
Article 16. REPORTING REQUIREMENTS AND SYSTEM ..... 63  
Article 17. NONDISCRIMINATION & WAGE POLICY ..... 64  
Article 18. QUALITY OF PERFORMANCE OF CONTRACTOR..... 64  
Article 19. PERFORMANCE BOND..... 68  
Article 20. INSURANCE ..... 68  
Article 21. INDEMNIFICATION..... 71  
Article 22. DEFAULT OF AGREEMENT ..... 73  
Article 23. FUND APPROPRIATION..... 75  
Article 24. MISCELLANEOUS PROVISIONS ..... 76

---

1                   **AGREEMENT BETWEEN THE CITY OF SAN JOSE AND**  
2                   **FOR YARD TRIMMINGS AND RESIDENTIAL STREET**  
3                   **SWEEPING SERVICES**

4   This Agreement is made and entered into effective the first day of July, 2006 (the  
5   “Effective Date”), by and between the City of San Jose, a municipal corporation of the  
6   State of California ("CITY") and \_\_\_\_\_("CONTRACTOR").

7   **WHEREAS**, on February 15, 2006, CITY issued a Request For Proposals (“RFP”) for  
8   Yard Trimmings and Residential Street Sweeping Services for the Recycle Plus  
9   Program; and

10   **WHEREAS**, on April 3, 2006 CONTRACTOR submitted a response to the RFP and the  
11   various addenda to the RFP; and

12   **WHEREAS**, after consideration of CONTRACTOR’s response and the responses of  
13   other proposers for the same services, CITY’s staff and the evaluation panel have  
14   recommended CONTRACTOR to perform the services more fully described in this  
15   Agreement; and

16   **WHEREAS**, the City Council desires to award to CONTRACTOR, and CONTRACTOR  
17   has determined to accept such award, an Agreement to perform the services described  
18   in this Agreement;

19   **NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS,**  
20   **AGREEMENTS AND CONSIDERATIONS CONTAINED HEREIN, CITY AND**  
21   **CONTRACTOR HEREBY AGREE AS HEREINAFTER SET FORTH:**

22                                   **ARTICLE 1. DEFINITIONS**

23   For the purpose of this Agreement, the definitions contained in this Article shall apply  
24   unless otherwise specifically stated. If a word or phrase is not defined in this Article, the  
25   definition of such word or phrase as contained in Chapter 9.10 of the San Jose  
26   Municipal Code shall control. When not inconsistent with the context, words used in the  
27   present tense include the future, words in the plural include the singular, and words in  
28   the singular include the plural. Use of the masculine gender shall include the feminine  
29   gender.

30           **1.01 Acceptable Residue.** The small particles of grass clippings and leaves  
31   that remain on the street after the Yard Trimmings have been collected. Acceptable  
32   Residue shall be of a size that is too small to be collected with the Yard Trimmings on-  
33   street collection equipment and shall meet the guidelines promulgated by the Director  
34   of Environmental Services.

---

1           **1.02 Agreement.** This written document and all exhibits and amendments  
2 hereto, between CITY and CONTRACTOR, governing the provision of services as  
3 provided herein.

4           **1.03 Agreement Year.** The twelve (12) month period from July 1<sup>st</sup> to June  
5 30<sup>th</sup>.

6           **1.04 Biohazardous or Biomedical Waste.** Any waste which may cause  
7 disease or reasonably be suspected of harboring pathogenic organisms; included are  
8 waste resulting from the operation of medical clinics, hospitals, and other facilities  
9 processing wastes which may consist of, but are not limited to, human and animal parts,  
10 contaminated bandages, pathological specimens, hypodermic needles, sharps,  
11 contaminated clothing and surgical gloves.

12           **1.05 BMP Guidelines for Non-Point Source Pollutants.** *Storm Water Best*  
13 *Management Practices Handbook for Industrial Commercial.*

14           **1.06 Business(es).** All retail, professional, wholesale and industrial facilities  
15 and any other commercial enterprises offering goods or services to the public.

16           **1.07 Business Service Unit.** Any Business located in a Mixed Use Dwelling  
17 that elects to utilize SFD Solid Waste Services or MFD Solid Waste Services and is  
18 approved for such service under CITY's Recycle Plus program requirements.

19           **1.08 Central Business District (CBD).** The Central Business District as  
20 described in San Jose Municipal Code Section 9.10.1500 and as set forth in **Exhibit 8**  
21 ("CENTRAL BUSINESS DISTRICT AND TRANSIT MALL ZONE") to this Agreement.

22           **1.09 CITY.** The City of San José, California.

23           **1.10 City Representative.** The person, or the person's designee(s),  
24 designated by the City Manager to administer and monitor the provisions of this  
25 Agreement.

26           **1.11 Civic Yard Trimmings.** Yard Trimmings that have been generated by  
27 Large Civic Service Units and other CITY lands within the Service District.

28           **1.12 Civic Yard Trimmings Collection Service.** The collection, Processing  
29 and marketing of Civic Yard Trimmings.

30           **1.13 Collection Services.** Yard Trimmings Service, Civic Yard Trimmings  
31 Collection Service, and Residential Street Sweeping Service.

32           **1.14 Compostable Waste.** Vegetable and other food scraps including meat,  
33 dairy products, kitchen grease and bones; paper and cardboard that have been  
34 contaminated with food, fat or kitchen grease; compostable paper associated with food  
35 preparation or food consumption such as paper towels, paper plates, tissue, waxed

---

1 paper and waxed cardboard; and other materials designated by the City Representative  
2 that are capable of being composted and that would otherwise be disposed of as  
3 Garbage. Compostable Waste must be generated at the Service Unit from which the  
4 Compostable Waste is collected and must be set out for collection with Yard Trimmings  
5 as a Compostable Waste separate from Garbage.

6 **1.15 Consolidated Utility Billing System (C-UBS).** An integrated utility  
7 billing, customer service, and performance management system.

8 **1.16 Contaminant.** Any material not normally produced from gardens or  
9 landscapes such as, but not limited to, brick, rocks, gravel, large quantities of dirt,  
10 concrete, non-organic wastes, oil and wood or wood products, including but not limited  
11 to, stumps, diseased elms, and other diseased trees.

12 **1.17 CONTRACTOR.** (To be completed)

13 **1.18 County.** Santa Clara County, California.

14 **1.19 Curb Mile.** The distance of one mile along one side of a street as  
15 measured by the CITY along the center line of the street. Distances along Median  
16 Islands are not considered Curb Miles.

17 **1.20 Curb Sweeping.** A complete sweep of all curbs and Median Islands but  
18 not traffic islands on all publicly maintained Residential Streets located within the  
19 Service District.

20 **1.21 Courtesy Notice.** A form approved by the City Representative and used  
21 by CONTRACTOR to inform Service Recipients that a courtesy collection occurred even  
22 though materials may not have been set out by the Service Recipient according to  
23 program instructions.

24 **1.22 Disposal Facility.** The Newby Island Landfill, located at 1606 Dixon  
25 Landing Road, San Jose, CA or such place or places specifically designated by the  
26 CITY for the disposal, or processing as appropriate, of residential solid waste, Sweep  
27 Waste and other materials.

28 **1.23 Dwelling Unit.** Any individual living unit in a single-family dwelling (SFD),  
29 multi-family dwelling (MFD), mobile home park, or Mixed-Use Dwelling (MUD) intended  
30 for, or capable of being utilized for, residential living. Dwelling Unit does not include an  
31 individual living unit in a hotel or motel, guesthouse, residential care facility, extended  
32 care facility, sorority or fraternity house, school, dormitory, residential service facility,  
33 emergency residential shelter, hospital, convent, or monastery, as determined by the  
34 City Representative.

35 **1.24 Exempt Waste.** Biohazardous or Biomedical Waste, Hazardous Waste,  
36 Sludge, Stable Matter, Yard Trimmings or lumber that is more than five (5) feet in length

---

1 in its longest dimension or more than two (2) feet in diameter, automobiles, automobile  
2 parts except those which fall within the definition of Recyclable Materials, boats, boat  
3 parts, boat trailers, internal combustion engines, lead-acid batteries, and those wastes  
4 under the control of the Nuclear Regulatory Commission; but not including those  
5 materials collected as large items or Recyclable Materials under the CITY's agreement  
6 for residential recycling services.

7 **1.25 Garbage.** All putrescible waste which generally includes but is not limited  
8 to kitchen and table food waste, animal, vegetative, food or any organic waste that is  
9 attendant with, or results from the storage, preparation, cooking or handling of food  
10 materials attributed to normal activities of a Service Unit. Garbage must be generated  
11 at the Service Unit from which the Garbage is collected. Garbage does not include  
12 those items defined as Exempt Waste and does not include materials set out for  
13 collection as Compostable Waste.

14 **1.26 Hazardous Waste.** Any material which is defined as a hazardous waste  
15 under California or United States law or any regulations promulgated pursuant to such  
16 law, as such law or regulations may be amended from time to time, but not including  
17 materials defined as Used Oil or Used Oil Filters that can be recycled.

18 **1.27 Large Civic Service Unit.** Those CITY properties as set forth in **Exhibit**  
19 **15** ("LARGE CIVIC SERVICE UNITS") to this Agreement.

20 **1.28 Mandatory Yard Trimmings Cart Collection Service.** The collection,  
21 processing and marketing of Organic Waste from a SFD Service Unit, MFD Service  
22 Unit, or Small Civic Service Unit in the Service District that is required by CITY to utilize  
23 a Yard Trimmings Cart for the set out of Organic Waste, and the disposal of Yard  
24 Trimmings Processing Residue.

25 **1.29 Median Island.** A dividing area, normally at curb height, between  
26 opposing directions of traffic not normally located along Residential Streets.

27 **1.30 MFD Service Unit.** Any combination of Dwelling Units or Business  
28 Service Units in the Service District utilizing a common Garbage bin for the  
29 accumulation and set out of residential solid waste, as determined by the City  
30 Representative.

31 **1.31 MHP Service Unit.** The common area of a mobile home park that utilizes  
32 Subscription Yard Trimmings Carts for the accumulation and set out of Yard Trimmings.

33 **1.32 Mixed Use Dwelling.** A building or structure which contains both  
34 Business(es) and Dwelling Unit(s).

35 **1.33 Non-Collection Notice.** A form approved by the City Representative and  
36 used by CONTRACTOR to notify Service Recipients of the reason for non-collection of

1 materials set out by the Service Recipient for collection by CONTRACTOR pursuant to  
2 this Agreement.

3 **1.34 On-Street Yard Trimmings Collection Service.** The collection,  
4 processing and marketing of Yard Trimmings from a SFD Service Unit, MFD Service  
5 Unit or Small Civic Service Unit that does not utilize a Yard Trimmings Cart for the set-  
6 out of Yard Trimmings, and the disposal of Yard Trimmings Processing Residue.

7 **1.35 Organic Waste.** Yard Trimmings and Compostable Waste.

8 **1.36 Rebuilt Vehicle.** For purposes of this Agreement, "rebuilt" means, at a  
9 minimum, replacement of worn parts and reconditioning or replacement of hydraulic  
10 systems, transmissions, differentials, electrical systems, engines, and brake systems.  
11 In addition, the Rebuilt Vehicle must be repainted prior to performance of services under  
12 this Agreement, and its tires must have at least eighty-five percent (85%) of tread  
13 remaining.

14 **1.37 Recyclable Materials.** Newsprint (including inserts); mixed paper  
15 (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, Kraft  
16 brown bags and paper, paperboard, paper egg cartons, office ledger paper, and  
17 telephone books); glass containers; aluminum beverage containers; small scrap and  
18 cast aluminum (not exceeding sixty (60) pounds in weight nor two (2) feet in any  
19 dimension for any single item); steel including "tin" cans and small scrap (not exceeding  
20 sixty (60) pounds in weight nor two (2) feet in any dimension for any single item);  
21 bimetal containers; mixed plastics such as plastic bags, plastic film, plastics (1-7), and  
22 bottles including containers made of HDPE, LDPE, PET, or PVC; textiles; aseptic  
23 containers; polystyrene; and other materials that are capable of being Recycled and that  
24 would otherwise be collected through the CITY's Solid Waste Service program.

25 **1.38 Residential Street.** Smaller local or neighborhood streets within the  
26 Service District, as designated by the City Representative. Residential Streets do not  
27 include large arterial and major collectors throughout the Service District.

28 **1.39 Residential Street Sweeping Service.** The sweeping of Residential  
29 Streets in the Service District and the transportation of Sweep Waste for disposal.

30 **1.40 Residential Yard Trimmings Collection Services.** On-Street Yard  
31 Trimmings Collection Service, Mandatory Yard Trimmings Cart Collection Service, and  
32 Subscription Yard Trimmings Cart Collection Service.

33 **1.41 Roll-Off Collection Services.** The collection of Roll-Off Containers  
34 containing Yard Trimmings, Large items, or construction and demolition debris from SFD  
35 Service Units, Small Civic Service Units or Business Service Units.

---

1           **1.42 Roll-Off Container.** A metal container that is normally loaded onto a  
2 motor vehicle and transported to an appropriate facility.

3           **1.43 Service District.** That area designated as District C on the map set out  
4 in **Exhibit 2** ("RECYCLE PLUS SERVICE DISTRICTS") to this Agreement.

5           **1.44 Service Recipient.** A Business Service Unit or Small Civic Service Unit  
6 or a resident of the City of San José residing in a SFD Service Unit or a MFD or MHP  
7 Service Unit that receives collection services in the Recycle Plus Program.

8           **1.45 Service Unit.** Large Civic Service Units, Small Civic Service Units, SFD  
9 Service Units, MFD Service Units or MHP Service Units.

10          **1.46 SFD Service Unit.** Any Dwelling Unit or Small Civic Service Unit in the  
11 Service District utilizing a Garbage Cart, any Dwelling Units in a Mixed Use Dwelling, or  
12 any combination of Dwelling Units sharing Garbage Carts, for the accumulation and set-  
13 out of residential solid waste.

14          **1.47 Sludge.** The accumulated solids, residues, and precipitates generated as  
15 a result of waste treatment or processing, including wastewater treatment, water supply  
16 treatment, or operation of an air pollution control facility, and mixed liquids and solids  
17 pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or  
18 any other such waste having similar characteristics or effects.

19          **1.48 Small Civic Service Unit.** Those neighborhood parks, community  
20 gardens, fire stations, and other CITY properties as set forth in **Exhibit 6** ("SMALL  
21 CIVIC SERVICE UNITS") to this Agreement.

22          **1.49 Stable Matter.** Manure and other waste matter normally accumulated in  
23 stables or in livestock or poultry enclosures.

24          **1.50 Subscription Yard Trimmings Cart Collection Service.** The collection,  
25 processing and marketing of Organic Waste from a SFD Service Unit, MFD Service Unit  
26 or MHP Service Unit that has elected to utilize a Yard Trimmings Cart for the set out of  
27 Organic Waste, and the disposal of the Yard Trimmings Processing Residue.

28          **1.51 Sweep Waste.** The accumulated waste materials generated as a result  
29 of performing Residential Street Sweeping Services. Sweep Waste includes, but is not  
30 limited to deposits of loose dirt, rocks, glass, cans, leaves, sticks, papers, Yard  
31 Trimmings residue or any like materials that can be removed by Residential Street  
32 Sweeping operations.

33          **1.52 Sweeper Route.** A daily path or itinerary followed by a sweeper that has  
34 been clearly divided into an a.m. and p.m. section.

---

1           **1.53 Traffic Island.** Islands, some of which have handicapped access cut-  
2           outs, that are usually found at street intersections whose primary function is to protect  
3           and aid pedestrians from vehicles.

4           **1.54 Transfer Station.** The \_\_\_\_\_ Transfer Station located at  
5           California, or such other facility that is approved in advance by CITY's Director of  
6           Environmental Services and that is designed, operated and permitted for the transfer of  
7           Yard Trimmings from one vehicle to another.

8           **1.55 Transit Mall Zone.** The Transit Mall Zone described in San José  
9           Municipal Code Section 9.10.1500 and as set forth in Exhibit 8 to this Agreement.

10          **1.56 Travel Mile.** A one-mile distance traveled along a street when the  
11          brooms of a street sweeper are disengaged and no actual sweeping occurs, (e.g.,  
12          distance between CONTRACTOR's service yard and the individual routes, and the  
13          distance to and from the dumpsite).

14          **1.57 Work Day.** Any day, Monday through Friday, that is not designated a  
15          holiday pursuant to Section 3.05 of this Agreement and any Saturday on which  
16          collection occurs because of the holiday schedule adjustment described in Section 3.05.

17          **1.58 Yard Trimmings.** Any vegetative matter resulting from normal yard and  
18          landscaping maintenance that is not more than five (5) feet in its longest dimension or  
19          six (6) inches in diameter or weighs more than sixty (60) pounds and any natural  
20          Christmas tree regardless of size and weight. Yard Trimmings includes sod; plant  
21          debris including palm, yucca and cactus; grass clippings, leaves, pruning, weeds,  
22          branches, brush, Christmas trees, and other forms of horticultural waste and must be  
23          generated at the Service Unit from which the Yard Trimmings are collected. Yard  
24          Trimmings do not include items defined as Exempt Waste.

25          **1.59 Yard Trimmings Cart.** A heavy plastic receptacle having a hinged tight-  
26          fitting lid, and wheels that is approved by the City Representative for use by Service  
27          Recipients for Yard Trimmings Services under this Agreement and is appropriately  
28          labeled as a Yard Trimmings Cart. The specifications for Yard Trimmings Carts,  
29          including capacity, are set forth in **Exhibit 5** ("CART SPECIFICATIONS AND  
30          PERFORMANCE CRITERIA") to this Agreement.

31          **1.60 Yard Trimmings and Residential Street Sweeping Program.** Yard  
32          Trimmings Service, and Residential Street Sweeping Service.

33          **1.61 Yard Trimmings Service.** Residential Yard Trimmings Collection Service  
34          and Civic Yard Trimmings Collection Services.

35          **1.62 Yard Trimmings Processing Facility.** The \_\_\_\_\_ located  
36          at \_\_\_\_\_ California, or such other facility that is approved in advance by CITY's

1 Director of Environmental Services and that is designed, operated and legally permitted  
2 for the purpose of receiving, and processing Yard Trimmings, large yard trimmings, and,  
3 in the event CITY exercises its option under Section 5.08 of this Agreement, to collect  
4 Compostable Waste.

5 **1.63 Yard Trimmings Processing Residue.** Materials collected pursuant to  
6 this Agreement, including both Organic Waste and Contaminants, that are delivered to a  
7 Yard Trimmings Processing Facility and subsequently landfilled or used as alternative  
8 daily cover (ADC) or other landfill applications. Yard Trimmings Processing Residue  
9 includes Contaminants removed before or after processing. Where San José Organic  
10 Waste is commingled with other Organic Waste for processing, the percentage of Yard  
11 Trimmings Processing Residue attributed to San José will be calculated using a CITY  
12 approved methodology.

## 13 **ARTICLE 2. TERM OF AGREEMENT**

14 **2.01 Term.** The Term of this Agreement shall be for a period beginning on the  
15 Effective Date and terminating June 30, 2013.

## 16 **ARTICLE 3. SERVICES PROVIDED BY CONTRACTOR**

17 **3.01 Grant of Exclusive Agreement.** Except as otherwise provided in this  
18 Agreement, CONTRACTOR is herein granted an exclusive Agreement to provide Yard  
19 Trimmings Services to all Service Units within the Service District and to provide  
20 Residential Street Sweeping Service on all Residential Streets identified as part of  
21 CONTRACTOR's Service District. No other services, including Roll-Off Collection  
22 Services, shall be exclusive to CONTRACTOR.

23 **3.02 Yard Trimmings Disposal by Service Recipients.** Nothing in this  
24 Agreement shall be construed as requiring Service Recipients to set out Yard Trimmings  
25 for collection by CONTRACTOR. Service Recipients may dispose of Yard Trimmings by  
26 any other appropriate means including, but not limited to, back-yard composting.

27 **3.03 Service Standards.** CONTRACTOR shall perform all services under this  
28 Agreement in a thorough and professional manner. Except for Residential Street  
29 Sweeping Service as set forth in Article 7 and emergency services as provided in Article  
30 15, all Yard Trimmings Services described in this Agreement shall be performed  
31 regardless of weather conditions or difficulty of collection. CONTRACTOR shall perform  
32 all additional services described in this Agreement professionally, promptly and  
33 courteously.

34 **3.04 Labor and Equipment.** CONTRACTOR shall provide and maintain all  
35 labor, equipment, tools, facilities, and personnel supervision required for the

---

1 performance of CONTRACTOR's obligations under this Agreement. CONTRACTOR  
2 shall at all times have sufficient backup equipment and labor to fulfill CONTRACTOR's  
3 obligations under this Agreement. No compensation for CONTRACTOR's services or  
4 for CONTRACTOR's supply of labor, equipment, tools, facilities or supervision shall be  
5 provided or paid to CONTRACTOR by CITY or by any Service Recipient except as  
6 expressly provided by this Agreement.

7 **3.05 Holiday Service.** CITY observes Thanksgiving Day, December 25<sup>th</sup>, and  
8 January 1<sup>st</sup> as legal holidays. CONTRACTOR shall not be required to provide Yard  
9 Trimmings Services or Residential Street Sweeping Service, nor to maintain office  
10 hours, on these designated holidays. In any week in which one of these holidays falls  
11 on a Work Day, CONTRACTOR shall perform services for the holiday and each Work  
12 Day thereafter on a one-Work Day-delayed basis for the remainder of the week with  
13 normally scheduled Friday services being performed on Saturday; provided however,  
14 that those Residential Street Sweeping Services which would normally follow a Yard  
15 Trimmings Service day that has been moved to Saturday as a result of the holiday shall  
16 be performed on the next Work Day.

17 **3.06 Commingling of Materials.**

18 3.06.1 Organic Waste Collected in San José. Prior to weighing the  
19 collected materials, CONTRACTOR shall not at any time commingle any Organic Waste  
20 collected pursuant to this Agreement with any other material collected by  
21 CONTRACTOR or any other person without the express prior written authorization of  
22 the City Representative.

23 3.06.2 Sweep Waste. CONTRACTOR shall not at any time commingle  
24 Sweep Waste collected during the provision of Residential Street Sweeping Service with  
25 any other materials collected by CONTRACTOR or any other person without the  
26 express prior written authorization of the City Representative.

27 **3.07 Spillage and Litter.**

28 3.07.1 CONTRACTOR shall not litter premises in the process of  
29 providing services under this Agreement or while its vehicles are on the road.  
30 CONTRACTOR shall transport all Yard Trimmings, Compostable Waste, Civic Yard  
31 Trimmings, and Sweep Waste in such a manner as to prevent the spilling or blowing of  
32 such waste from CONTRACTOR's vehicle. CONTRACTOR shall exercise all  
33 reasonable care and diligence in providing Collection Services so as to prevent spilling  
34 or dropping of Yard Trimmings, Compostable Waste, Civic Yard Trimmings, or Sweep  
35 Waste during collection activity and shall immediately, at the time of occurrence, clean  
36 up such spilled Yard Trimmings, Compostable Waste, Civic Yard Trimmings, and Sweep  
37 Waste.



---

1           **4.02 Service Unit Changes.** CITY and CONTRACTOR acknowledge that  
2 during the term of this Agreement it may be necessary or desirable to add or delete  
3 Service Units for which CONTRACTOR will provide Yard Trimmings Service.

4           4.02.1 Additions. CONTRACTOR shall provide Yard Trimmings  
5 Service described in this Agreement to new Service Units in CONTRACTOR's Service  
6 District within five (5) Work Days of receipt of notice from CITY through the  
7 Consolidated Utility Billing System to begin such Yard Trimmings Service. Service Units  
8 may also be added at the request of CONTRACTOR with written approval of the City  
9 Representative or at the request of the Service Unit and written approval of eligibility by  
10 the City Representative.

11           4.02.2 Deletions. CONTRACTOR shall immediately cease providing  
12 Yard Trimmings Service to any Service Unit upon receipt of notice from CITY through  
13 the Consolidated Utility Billing System to stop such service. Service Units may also be  
14 deleted because of a determination by the City Representative that the premises are not  
15 located in CONTRACTOR's Service District, or that the premises do not qualify for Yard  
16 Trimmings Service described in this Agreement.

17           4.02.3 Revised Route Maps. CONTRACTOR shall revise the Service  
18 Unit route maps to show the addition or deletion of Service Units as provided above and  
19 shall provide such revised maps to the City Representative upon request.

20           **4.03 Street Changes.** CITY and CONTRACTOR acknowledge that during the  
21 term of this Agreement it may be necessary or desirable to add or delete Residential  
22 Streets for which CONTRACTOR will provide Residential Street Sweeping Service.  
23 CITY will provide notification of changes to CONTRACTOR through the Consolidated  
24 Utility Billing System.

25           4.03.1 Street Additions. As new streets are constructed and accepted  
26 by CITY, CITY may, at CITY's sole option, designate such streets as part of  
27 CONTRACTOR's Service District for the purposes of Residential Street Sweeping  
28 Service. If the City Representative designates such streets as part of CONTRACTOR's  
29 Service District, CONTRACTOR shall provide Residential Street Sweeping Service on  
30 such streets under the terms and conditions of this Agreement within fifteen (15) Work  
31 Days of receipt of notice from the City Representative to begin service. CITY shall  
32 compensate CONTRACTOR for the additional Curb Miles at the Monthly Street  
33 Sweeping rate set forth on line A.5 in **Exhibit 1** ("COMPENSATION RATES") to this  
34 Agreement.

35           4.03.2 Street Deletions. CITY may require some Residential Streets to  
36 be temporarily or permanently removed from the list of scheduled streets for which  
37 CONTRACTOR provides Residential Street Sweeping Service under this Agreement.

1 CONTRACTOR shall immediately cease providing Residential Street Sweeping Service  
2 to any Residential Street upon receipt of notice from the City Representative to stop  
3 such service. CONTRACTOR shall be compensated for the Curb Miles for Residential  
4 Streets removed from the list of scheduled streets in accordance with the Partial Month  
5 Service provisions of Section 10.02.4. When a Residential Street has been temporarily  
6 removed from the list of scheduled streets, CONTRACTOR shall resume Residential  
7 Street Sweeping Service on such street in the next regularly scheduled cycle following  
8 notification from the City Representative to resume service.

9           4.03.3 Revised Maps. CONTRACTOR shall revise the Residential  
10 Street Sweeping Service route maps to show the addition or deletion of Residential  
11 Streets as provided above and shall provide such revised maps to the City  
12 Representative upon request.

13           **4.04 Annexation.** If during the term of this Agreement, additional territory  
14 within or adjacent to CONTRACTOR's Service District is acquired by CITY through  
15 purchase, annexation, eminent domain or other procedures, the City Representative  
16 may designate such additional territory as part of CONTRACTOR's Service District. If  
17 the additional territory is so designated, CONTRACTOR agrees to provide Collection  
18 Services in such additional territory in accordance with the provisions and service rates  
19 set forth in this Agreement. Such Collection Services shall begin within ten (10) Work  
20 Days of receipt of written notice from the City Representative. CONTRACTOR shall not  
21 begin Collection Services without written authorization from the City Representative.

22           If at the time of acquisition by CITY, the additional territory contains more  
23 than five hundred (500) Service Units for which CONTRACTOR will provide Yard  
24 Trimmings Service using Yard Trimmings Carts, CONTRACTOR may phase in the  
25 distribution of Yard Trimmings Carts on a schedule approved by the City Representative;  
26 provided that CONTRACTOR shall complete the distribution of all Yard Trimmings Carts  
27 within ninety (90) calendar days after CONTRACTOR receives notification to begin Yard  
28 Trimmings Service in the additional territory.

## 29           **ARTICLE 5. YARD TRIMMINGS SERVICES**

30           Beginning July 1, 2007, and continuing until the expiration or termination of this  
31 Agreement, CONTRACTOR shall provide Yard Trimmings Service in the Service District  
32 in accordance with the terms and conditions of this Agreement.

33           **5.01 Transition.** CONTRACTOR understands and agrees that the time  
34 between the Effective Date and July 1, 2007, is intended to provide CONTRACTOR with  
35 sufficient time to, among other things, order equipment, prepare necessary routing,  
36 implement changes in the Yard Trimmings Service program, obtain permits and

1 licenses, establish/build facilities, obtain any required service agreements, begin the  
2 public awareness program as part of CONTRACTOR's transition program, coordinate  
3 with CITY's public awareness program, and integrate any program changes as specified  
4 in this Agreement. CONTRACTOR shall be responsible for the provision of all Yard  
5 Trimmings Service in the Service District beginning July 1, 2007. CONTRACTOR shall  
6 implement the transition in accordance with CONTRACTOR's Transition Plan which is  
7 set forth in **Exhibit 7** ("PLANS") to this Agreement. The Transition Plan may be  
8 modified from time to time by the mutual written agreement of CONTRACTOR and the  
9 City Representative in order to provide a smooth transition of services, provided that no  
10 such modification shall extend any time for performance beyond the dates set forth in  
11 this Agreement.

12 **5.02 Holiday Contingency Plan.** On or before September 30, 2007 and on or  
13 before each September 30<sup>th</sup> during the term of this Agreement, CONTRACTOR shall  
14 submit an annual plan outlining collection strategies to handle increased tonnages  
15 during the fall holiday season. The plan should list any additional vehicles which will be  
16 utilized including ID#, type, license number and material that will be collected; strategy  
17 for fluctuation in the labor force; how excess material delivered to CONTRACTOR's  
18 Yard Trimmings processing facility will be processed; and how coordination with the  
19 SFD Solid Waste Services and the SFD Recycling Services contractor(s) will be  
20 accomplished for the collection of Christmas trees.

21 **5.03 General Provisions.**

22 5.03.1 Frequency of Service. CONTRACTOR shall provide Residential  
23 Yard Trimmings Collection Service to all Service Units in CONTRACTOR's Service  
24 District once every week on a scheduled route basis. Residential Yard Trimmings  
25 Collection Services to SFD Service Units shall be provided on the same Work Day as  
26 SFD solid waste collection service is provided by CITY's authorized collector.  
27 Residential Yard Trimmings Collection Services to MFD and Small Civic Service Units  
28 shall be provided in the most efficient manner possible taking into the account the SFD  
29 Service Unit scheduling requirements. Where the scheduled collection day falls on a  
30 holiday, CONTRACTOR shall adjust the route schedule as set forth in Section 3.05 of  
31 this Agreement.

32 5.03.2 Hours of Collection. Residential Yard Trimmings Collection  
33 Service shall be provided, commencing no earlier than 6:00 a.m. and terminating no  
34 later than 6:00 p.m., Monday through Friday with no service on Saturday, except for  
35 holiday service as set forth in Section 3.05 of this Agreement, or Sunday.

36 The hours, days, or both of collection may be extended due to  
37 extraordinary circumstances or conditions with the prior consent of the City  
38 Representative. If such consent it given in any manner other than by written notice, the

1 City Representative shall provide written confirmation to CONTRACTOR within three (3)  
2 Work Days.

3 Notwithstanding the above requirements, delivery of collected  
4 materials to the Yard Trimmings Processing Facility, Disposal Facility or other  
5 appropriate facility shall occur during the normal business hours of such facility, unless  
6 other arrangements have been made with the facility and have been approved in  
7 advance by the City Representative.

8 5.03.3 Inventory. CONTRACTOR shall maintain an inventory of Yard  
9 Trimmings Carts in sufficient number for CONTRACTOR to perform deliveries and  
10 repairs of such equipment in a timely manner.

11 5.03.4 Inspection. CITY shall have the right to inspect  
12 CONTRACTOR's Yard Trimmings Processing Facility and CONTRACTOR's Transfer  
13 Station during such facilities' normal business hours and shall have the right to inspect  
14 CONTRACTOR's collection vehicles and their contents at any time while operating  
15 inside or outside the City of San José.

16 5.03.5 Reporting of Problems and Non-Collections. CONTRACTOR  
17 shall use the Consolidated Utility Billing System to report all instances where Yard  
18 Trimmings of unknown origin were collected; and all deliveries, replacements and  
19 repairs of Yard Trimmings Carts. Except as otherwise provided in this Agreement, to the  
20 extent possible, CONTRACTOR shall make such reports by the end of the Work Day in  
21 which the event occurred; where it is not possible to make such reports by the end of  
22 the Work Day, CONTRACTOR shall report such events no later than the end of the next  
23 Work Day.

24 **5.04 Residential Yard Trimmings Collection Service**. CONTRACTOR shall  
25 perform Residential Yard Trimmings Collection Service in accordance with the following  
26 terms and conditions:

27 5.04.1 On-Street Yard Trimmings Collection Services.

28 5.04.1.1 Conditions of Service. CONTRACTOR shall provide On-  
29 Street Yard Trimmings Collection Service to all Service Units in the Service District  
30 whose Yard Trimmings are set out on a paved surface of the public roadway, closest  
31 accessible roadway, or other such location agreed to by CONTRACTOR and the  
32 Service Recipient, that will provide safe and efficient accessibility to the  
33 CONTRACTOR's collection crew and vehicle. The total quantity of Yard Trimmings  
34 collected from each Service Unit shall be unlimited.

35 5.04.1.2 Manner of Collection. CONTRACTOR shall provide On-  
36 Street Yard Trimmings Collection Service with as little disturbance as possible and shall

---

1 remove all Yard Trimmings except for Acceptable Residue. If CONTRACTOR's access  
2 to a Yard Trimmings set-out is blocked or inhibited by a Garbage cart, a recycling cart or  
3 a container provided by the Service Recipient, CONTRACTOR shall manually move  
4 such cart or container, collect the Yard Trimmings and manually replace the cart or  
5 container where it can be properly collected by the CITY-authorized collector.

6                   5.04.1.3 Non-Collection. CONTRACTOR shall not be required to  
7 provide On-Street Yard Trimmings Collection Service at any Service Unit where: the  
8 Yard Trimmings are not segregated from other waste materials; access is blocked or  
9 inhibited by vehicles or other obstacles, other than containers as described in Section  
10 5.04.1.2 above; or the Yard Trimmings are commingled with Contaminants. In the event  
11 CONTRACTOR does not collect Yard Trimmings for any of these reasons,  
12 CONTRACTOR shall leave a Non-Collection Notice at the Service Unit nearest the Yard  
13 Trimmings set-out explaining why collection was not made.

14                   5.04.2    Cart Collection Service.

15                   5.04.2.1 Manner of Collection. CONTRACTOR shall provide cart  
16 collection service with as little disturbance as possible. Except in the case of on-  
17 premises service, CONTRACTOR shall leave any Yard Trimmings Cart in an upright  
18 position at the same point from which its contents were collected. In the case of on  
19 premises service, CONTRACTOR shall remove the Yard Trimmings Cart from the back  
20 or side of the Service Unit (or from such other location as agreed to by CONTRACTOR  
21 and the Service Recipient), shall empty the contents into the collection vehicle, and  
22 shall return the Yard Trimmings Cart to the location from which it was removed.  
23 CONTRACTOR shall not empty the contents of the Yard Trimmings Cart onto the street  
24 for the purpose of collection.

25                                   CONTRACTOR's employees shall follow the regular walk  
26 for pedestrians while on private property and shall not trespass nor cross property to the  
27 adjoining premises unless the occupant or owner of both properties has given  
28 permission. Care shall be taken to prevent damage to property, including flowers,  
29 shrubs, and other plantings.

30                   5.04.2.2 Mandatory Yard Trimmings Cart Collection Service.

31 CONTRACTOR shall provide Mandatory Yard Trimmings Cart Collection Service to  
32 those Service Units in the Service District designated by CITY through the Consolidated  
33 Utility Billing System as requiring Mandatory Yard Trimmings Cart Collection Service  
34 where the Yard Trimmings (except for overages) and the Compostable Waste are  
35 properly containerized in a Yard Trimmings Cart, and the Yard Trimmings Cart has been  
36 placed within three (3) feet of the curb, swale, paved surface of the public roadway,  
37 closest accessible roadway, or other such location agreed to by CONTRACTOR and the  
38 Service Recipient, that will provide safe and efficient accessibility to the

1 CONTRACTOR's collection crew and vehicle. The total quantity of Organic Waste  
2 collected from each Service Unit shall not be limited by the number of Yard Trimmings  
3 Carts. Service Units receiving Mandatory Cart Collection Service may handle Yard  
4 Trimmings overages as set forth in Section 5.04.3 below.

5 On or before October 1, 2006, CITY shall provide  
6 CONTRACTOR with a list of Service Units required to have Mandatory Yard Trimmings  
7 Cart Collection Service. Prior to March 1, 2007, CONTRACTOR shall review the list of  
8 Service Units required to have Mandatory Yard Trimmings Cart Collection Service and  
9 shall provide the City Representative with recommendations of additions or deletions to  
10 the list based on CONTRACTOR's knowledge of the collection routes, the applicable  
11 Municipal Code provisions, and safety or logistical factors. The City Representative  
12 shall review the recommendations and provide CONTRACTOR with a final list of  
13 Mandatory Yard Trimmings Cart Collection Service Units within thirty (30) calendar days  
14 of receipt of the recommendations from CONTRACTOR.

15 During the term of this Agreement, CITY may add or  
16 delete Service Units to/from the Mandatory Yard Trimmings Cart Collection Service  
17 program. Except in emergency situations identified by the City Representative, all such  
18 additions or deletions shall become effective the first day of the month immediately  
19 following the month in which CITY provides notice to CONTRACTOR of the addition or  
20 deletion. If an added Service Unit does not already have a Yard Trimmings Cart,  
21 CONTRACTOR shall deliver a Yard Trimmings Cart to the Service Unit prior to the  
22 effective date of the addition. Upon the effective date of any addition, CONTRACTOR  
23 shall provide Mandatory Yard Trimmings Cart Collection Service to the added Service  
24 Unit(s). Upon the effective date of any deletion, CONTRACTOR shall provide On-Street  
25 Yard Trimmings Collection Service or Subscription Yard Trimmings Cart Collection  
26 Service as specified by the City Representative. The Partial Month Service provisions  
27 of Section 10.02.4 shall not apply in the case of additions or deletions under this  
28 paragraph, and CONTRACTOR shall be compensated for each month based upon the  
29 service in effect on the last calendar day of that month and the applicable rate in effect  
30 for that month.

31 CONTRACTOR may not add or delete Service Units  
32 to/from the Mandatory or Mandatory On-Premise Yard Trimmings Cart Collection  
33 Service programs until notified by the CITY in the manner set forth in the preceding  
34 paragraph. When new service units are identified by the CONTRACTOR as candidates  
35 for mandatory cart service, the CONTRACTOR shall submit the addresses and routes  
36 to the City Representative for such service. Within 30 days, the CITY shall make the  
37 determination on eligibility of the new mandatory cart service units.

1                                   5.04.2.3 Subscription Yard Trimmings Cart Collection Services.

2 CONTRACTOR shall provide Subscription Yard Trimmings Cart Collection Service to  
3 those Service Units in the Service District subscribing to such service as are designated  
4 by CITY through the Consolidated Utility Billing System, where the Yard Trimmings  
5 (except for overages) and the Compostable Waste are properly containerized in a Yard  
6 Trimmings Cart and the Yard Trimmings Cart has been placed within three (3) feet of the  
7 curb, swale, paved surface of the public roadway, closest accessible roadway, or other  
8 such location agreed to by CONTRACTOR and the Service Recipient, that will provide  
9 safe and efficient accessibility to CONTRACTOR's collection crew and vehicles. The  
10 total quantity of Organic Waste collected from each Service Unit shall not be limited by  
11 the number of Yard Trimmings Carts. Service Units subscribing to Subscription Yard  
12 Trimmings Cart Collection Service may also set out Yard Trimmings under the On-Street  
13 Yard Trimmings Collection Service provisions of Section 5.04.1 above or may handle  
14 Yard Trimmings overages as set forth in Section 5.04.3 below.

15                                   5.04.2.4 Non-Subscription On-Premises Cart Service.

16 Notwithstanding any term or condition set forth in this Agreement, CONTRACTOR shall  
17 provide on-premises collection of Yard Trimmings from a SFD Service Unit utilizing a  
18 Yard Trimmings Cart for the set out of Organic Waste if all adult occupants residing  
19 therein have disabilities that prevent them from setting the Yard Trimmings Cart at the  
20 curb for collection and if a request for non-subscription on-premises service has been  
21 made to, and approved by, the City Representative in the manner required by CITY. On  
22 or before May 1, 2007, the City Representative shall notify CONTRACTOR through the  
23 Consolidated Utility Billing System of any Service Recipients requiring non-subscription  
24 on-premises service. Thereafter during the term of this Agreement the City  
25 Representative shall notify CONTRACTOR through the Consolidated Utility Billing  
26 System of any Service Recipients requiring non-subscription on-premises service, along  
27 with the date such service is to begin. CONTRACTOR shall be paid the monthly base  
28 rate set forth on line A.2 of Exhibit 1 for each cart; no additional monies shall be due to  
29 CONTRACTOR for the provision of non-subscription on-premises service.

30                                   CONTRACTOR may at any time, but not more often than  
31 twice in any Agreement Year, request that the City Representative verify the eligibility of  
32 a SFD Service Unit for non-subscription on-premises service. Upon receipt of  
33 CONTRACTOR's request, the City Representative shall make a determination as to  
34 whether the SFD Service Unit meets the eligibility requirements and shall notify  
35 CONTRACTOR in writing of such determination within sixty (60) calendar days of  
36 CONTRACTOR's request. At the time CONTRACTOR makes the request for  
37 verification of eligibility, CONTRACTOR may submit to the City Representative any  
38 information relevant to the City Representative's determination.

---

1                   5.04.2.5 Subscription On-Premises Cart Service. Notwithstanding  
2 any term or condition set forth in this Agreement, CONTRACTOR shall provide on-  
3 premises collection of Organic Waste from a SFD Service Unit to those Service  
4 Recipients subscribing to such service, except that subscription on-premises cart  
5 collection service shall not be available in those instances where the on-premises  
6 collection location of the Yard Trimmings Cart is more than one hundred (100) yards  
7 from the normal curb set out location. The City Representative shall notify  
8 CONTRACTOR in writing of any Service Recipient requesting subscription on-premises  
9 service along with the date such service is to begin.

10                   5.04.2.6 On-Premises Collection Day. CONTRACTOR shall  
11 provide on-premises collection on the same Work Day that On-Street Yard Trimmings  
12 Collection Service would otherwise be performed for the Service Unit.

13                   5.04.3 Yard Trimmings Overages. All Residential Yard Trimmings  
14 Collection Services shall be unlimited as to total weight or volume of Organic Waste  
15 collected. CONTRACTOR shall collect Yard Trimmings overages from a Service Unit  
16 with Mandatory Yard Trimmings Cart Collection Service or Subscription Yard Trimmings  
17 Cart Collection Service as long as the Yard Trimmings overages are set out beside a full  
18 Yard Trimmings Cart either in bundles tied with twine or in a can or other container  
19 provided by the Service Recipient and clearly labeled as a Yard Trimmings container.  
20 CONTRACTOR shall provide Yard Trimmings labels to identify additional containers  
21 upon request of the Service Recipient. Service Recipients with Subscription Yard  
22 Trimmings Cart Collection Service may also elect to place Yard Trimmings overages in  
23 the street for on-street collection in accordance with the Conditions of Service set forth  
24 in Section 5.04.1.1 above. Service Recipients with Subscription Yard Trimmings Cart  
25 Collection Service may elect to order more than one cart, and CONTRACTOR shall be  
26 paid the monthly base rate set forth on line A.2 of Exhibit 1 for each cart.  
27 CONTRACTOR may offer to collect Yard Trimmings overages from a Service Unit with  
28 Mandatory Yard Trimmings Cart Collection Service by offering extra carts at no charge  
29 to the Service Recipient and at no additional cost to the CITY.

30                   5.04.4 Non-Collection of Carts and Overages.

31                   5.04.4.1 Carts. Except as set forth below in this Section 5.04.4.1,  
32 CONTRACTOR shall not be required to provide Yard Trimmings Service using Yard  
33 Trimmings Carts if the Service Recipient does not segregate the Organic Waste from  
34 Contaminants. If Organic Waste is contaminated through commingling with other waste  
35 materials, CONTRACTOR shall, if practical, separate the Organic Waste from the  
36 Contaminants. CONTRACTOR shall then collect the Organic Waste and leave the  
37 Contaminants in the Yard Trimmings Cart along with a Non-Collection Notice explaining  
38 why the Contaminants are not considered Organic Waste. However, in the event the

---

1 Organic Waste and Contaminants are commingled to the extent that they cannot easily  
2 be separated by CONTRACTOR or the nature of the Contaminants renders the entire  
3 contents of the Yard Trimmings Cart contaminated, CONTRACTOR will leave the Yard  
4 Trimmings Cart un-emptied along with a Non-Collection Notice that contains instructions  
5 on the proper procedures for setting out Organic Waste.

6                   5.04.4.2 Overages. CONTRACTOR shall have no obligation to  
7 collect Yard Trimmings overages as provided in Section 5.04.3 where: the Yard  
8 Trimmings container provided by the Service Recipient or the bundle exceeds the  
9 allowable weight limit of sixty (60) pounds; a bundle exceeds five (5) feet in length; the  
10 Yard Trimmings are in a container that is not clearly marked to indicate contents; the  
11 Yard Trimmings contain Contaminants; or the Yard Trimmings from a Service Unit  
12 receiving Mandatory Yard Trimming Cart Collection Service are not placed beside a full  
13 Yard Trimmings Cart provided by CONTRACTOR. CONTRACTOR shall have no  
14 obligation to collect overages of Compostable Waste.

15                   If CONTRACTOR does not collect Organic Waste for any  
16 reason, CONTRACTOR shall leave a Non-Collection Notice at the Service Unit in front  
17 of which the Organic Waste is placed.

18                   CONTRACTOR shall utilize the Consolidated Utility  
19 Billing System to notify the City Representative of Service Units with frequent Yard  
20 Trimmings overages, and the City Representative may require the Service Unit to obtain  
21 larger and/or additional Yard Trimmings Carts.

22                   5.04.4.3 Christmas Trees. CONTRACTOR shall collect all natural  
23 Christmas trees, including flocked Christmas trees, set out by Service Units. Christmas  
24 trees shall be collected from the street from SFD Service Units with On-Street Yard  
25 Trimmings Collection Service or Subscription Yard Trimmings Collection Service, and  
26 from the curb from SFD Service Units with Mandatory Yard Trimmings Cart Collection  
27 Service. In the case of MFD Service Units, Christmas trees shall be collected in the  
28 manner agreed upon between the management of the MFD Service Unit and  
29 CONTRACTOR. CONTRACTOR shall utilize the required MFD service agreement to  
30 specify the place and manner in which Christmas trees will be collected for each MFD  
31 Service Unit. There shall be no additional payment to the CONTRACTOR for the  
32 collection of Christmas trees.

33                   5.04.5 Fall Leaf Removal. CONTRACTOR shall remove piles of leaves  
34 from all public streets served by the Residential Street Sweeping Service program, and  
35 from all other public streets in front of or adjacent to a SFD Service Unit, MFD Service  
36 Unit, or Small Civic Service Unit.

---

1                   5.04.6    Service Agreements. CONTRACTOR shall obtain a signed  
2 service agreement from each SFD Service Unit complex or development with private  
3 streets, from each MFD Service Unit, and from each Small Civic Service Unit for the  
4 provision of Residential Yard Trimmings Collection Services. If an MHP chooses to  
5 subscribe to yard trimmings carts for common areas, CONTRACTORS must obtain a  
6 signed service agreement, at which time it becomes an MHP Service Unit.  
7 CONTRACTOR shall provide the City Representative with copies of all signed service  
8 agreements within ten (10) Work Days of receipt by CONTRACTOR. To the extent  
9 available, CITY will provide CONTRACTOR with a list of private streets in  
10 CONTRACTOR's Service District, and shall provide updated lists as additional streets  
11 are added or additional information is available. The City Representative will assist  
12 CONTRACTOR in contacting representatives of Small Civic Service Units. The service  
13 agreements will contain at least the following information: Name and address of  
14 complex, homeowners association, or Small Civic Service Unit; number of units; name,  
15 address and phone number of contact person; permission for CONTRACTOR to enter  
16 the private streets; type of Residential Yard Trimmings Collection Service to be provided  
17 (On-Street or Cart); number and location of Yard Trimmings Carts and/or on-street set-  
18 out locations; and, if applicable, manner and location of Christmas tree removal. MFD  
19 Service Units may elect to subscribe to Yard Trimmings Cart Service, if they chose not  
20 to utilize on-street service. MHP Service Units may elect to subscribe to Yard  
21 Trimmings Cart Service for common areas of the complex. No MFD Service Units and  
22 MHP Service Units shall be provided with Yard Trimmings Cart Service by the  
23 CONTRACTOR until a completed service agreement has been submitted to the CITY  
24 by the CONTRACTOR.

25                   5.04.6.1 CONTRACTOR shall provide Residential Yard Trimmings  
26 Collection Services to all Service Units in the Service District unless such service is  
27 specifically refused. CONTRACTOR will not be compensated for the provision of these  
28 services to those Service Units for which service agreements are required until copies of  
29 the service agreements are provided to the City Representative in the required manner.  
30 In the event CONTRACTOR is unable to obtain a signed service agreement from a  
31 Service Unit through no fault of CONTRACTOR, CITY will assist CONTRACTOR in  
32 resolving the situation. CONTRACTOR will not be compensated for those Service Units  
33 that refuse Yard Trimmings Services.

34                   5.04.7    Spillage. CONTRACTOR shall not be responsible for cleaning  
35 up sanitary conditions around Yard Trimmings Carts or other containers caused by the  
36 carelessness of the Service Recipient; however, CONTRACTOR shall clean up any  
37 Organic Waste spilled from a Yard Trimmings Cart by CONTRACTOR or its employees.  
38 During hauling, all Organic Waste shall be contained, covered or enclosed so that  
39 leaking, spilling and blowing of the Organic Waste is prevented. CONTRACTOR shall

1 be responsible for the immediate clean-up of any spillage caused by CONTRACTOR or  
2 its employees.

3           5.04.8 Courtesy Notices. In the following instances, CONTRACTOR  
4 shall collect the Yard Trimmings as set out, and leave a courtesy notice at the nearest  
5 Service Unit: Where the Yard Trimmings are placed less than twelve (12) inches from  
6 the curb; where the length, width or height of a Yard Trimmings pile exceeds five (5)  
7 feet; where Yard Trimmings are placed in a marked bicycle lane; where Yard Trimmings  
8 are placed in front of a red curb or no parking zone; or where Yard Trimmings are  
9 placed in an area which impedes traffic flow or poses a potential safety hazard.

10           5.04.9 Yard Trimmings of Unknown Origin. The San José Municipal  
11 Code prohibits the placement of Yard Trimmings in the street other than in front of the  
12 Service Unit from which the Yard Trimmings were generated. However, CONTRACTOR  
13 shall collect Yard Trimmings whose origins are unknown, or which are not placed in front  
14 of a Service Unit, as long as the Yard Trimmings otherwise meet the criteria for  
15 collection set forth above. The City Representative may investigate areas with multiple  
16 occurrences of Yard Trimmings of unknown origins.

17           5.04.10 Purchase and Distribution of Yard Trimmings Carts.

18 CONTRACTOR shall purchase and distribute fully assembled and functional Yard  
19 Trimmings Carts to new Service Units receiving Mandatory Yard Trimmings Cart  
20 Collection Service or Subscription Yard Trimmings Cart Collection Service, that are  
21 added to CONTRACTOR's Service District during the term of this Agreement. The CITY  
22 will provide CONTRACTOR with addresses of new Service Units requiring Yard  
23 Trimmings Carts and the number and size of the Yard Trimmings Carts to be provided to  
24 each Service Unit. Except as provided in Section 4.04 of this Agreement,  
25 CONTRACTOR shall complete the distribution within ten (10) Work Days of receipt of  
26 the new Service Unit address through the Consolidated Utility Billing System.

27           5.04.11 Replacement of Yard Trimmings Carts. CONTRACTOR's  
28 employees shall take care to prevent damage to Yard Trimmings Carts by unnecessary  
29 rough treatment. Any Yard Trimmings Cart damaged by CONTRACTOR shall be  
30 replaced by CONTRACTOR, at CONTRACTOR's expense, within ten (10) Work Days  
31 of notification from the City Representative, at no cost or inconvenience to the Service  
32 Recipient and at no cost to CITY.

33           Upon notification to CONTRACTOR by the City Representative  
34 or a Service Recipient that the Service Recipient's Yard Trimmings Cart has been stolen  
35 or that it has been damaged beyond repair through no fault of CONTRACTOR,  
36 CONTRACTOR shall deliver a replacement Yard Trimmings Cart to such Service  
37 Recipient within ten (10) Work Days of the notification.

1                   Each Service Recipient shall be entitled to the replacement of  
2 one (1) lost, destroyed, or stolen Yard Trimmings Cart during the term of this  
3 Agreement, as extended, at no cost to the Service Recipient or CITY. Except in the  
4 case of a Yard Trimmings Cart that must be replaced because of damage caused by  
5 CONTRACTOR or in the case where CONTRACTOR elects to replace a Yard  
6 Trimmings Cart rather than repair it on-site, CONTRACTOR shall be compensated for  
7 the cost of those replacements in excess of one (1) per Service Recipient during the  
8 term of this Agreement, in accordance with the Yard Trimmings “Cart Exchanges in  
9 Excess of Once per Year” service rate set forth in Exhibit 1 as adjusted under the terms  
10 of this Agreement. CONTRACTOR understands and agrees that this provision is  
11 intended to be applied on a per Service Recipient basis, not a per Service Unit basis.

12                   5.04.12 Repair of Yard Trimmings Carts. CONTRACTOR shall be  
13 responsible for repair of Yard Trimmings Carts in the areas to include, but not be limited  
14 to, hinged lids, wheels and axles. Within ten (10) Work Days of notification by the City  
15 Representative or a Service Recipient of the need for such repairs, CONTRACTOR  
16 shall repair the Yard Trimmings Cart or if necessary remove the Yard Trimmings Cart for  
17 repairs and deliver a replacement Yard Trimmings Cart to the Service Recipient.

18                   5.04.13 Yard Trimmings Cart Exchange. Within ten (10) Work Days of  
19 notification to CONTRACTOR by the City Representative or a Service Recipient that a  
20 change in the size of the Yard Trimmings Cart is required, CONTRACTOR shall deliver  
21 a replacement Yard Trimmings Cart(s) to the Service Recipient. Each Service Unit  
22 shall be eligible to receive one (1) free Yard Trimmings Cart exchange per Agreement  
23 Year during the term of this Agreement, as extended. CONTRACTOR shall be  
24 compensated for the cost of those exchanges in excess of one (1) per Agreement Year,  
25 in accordance with the Yard Trimmings “Cart Exchanges in Excess of Once per Year”  
26 service rate set forth in Exhibit 1 as adjusted under the terms of this Agreement.

27                   5.04.14 Ownership of Yard Trimmings Carts. CONTRACTOR shall  
28 retain ownership of Yard Trimmings Carts during the term of this Agreement. Upon the  
29 expiration or termination of this Agreement, CONTRACTOR shall transfer to CITY and  
30 CITY shall obtain ownership of all Yard Trimmings Carts that are in the possession of a  
31 Service Unit on the date of such expiration or termination. CONTRACTOR shall retain  
32 ownership of all Yard Trimmings Carts in CONTRACTOR’s possession at the  
33 termination or expiration of this Agreement.

34                   **5.05 Small Civic Service Unit Collection.**

35                   5.05.1       CONTRACTOR shall provide weekly collection of Yard  
36 Trimmings generated by those Small Civic Service Units listed on Exhibit 6 to this  
37 Agreement that utilize On-Street Yard Trimmings Collection Service, and weekly  
38 collection of Organic Waste generated by those Small Civic Service Units that utilize

---

1 Mandatory Yard Trimmings Cart Collection Service. CONTRACTOR shall be  
2 compensated at the SFD Service Unit base rate for those Small Civic Service Units for  
3 which a copy of the signed service agreement has been provided to the City  
4 Representative.

5           5.05.2    Entry to Parks or Gardens. Where necessary, CONTRACTOR  
6 shall enter neighborhood parks or community gardens to collect Yard Trimmings.  
7 CONTRACTOR shall not be required to operate its equipment on an unpaved surface.  
8 CONTRACTOR shall enter locked community gardens and neighborhood parks where  
9 necessary. CITY shall provide keys to locked Small Civic Service Units.

10           5.05.3    On-Call Service. Within three (3) Work Days of receipt of a  
11 written request from the City Representative, CONTRACTOR shall collect Civic Yard  
12 Trimmings generated by CITY crews at Small Civic Service Units. CONTRACTOR shall  
13 collect all such Yard Trimmings separately from all other Yard Trimmings and shall have  
14 such Yard Trimmings weighed separately at the Transfer Station or Yard Trimmings  
15 Processing Facility. CONTRACTOR shall be compensated for this service at the “Large  
16 Civic Collection & Pruning” per ton service rate set forth in Exhibit 1 as may be adjusted  
17 under the terms of this Agreement.

18           5.05.4    Non-Collection of Small Civic Service Units. CONTRACTOR  
19 shall have no obligation to collect Organic Waste from Small Civic Service Units where  
20 the Organic Waste contains Contaminants. If the Organic Waste contains  
21 Contaminants, CONTRACTOR shall leave a Non-Collection Notice at the Small Civic  
22 Service Unit; if there is no appropriate location to leave a Non-Collection Notice,  
23 CONTRACTOR shall complete a Non-Collection Notice, send a copy to the City  
24 Representative, and utilize the Consolidated Utility Billing System to notify CITY of the  
25 non-collection.

26           **5.06 Large Civic Service Unit Yard Trimming Collection Services.**  
27 CONTRACTOR shall provide Civic Yard Trimmings Collection Services to Large Civic  
28 Service Units as provided below in this Section 5.06. The Yard Trimmings shall be  
29 stored loose in bunkers or loose in CONTRACTOR’s Roll-Off Containers and  
30 CONTRACTOR shall utilize the collection method specified by CITY’s yard staff.

31           5.06.1    On-Call Service. Within three (3) Work Days of receipt of a  
32 written request from the City Representative, CONTRACTOR shall collect Civic Yard  
33 Trimmings generated by CITY crews at Large Civic Service Units.

34           5.06.2    Weekly Collection Service. Within five (5) Work Days of receipt  
35 of a written request from the City Representative, CONTRACTOR shall begin weekly  
36 collection of Civic Yard Trimmings from all Large Civic Service Units. Such weekly  
37 collection shall continue until written notification is received by CONTRACTOR from the

1 City Representative to discontinue said weekly collection. In addition, the City  
2 Representative may request on-call service on an as-needed basis.

3 5.06.3 Street Tree Prunings Collection. The City Representative may  
4 direct CONTRACTOR to collect Civic Yard Trimmings generated by CITY crews or  
5 CITY's designated tree-pruning contractors in the pruning of street trees and placed  
6 loose in the street.

7 5.06.4 Non-Collection of Large Civic Service Units. If Civic Yard  
8 Trimmings contain Contaminants, CONTRACTOR shall leave a Non-Collection Notice  
9 and shall utilize the Consolidated Utility Billing System to notify CITY of the  
10 Contaminants and their location so that CITY staff may remove the Contaminants.

11 5.06.5 Separate Collection/Weighing. CONTRACTOR shall collect all  
12 Civic Yard Trimmings separately from all other Yard Trimmings and shall have the Civic  
13 Yard Trimmings weighed separately at the Transfer Station or Yard Trimmings  
14 Processing Facility.

15 5.06.6 Compensation. CONTRACTOR shall be compensated for all  
16 Large Civic Service Unit Yard Trimmings Collection Service at the "Large Civic  
17 Collection & Pruning" per ton service rate set forth on Exhibit 1 as adjusted under the  
18 terms of this Agreement.

19 **5.07 Home Composting Bin Delivery.** CONTRACTOR shall deliver CITY-  
20 provided home composting bins to SFD Service Units and MFD Service Units on an on-  
21 going basis within ten (10) Work Days of receipt of written notification from the City  
22 Representative. CONTRACTOR shall deliver home composting bins to a location on  
23 the premises specified by the Service Recipient (e.g. doorstep, front porch). However,  
24 CONTRACTOR shall not be required to deliver a home composting bin to a backyard or  
25 side yard. CONTRACTOR shall provide storage for an inventory of CITY-provided  
26 home composting bins and shall account for all bins received and delivered.  
27 CONTRACTOR shall utilize the Consolidated Utility Billing System to provide CITY with  
28 a monthly inventory report documenting the number of bins received, bins delivered,  
29 and bins in storage. CONTRACTOR shall be compensated for this service at the  
30 "Delivery of Home Composting Bins" service rate set forth on Exhibit 1 as adjusted  
31 under the terms of this Agreement.

32 **5.08 Option For Compostable Waste Service.** At any time after July 1, 2008  
33 CITY may elect to have CONTRACTOR collect Compostable Waste from all Service  
34 Units in the Service District that use Yard Trimmings Carts for the set out and collection  
35 of Yard Trimmings.

36 5.08.1 Collection and Processing Plan. Within ninety (90) calendar  
37 days of notification from the City Representative that CITY has made this election,

1 CONTRACTOR shall submit a collection, processing and marketing plan to the City  
2 Representative. The plan shall include at least the processing requirements set out in  
3 Article 6 of this Agreement.

4 5.08.2 Commencement of Collection. Within sixty (60) calendar days  
5 of the City Representative's approval of CONTRACTOR's collection, processing and  
6 marketing plan, CONTRACTOR shall commence collection of Compostable Waste that  
7 is commingled with Yard Trimmings in the Yard Trimmings Carts.

8 5.08.3 Reporting. For any daily, monthly, quarterly or annual reports  
9 submitted to CITY after the commencement of collection of Compostable Waste,  
10 CONTRACTOR shall combine the tonnage of Compostable Waste with the tonnage of  
11 Yard Trimmings and list the total as Organic Waste in the reports otherwise required  
12 under this Agreement. For any route audit that is conducted after the commencement  
13 of collection of Compostable Waste, Compostable Waste shall be reported with Yard  
14 Trimmings as Organic Waste.

15 5.08.4 Until CITY exercises the option provided above in this Section  
16 5.07 and CONTRACTOR begins collection of Compostable Waste, references to  
17 Organic Waste in this Agreement shall include only Yard Trimmings. CONTRACTOR  
18 shall have no obligation to collect or process Compostable Waste unless and until CITY  
19 exercises the option described in this Section 5.08 and City Representative and  
20 CONTRACTOR have mutually agreed in writing for the collection and processing of  
21 Compostable Waste.

22 ***NOTE - In the event the CITY selects the Yard Trimmings Carts***  
23 ***optional service, the language in Sections 5.04 and 5.05 will be***  
24 ***replaced with the language in the following Sections 5.09 and 5.10***  
25 ***and the appropriate definitions in Article 1 will be amended.***

26 **5.09 Residential Yard Trimmings Collection Service**. CONTRACTOR shall  
27 perform Residential Yard Trimmings Collection Service in accordance with the following  
28 terms and conditions:

29 5.09.1 On-Street Yard Trimmings Collection Services.

30 5.09.1.1 Conditions of Service. CONTRACTOR shall provide On-  
31 Street Yard Trimmings Collection Service to all MFD Service Units and those Small Civic  
32 Service Units in the Service District whose Yard Trimmings are set out on a paved  
33 surface of the public roadway, closest accessible roadway, or other such location  
34 agreed to by CONTRACTOR and the Service Recipient, that will provide safe and  
35 efficient accessibility to the CONTRACTOR's collection crew and vehicle. The total  
36 quantity of Yard Trimmings collected from each Service Unit shall be un-limited.

---

1                   5.09.1.2 Manner of Collection. CONTRACTOR shall provide On-  
2 Street Yard Trimmings Collection Service with as little disturbance as possible and shall  
3 remove all Yard Trimmings except for Acceptable Residue. If CONTRACTOR's access  
4 to a Yard Trimmings set-out is blocked or inhibited by a Garbage cart, a recycling cart or  
5 a container provided by the Service Recipient, CONTRACTOR shall manually move  
6 such cart or container, collect the Yard Trimmings and manually replace the cart or  
7 container where it can be properly collected by the CITY-authorized collector.

8                   5.09.1.3 Non-Collection. CONTRACTOR shall not be required to  
9 provide On-Street Yard Trimmings Collection Service at any Service Unit where: the  
10 Yard Trimmings are not segregated from other waste materials; access is blocked or  
11 inhibited by vehicles or other obstacles, other than containers as described in Section  
12 5.09.1.2 above; or the Yard Trimmings are commingled with Contaminants. In the event  
13 CONTRACTOR does not collect Yard Trimmings for any of these reasons,  
14 CONTRACTOR shall leave a Non-Collection Notice at the Service Unit nearest the Yard  
15 Trimmings set-out explaining why collection was not made.

16                   5.09.2     YT Cart Collection Services.

17                   5.09.2.1 Conditions of Service. CONTRACTOR shall provide YT  
18 Cart Collection Service to all YT Cart Service Units (to be defined if needed as all SFD  
19 Service Units except Off-Street SFD Service Units and all Small Civic Service Units  
20 utilizing YT Carts.) in the Service District, where the Yard Trimmings (except for  
21 overages) and the Compostable Waste are properly containerized in a Yard Trimmings  
22 Cart and the Yard Trimmings Cart has been placed within three (3) feet of the curb,  
23 swale, paved surface of the public roadway, closest accessible roadway, or other such  
24 location agreed to by CONTRACTOR and the Service Recipient, that will provide safe  
25 and efficient accessibility to CONTRACTOR's collection crew and vehicles. The total  
26 quantity of Organic Waste collected from each Service Unit shall not be limited by the  
27 number of Yard Trimmings Carts.

28                   5.09.2.2 Manner of Collection. CONTRACTOR shall provide YT  
29 Cart Collection Service with as little disturbance as possible. Except in the case of on-  
30 premises service, CONTRACTOR shall leave any Yard Trimmings Cart in an upright  
31 position at the same point from which its contents were collected. In the case of on  
32 premises service, CONTRACTOR shall remove the Yard Trimmings Cart from the back  
33 or side of the Service Unit (or from such other location as agreed to by CONTRACTOR  
34 and the Service Recipient), shall empty the contents into the collection vehicle, and  
35 shall return the Yard Trimmings Cart to the location from which it was removed.  
36 CONTRACTOR shall not empty the contents of the Yard Trimmings Cart onto the street  
37 for the purpose of collection.

1                                   CONTRACTOR's employees shall follow the regular  
2 walk for pedestrians while on private property and shall not trespass nor cross property  
3 to the adjoining premises unless the occupant or owner of both properties has given  
4 permission. Care shall be taken to prevent damage to property, including flowers,  
5 shrubs, and other plantings.

6                                   5.09.2.3 Non-Subscription On-Premises Cart Service.

7 Notwithstanding any term or condition set forth in this Agreement, CONTRACTOR shall  
8 provide on-premises collection of Yard Trimmings from a SFD Service Unit utilizing a  
9 Yard Trimmings Cart for the set out of Organic Waste if all adult occupants residing  
10 therein have disabilities that prevent them from setting the Yard Trimmings Cart at the  
11 curb for collection and if a request for non-subscription on-premises service has been  
12 made to, and approved by, the City Representative in the manner required by CITY. On  
13 or before May 1, 2007, the City Representative shall notify CONTRACTOR through the  
14 Consolidated Utility Billing System of any Service Recipients requiring non-subscription  
15 on-premises service. Thereafter during the term of this Agreement the City  
16 Representative shall notify CONTRACTOR through the Consolidated Utility Billing  
17 System of any Service Recipients requiring non-subscription on-premises service, along  
18 with the date such service is to begin. CONTRACTOR shall be paid the monthly base  
19 rate set forth on line A.2 of Exhibit 1 for each cart; no additional monies shall be due to  
20 CONTRACTOR for the provision of non-subscription on-premises service.

21                                   CONTRACTOR may at any time, but not more often  
22 than twice in any Agreement Year, request that the City Representative verify the  
23 eligibility of a SFD Service Unit for non-subscription on-premises service. Upon receipt  
24 of CONTRACTOR's request, the City Representative shall make a determination as to  
25 whether the SFD Service Unit meets the eligibility requirements and shall notify  
26 CONTRACTOR in writing of such determination within sixty (60) calendar days of  
27 CONTRACTOR's request. At the time CONTRACTOR makes the request for  
28 verification of eligibility, CONTRACTOR may submit to the City Representative any  
29 information relevant to the City Representative's determination.

30                                   5.09.2.4 Subscription On-Premises Cart Service. Notwithstanding

31 any term or condition set forth in this Agreement, CONTRACTOR shall provide on-  
32 premises collection of Organic Waste from a SFD Service Unit to those Service  
33 Recipients subscribing to such service, except that subscription on-premises cart  
34 collection service shall not be available in those instances where the on-premises  
35 collection location of the Yard Trimmings Cart is more than one hundred (100) yards  
36 from the normal curb set out location. The City Representative shall notify  
37 CONTRACTOR through the Consolidated Utility Billing System writing of any Service

1 Recipient requesting subscription on-premises service along with the date such service  
2 is to begin.

3                   5.09.2.5 On-Premises Collection Day. CONTRACTOR shall  
4 provide on-premises collection on the same Work Day that On-Street Yard Trimmings  
5 Collection Service would otherwise be performed for the Service Unit.

6                   5.09.3 Off-Street Cart Collection Service.

7                   5.09.3.1 Conditions of Service. CONTRACTOR shall provide Off-  
8 Street Yard Trimmings Cart Collection Service (*this term will replace the current*  
9 *Mandatory Yard Trimmings Cart Collection Service if needed*) to those Service Units in  
10 the Service District designated by CITY through the Consolidated Utility Billing as  
11 requiring Off-Street Yard Trimmings Cart Collection Service where the Yard Trimmings,  
12 except for overages, and the Compostable Waste are properly containerized in a Yard  
13 Trimmings Cart, and the Yard Trimmings Cart has been placed within three (3) feet of  
14 the curb, swale, paved surface of the public roadway, closest accessible roadway, or  
15 other such location agreed to by CONTRACTOR and the Service Recipient, that will  
16 provide safe and efficient accessibility to the CONTRACTOR's collection crew and  
17 vehicle. The total quantity of Organic Waste collected from each Service Unit shall not  
18 be limited by the number of Yard Trimmings Carts. Service Units receiving Off-Street  
19 Cart Collection Service may handle Yard Trimmings overages as set forth in Section  
20 5.09.4 below.

21                   5.09.3.2 Manner of Collection. CONTRACTOR shall provide Off-  
22 Street Cart Collection Service with as little disturbance as possible. Except in the case  
23 of on-premises service, CONTRACTOR shall leave any Yard Trimmings Cart in an  
24 upright position at the same point from which its contents were collected. In the case of  
25 on premises service, CONTRACTOR shall remove the Yard Trimmings Cart from the  
26 back or side of the Service Unit (or from such other location as agreed to by  
27 CONTRACTOR and the Service Recipient), shall empty the contents into the collection  
28 vehicle, and shall return the Yard Trimmings Cart to the location from which it was  
29 removed. CONTRACTOR shall not empty the contents of the Yard Trimmings Cart onto  
30 the street for the purpose of collection.

31                   CONTRACTOR's employees shall follow the regular walk  
32 for pedestrians while on private property and shall not trespass nor cross property to the  
33 adjoining premises unless the occupant or owner of both properties has given  
34 permission. Care shall be taken to prevent damage to property, including flowers,  
35 shrubs, and other plantings.

36                   On or before October 1, 2006, CITY shall provide  
37 CONTRACTOR with a list of Service Units required to have Off-Street Yard Trimmings

1 Cart Collection Service. Prior to March 1, 2007, CONTRACTOR shall review the list of  
2 Service Units required to have Off-Street Yard Trimmings Cart Collection Service and  
3 shall provide the City Representative with recommendations of additions or deletions to  
4 the list based on CONTRACTOR's knowledge of the collection routes, the applicable  
5 Municipal Code provisions, and safety or logistical factors. The City Representative  
6 shall review the recommendations and provide CONTRACTOR with a final list of Off-  
7 Street Yard Trimmings Cart Collection Service Units within thirty (30) calendar days of  
8 receipt of the recommendations from CONTRACTOR.

9   During the term of this Agreement, CITY may add or  
10 delete Service Units to/from the Off-Street Yard Trimmings Cart Collection Service  
11 program. Except in emergency situations identified by the City Representative, all such  
12 additions or deletions shall become effective the first day of the month immediately  
13 following the month in which CITY provides notice to CONTRACTOR of the addition or  
14 deletion. If an added Service Unit does not already have a Yard Trimmings Cart,  
15 CONTRACTOR shall deliver a Yard Trimmings Cart to the Service Unit prior to the  
16 effective date of the addition. Upon the effective date of any addition, CONTRACTOR  
17 shall provide Off-Street Yard Trimmings Cart Collection Service to the added Service  
18 Unit(s). Upon the effective date of any deletion, CONTRACTOR shall provide YT Cart  
19 Collection Service as specified by the City Representative. The Partial Month Service  
20 provisions of Section 10.02.4 shall not apply in the case of additions or deletions under  
21 this paragraph, and CONTRACTOR shall be compensated for each month based upon  
22 the service in effect on the last calendar day of that month and the applicable rate in  
23 effect for that month.

24   CONTRACTOR may not add or delete Service Units  
25 to/from the Off-Street or Non-Subscription On-Premise Yard Trimmings Cart Collection  
26 Service programs until notified by the CITY in the manner set forth in the preceding  
27 paragraph.

28                   5.09.4     Yard Trimmings Overages. All Residential Yard Trimmings  
29 Collection Services shall be unlimited as to total weight or volume of Organic Waste  
30 collected. CONTRACTOR shall collect Yard Trimmings overages from a Service Unit  
31 with YT Cart Collection Service or Off-Street Yard Trimmings Cart Collection Service as  
32 long as the Yard Trimmings overages are set out beside a full Yard Trimmings Cart  
33 either in bundles tied with twine or in a can or other container provided by the Service  
34 Recipient and clearly labeled as a Yard Trimmings container. CONTRACTOR shall  
35 provide Yard Trimmings labels to identify additional containers upon request of the  
36 Service Recipient. Service Recipients with YT Cart Collection Service may also elect to  
37 place Yard Trimmings overages in the street for on-street collection in accordance with  
38 the Conditions of Service set forth in Section 5.09.1.1 above. Service Recipients with

---

1 YT Cart Collection Service may elect to order more than one cart, and CONTRACTOR  
2 shall be paid the monthly base rate set forth on line A.2 of Exhibit 1 for each cart.  
3 CONTRACTOR may offer to collect Yard Trimmings overages from a Service Unit with  
4 Off-Street Yard Trimmings Cart Collection Service by offering extra carts at no charge to  
5 the Service Recipient and at no additional cost to the CITY.

6 5.09.5 Non-Collection of Carts and Overages.

7 5.09.5.1 Carts. Except as set forth below in this Section 5.09.5.1,  
8 CONTRACTOR shall not be required to provide Yard Trimmings Service using Yard  
9 Trimmings Carts if the Service Recipient does not segregate the Organic Waste from  
10 Contaminants. If Organic Waste is contaminated through commingling with other waste  
11 materials, CONTRACTOR shall, if practical, separate the Organic Waste from the  
12 Contaminants. CONTRACTOR shall then collect the Organic Waste and leave the  
13 Contaminants in the Yard Trimmings Cart along with a Non-Collection Notice explaining  
14 why the Contaminants are not considered Organic Waste. However, in the event the  
15 Organic Waste and Contaminants are commingled to the extent that they cannot easily  
16 be separated by CONTRACTOR or the nature of the Contaminants renders the entire  
17 contents of the Yard Trimmings Cart contaminated, CONTRACTOR will leave the Yard  
18 Trimmings Cart un-emptied along with a Non-Collection Notice that contains instructions  
19 on the proper procedures for setting out Organic Waste.

20 5.09.5.2 Overages. CONTRACTOR shall have no obligation to  
21 collect Yard Trimmings overages as provided in Section 5.09.4 where: the Yard  
22 Trimmings container provided by the Service Recipient or the bundle exceeds the  
23 allowable weight limit of sixty (60) pounds; a bundle exceeds five (5) feet in length; the  
24 Yard Trimmings are in a container that is not clearly marked to indicate contents; the  
25 Yard Trimmings contain Contaminants; or the Yard Trimmings are not placed beside a  
26 full Yard Trimmings Cart provided by CONTRACTOR. CONTRACTOR shall have no  
27 obligation to collect overages of Compostable Waste.

28 If CONTRACTOR does not collect Organic Waste for any  
29 reason, CONTRACTOR shall leave a Non-Collection Notice at the Service Unit in front  
30 of which the Organic Waste is placed.

31 5.09.5.3 Christmas Trees. CONTRACTOR shall collect all natural  
32 Christmas trees, including flocked Christmas trees, set out by Service Units. Christmas  
33 trees shall be collected from the street from SFD Service Units with YT Collection  
34 Service, and from the curb from SFD Service Units with Off-Street Yard Trimmings Cart  
35 Collection Service. In the case of MFD Service Units, Christmas trees shall be collected  
36 in the manner agreed upon between the management of the MFD Service Unit and  
37 CONTRACTOR. CONTRACTOR shall utilize the required MFD service agreement to  
38 specify the place and manner in which Christmas trees will be collected for each MFD

---

1 Service Unit. There shall be no additional payment to the CONTRACTOR for the  
2 collection of Christmas trees.

3           5.09.6   Fall Leaf Removal. CONTRACTOR shall remove piles of leaves  
4 from all public streets served by the Residential Street Sweeping Service program, and  
5 from all other public streets in front of or adjacent to a SFD Service Unit, MFD Service  
6 Unit, or Small Civic Service Unit.

7           5.09.7   Service Agreements. CONTRACTOR shall obtain a signed  
8 service agreement from each SFD Service Unit complex or development with private  
9 streets, from each MFD Service Unit, and from each Small Civic Service Unit for the  
10 provision of Residential Yard Trimmings Collection Services. If an MHP chooses to  
11 subscribe to Yard Trimmings Carts for common areas, CONTRACTORS must obtain a  
12 signed service agreement, at which time it becomes an MHP Service Unit.  
13 CONTRACTOR shall provide the City Representative with copies of all signed service  
14 agreements within ten (10) Work Days of receipt by CONTRACTOR. To the extent  
15 available, CITY will provide CONTRACTOR with a list of private streets in  
16 CONTRACTOR's Service District, and shall provide updated lists as additional streets  
17 are added or additional information is available. The City Representative will assist  
18 CONTRACTOR in contacting representatives of Small Civic Service Units. The service  
19 agreements will contain at least the following information: Name and address of  
20 complex, homeowners association, or Small Civic Service Unit; number of units; name,  
21 address and phone number of contact person; permission for CONTRACTOR to enter  
22 the private streets; type of Residential Yard Trimmings Collection Service to be provided  
23 (On-Street or Cart); number and location of Yard Trimmings Carts and/or on-street set-  
24 out locations; and, if applicable, manner and location of Christmas tree removal. MFD  
25 Service Units may elect to subscribe to Yard Trimmings Cart Service, if they chose not  
26 to utilize on-street service. MHP Service Units may elect to subscribe to Yard  
27 Trimmings Cart Service for common areas of the complex. No MFD Service Units and  
28 MHP Service Units shall be provided with Yard Trimmings Cart Service by the  
29 CONTRACTOR until a completed service agreement has been submitted to the CITY  
30 by the CONTRACTOR.

31           5.09.7.1 CONTRACTOR shall provide Residential Yard Trimmings  
32 Collection Services to all Service Units in the Service District unless such service is  
33 specifically refused. CONTRACTOR will not be compensated for the provision of these  
34 services to those Service Units for which service agreements are required until copies of  
35 the service agreements are provided to the City Representative in the required manner.  
36 In the event CONTRACTOR is unable to obtain a signed service agreement from a  
37 Service Unit through no fault of CONTRACTOR, CITY will assist CONTRACTOR in

1 resolving the situation. CONTRACTOR will not be compensated for those Service Units  
2 that refuse Yard Trimmings Services.

3           5.09.8 Spillage. CONTRACTOR shall not be responsible for cleaning  
4 up sanitary conditions around Yard Trimmings Carts or other containers caused by the  
5 carelessness of the Service Recipient; however, CONTRACTOR shall clean up any  
6 Organic Waste spilled from a Yard Trimmings Cart by CONTRACTOR or its employees.  
7 During hauling, all Organic Waste shall be contained, covered or enclosed so that  
8 leaking, spilling and blowing of the Organic Waste is prevented. CONTRACTOR shall  
9 be responsible for the immediate clean-up of any spillage caused by CONTRACTOR or  
10 its employees.

11           5.09.9 Courtesy Notices. In the following instances, CONTRACTOR  
12 shall collect the Yard Trimmings as set out, and leave a courtesy notice at the nearest  
13 Service Unit: Where the Yard Trimmings are placed less than twelve (12) inches from  
14 the curb; where the length, width or height of a Yard Trimmings pile exceeds five (5)  
15 feet; where Yard Trimmings are placed in a marked bicycle lane; where Yard Trimmings  
16 are placed in front of a red curb or no parking zone; or where Yard Trimmings are  
17 placed in an area which impedes traffic flow or poses a potential safety hazard.

18           5.09.10 Yard Trimmings of Unknown Origin. The San José Municipal  
19 Code prohibits the placement of Yard Trimmings in the street other than in front of the  
20 Service Unit from which the Yard Trimmings were generated. However, CONTRACTOR  
21 shall collect Yard Trimmings whose origins are unknown, or which are not placed in front  
22 of a Service Unit, as long as the Yard Trimmings otherwise meet the criteria for  
23 collection set forth above. The City Representative may investigate areas with multiple  
24 occurrences of Yard Trimmings of unknown origins.

25           5.09.11 Purchase and Distribution of Yard Trimmings Carts.  
26 CONTRACTOR shall purchase and distribute fully assembled and functional Yard  
27 Trimmings Carts to new Service Units receiving YT Cart Collection Service or Off-Street  
28 Yard Trimmings Cart Collection Service, that are added to CONTRACTOR's Service  
29 District during the term of this Agreement. The City Representative will provide  
30 CONTRACTOR with addresses of new Service Units requiring Yard Trimmings Carts  
31 and the number and size of the Yard Trimmings Carts to be provided to each Service  
32 Unit. Except as provided in Section 4.04 of this Agreement, CONTRACTOR shall  
33 complete the distribution within ten (10) Work Days of receipt of the new Service Unit  
34 address through the Consolidated Utility Billing System.

35           5.09.12 Replacement of Yard Trimmings Carts. CONTRACTOR's  
36 employees shall take care to prevent damage to Yard Trimmings Carts by unnecessary  
37 rough treatment. Any Yard Trimmings Cart damaged by CONTRACTOR shall be  
38 replaced by CONTRACTOR, at CONTRACTOR's expense, within ten (10) Work Days

---

1 of notification from the City Representative, at no cost or inconvenience to the Service  
2 Recipient and at no cost to CITY.

3                   Upon notification to CONTRACTOR by the City Representative  
4 or a Service Recipient that the Service Recipient's Yard Trimmings Cart has been stolen  
5 or that it has been damaged beyond repair through no fault of CONTRACTOR,  
6 CONTRACTOR shall deliver a replacement Yard Trimmings Cart to such Service  
7 Recipient within ten (10) Work Days of the notification.

8                   Each Service Recipient shall be entitled to the replacement of  
9 one (1) lost, destroyed, or stolen Yard Trimmings Cart during the term of this  
10 Agreement, as extended, at no cost to the Service Recipient or CITY. Except in the  
11 case of a Yard Trimmings Cart that must be replaced because of damage caused by  
12 CONTRACTOR or in the case where CONTRACTOR elects to replace a Yard  
13 Trimmings Cart rather than repair it on-site, CONTRACTOR shall be compensated for  
14 the cost of those replacements in excess of one (1) per Service Recipient during the  
15 term of this Agreement, in accordance with the Yard Trimmings "Cart Exchanges in  
16 Excess of Once per Year" service rate set forth in Exhibit 1 as adjusted under the terms  
17 of this Agreement. CONTRACTOR understands and agrees that this provision is  
18 intended to be applied on a per Service Recipient basis, not a per Service Unit basis.

19                   5.09.13 Repair of Yard Trimmings Carts. CONTRACTOR shall be  
20 responsible for repair of Yard Trimmings Carts in the areas to include, but not be limited  
21 to, hinged lids, wheels and axles. Within ten (10) Work Days of notification by the City  
22 Representative or a Service Recipient of the need for such repairs, CONTRACTOR  
23 shall repair the Yard Trimmings Cart or if necessary remove the Yard Trimmings Cart for  
24 repairs and deliver a replacement Yard Trimmings Cart to the Service Recipient.

25                   5.09.14 Yard Trimmings Cart Exchange. Within ten (10) Work Days of  
26 notification to CONTRACTOR by the City Representative or a Service Recipient that a  
27 change in the size of the Yard Trimmings Cart is required, CONTRACTOR shall deliver  
28 a replacement Yard Trimmings Cart(s) to the Service Recipient. Each Service Unit  
29 shall be eligible to receive one (1) free Yard Trimmings Cart exchange per Agreement  
30 Year during the term of this Agreement, as extended. CONTRACTOR shall be  
31 compensated for the cost of those exchanges in excess of one (1) per Agreement Year,  
32 in accordance with the Yard Trimmings "Cart Exchanges in Excess of Once per Year"  
33 service rate set forth in Exhibit 1 as adjusted under the terms of this Agreement.

34                   5.09.15 Ownership of Yard Trimmings Carts. CONTRACTOR shall  
35 retain ownership of Yard Trimmings Carts during the term of this Agreement. Upon the  
36 expiration or termination of this Agreement, CONTRACTOR shall transfer to CITY and  
37 CITY shall obtain ownership of all Yard Trimmings Carts that are in the possession of a  
38 Service Unit on the date of such expiration or termination. CONTRACTOR shall retain

1 ownership of all Yard Trimmings Carts in CONTRACTOR's possession at the  
2 termination or expiration of this Agreement.

3 **5.10 Small Civic Service Unit Collection.**

4 5.10.1 CONTRACTOR shall provide weekly collection of Yard  
5 Trimmings generated by those Small Civic Service Units listed on Exhibit 6 to this  
6 Agreement that utilize On-Street Yard Trimmings Collection Service, and weekly  
7 collection of Organic Waste generated by those Small Civic Service Units that utilize  
8 Off-Street Yard Trimmings Cart Collection Service. CONTRACTOR shall be  
9 compensated at the SFD Service Unit base rate for those Small Civic Service Units for  
10 which a copy of the signed service agreement has been provided to the City  
11 Representative.

12 5.10.2 Entry to Parks or Gardens. Where necessary, CONTRACTOR  
13 shall enter neighborhood parks or community gardens to collect Yard Trimmings.  
14 CONTRACTOR shall not be required to operate its equipment on an unpaved surface.  
15 CONTRACTOR shall enter locked community gardens and neighborhood parks where  
16 necessary. CITY shall provide keys to locked Small Civic Service Units.

17 5.10.3 On-Call Service. Within three (3) Work Days of receipt of a  
18 written request from the City Representative, CONTRACTOR shall collect Civic Yard  
19 Trimmings generated by CITY crews at Small Civic Service Units. CONTRACTOR shall  
20 collect all such Yard Trimmings separately from all other Yard Trimmings and shall have  
21 such Yard Trimmings weighed separately at the Transfer Station or Yard Trimmings  
22 Processing Facility. CONTRACTOR shall be compensated for this service at the "Large  
23 Civic Collection & Pruning" per ton service rate set forth in Exhibit 1 as may be adjusted  
24 under the terms of this Agreement.

25 5.10.4 Non-Collection of Small Civic Service Units. CONTRACTOR  
26 shall have no obligation to collect Organic Waste from Small Civic Service Units where  
27 the Organic Waste contains Contaminants. If the Organic Waste contains  
28 Contaminants, CONTRACTOR shall leave a Non-Collection Notice at the Small Civic  
29 Service Unit; if there is no appropriate location to leave a Non-Collection Notice,  
30 CONTRACTOR shall complete a Non-Collection Notice, send a copy to the City  
31 Representative, and utilize the Consolidated Utility Billing System to notify CITY of the  
32 non-collection.

33 **ARTICLE 6. ORGANIC WASTE PROCESSING**

34 **6.01 Yard Trimmings Processing Facility and Transfer Station.**

35 CONTRACTOR shall provide the Yard Trimmings Processing Facility, or provide  
36 alternate capacity as described below, for processing all Organic Waste collected

---

1 pursuant to this Agreement. CONTRACTOR may utilize the Transfer Station for delivery  
2 of Yard Trimmings and transfer to the Yard Trimmings Processing Facility. Until such  
3 time as CITY exercises its option under Section 5.08 and CITY and CONTRACTOR  
4 have agreed to terms for the collection and processing of Compostable Waste,  
5 CONTRACTOR shall only be required to provide capacity for processing Yard  
6 Trimmings.

7           6.01.1    CITY Access. CONTRACTOR shall ensure that representatives  
8 of CITY have access to the Yard Trimmings Processing Facility and the Transfer Station  
9 during normal business hours. CONTRACTOR shall also ensure that the Yard  
10 Trimmings Processing Facility is accessible to CITY vehicles picking up CITY's  
11 Approved Products and that the products from the Organic Waste listed on **Exhibit 14**  
12 ("APPROVED PRODUCTS") are loaded onto CITY vehicles during normal operating  
13 hours Monday through Friday at no charge to CITY. Notwithstanding the foregoing,  
14 nothing herein shall require CONTRACTOR to operate the Yard Trimmings Processing  
15 Facility or the Transfer Station at any times not allowed by any permit or approvals  
16 issued for the facility.

17           6.01.2    Processing of Organic Waste. CONTRACTOR shall ensure  
18 there is sufficient capacity at the Yard Trimmings Processing Facility for receiving,  
19 processing, and curing all Organic Waste collected by CONTRACTOR pursuant to this  
20 Agreement, and for processing Organic Waste into Approved Products in accordance  
21 with the requirements of Exhibit 14, and for storage of the Approved Products.  
22 CONTRACTOR shall maintain procedures, records and internal controls to record  
23 weights of incoming material before Organic Waste collected pursuant to this  
24 Agreement is commingled with Yard Trimmings or Compostable Waste from any other  
25 source. At a minimum, CONTRACTOR shall perform or shall cause to be performed, all  
26 of the following weighings, and CONTRACTOR shall record the weights in accordance  
27 with reporting requirements of this Agreement.

28           6.01.2.1 All Organic Waste collected pursuant to this Agreement shall be  
29 weighed upon the initial delivery to the Transfer Station and CONTRACTOR shall report  
30 all weights (both gross and tare) and related delivery information, including date, time,  
31 material type, route and truck number for each load. In addition, CONTRACTOR shall  
32 report the total weight of all compostable materials delivered to the Transfer Station, the  
33 total weight of the residue generated from handling compostable materials at the  
34 Transfer Station from any source, the weight of compostable materials delivered from  
35 the Transfer Station to the Yard Trimmings Processing Facility, and the weight of  
36 compostable materials delivered from the Transfer Station to any other facility for  
37 disposal or processing.

---

1           6.01.2.2 All Organic Waste collected pursuant to this Agreement shall be  
2 weighed upon delivery to the Yard Trimmings Processing Facility and CONTRACTOR  
3 shall report all weights (both gross and tare) and related delivery information, including  
4 date, time, material type, route and truck number for each load. In addition,  
5 CONTRACTOR shall report the total weight of all compostable materials delivered  
6 directly to the Yard Trimmings Processing Facility from any source and the total weight  
7 of the residue generated from handling compostable materials at the Yard Trimmings  
8 Processing Facility.

9           6.01.2.3 All Organic Waste that is processed into Approved Products  
10 shall be weighed at the time the Approved Products leave the Yard Trimmings  
11 Processing Facility. In addition, CONTRACTOR shall report the weight of all other  
12 materials that are sent off-site from the Yard Trimmings Processing Facility.

13           6.01.2.4 All scales shall be registered with the County Department of  
14 Weights and Measures and shall be regularly maintained to ensure their reliability and  
15 continued functioning. Current certificates of registration, inspection reports and all  
16 maintenance records shall be made available for review by CITY upon receipt of written  
17 request from the City Representative. Scales shall be operated in the same manner as  
18 required by State of California weigh master regulations.

19           **6.02 Alternate Processing Capacity.** CONTRACTOR shall secure  
20 processing capacity at an alternative facility, approved by the City Representative, for  
21 use in the event CONTRACTOR is unable to deliver Organic Waste at the Yard  
22 Trimmings Processing Facility because the facility is closed as a result of the order of a  
23 regulatory agency having jurisdiction over the Yard Trimmings Processing Facility or in  
24 the event the Organic Waste can not be processed at the Yard Trimmings Processing  
25 Facility as required by this Agreement. Processing of Organic Waste at any such  
26 alternate capacity facility shall be in accordance with the requirements for the Yard  
27 Trimming Processing Facility and Transfer Station set forth in Section 6.01 above,  
28 including CITY access requirements and weight reporting.

29           **6.03 Organic Waste Processing Services.** CONTRACTOR shall ensure that  
30 all Organic Waste collected pursuant to this Agreement is diverted from the Disposal  
31 Facility in accordance with AB 939 (the California Integrated Waste Management Act,  
32 Public Resources Code § 40000 *et seq.*) and subsequent legislation and regulations  
33 and are processed into one or more of the Approved Products listed in Exhibit 14 to this  
34 Agreement, as may be amended from time to time.

35           CONTRACTOR shall ensure that the Organic Waste collected pursuant to  
36 this Agreement is neither disposed of in a landfill nor utilized as alternative daily cover  
37 (ADC) at a landfill or other landfill application without prior written consent from CITY's  
38 Director of Environmental Services. CONTRACTOR shall permit only incidental residue

1 (not more than 5% of incoming weight) to be landfilled, used as alternative daily cover,  
2 or used in any other landfill application.

3 6.03.1 Delivery To Yard Trimmings Processing Facility.

4 CONTRACTOR shall deliver all Organic Waste collected pursuant to this Agreement to  
5 the Yard Trimmings Processing Facility or to the Transfer Station or to an alternate  
6 facility approved in advance, in writing, by the City Representative. All expenses related  
7 to processing and marketing of Organic Waste shall be the sole responsibility of  
8 CONTRACTOR.

9 6.03.2 Approved Products. CONTRACTOR shall ensure that all  
10 Organic Waste collected pursuant to this Agreement is processed only into the  
11 Approved Products listed in Exhibit 14. In the event additional products are identified by  
12 CONTRACTOR or the operator of the Yard Trimmings Processing Facility,  
13 CONTRACTOR may make written request for approval of such additional products to  
14 CITY's Director of Environmental Services ("Director"). However, CONTRACTOR shall  
15 not process, or allow processing of, Organic Waste delivered pursuant to this  
16 Agreement into any such additional products unless such additional products are  
17 approved by the Director in writing. It is expressly understood that the Director may  
18 reject additional products and that nothing herein shall in any way be deemed to require  
19 the Director to authorize any additional products as Approved Products.

20 6.03.3 Compost Requirements. CONTRACTOR shall ensure, and  
21 document to the satisfaction of the City Representative, that at least fifty percent (50%)  
22 by weight of the Organic Waste collected pursuant to this Agreement is composted such  
23 that the resulting compost has undergone the Process to Further Reduce Pathogens  
24 (PFRP) as outlined in "Standards for the Use and Disposal of Sewage Sludge", 40 Code  
25 of Federal Regulations Part 503 dated August 4, 1999 , Appendix B to Part 503-  
26 Pathogen Treatment process, item B page 9404, and has been composted for at least  
27 thirty (30) days.

28 6.03.4 CITY's Use of Approved Products. CONTRACTOR shall make  
29 available to CITY Seven Hundred Sixty (760) tons of Approved Products per year at no  
30 additional cost to CITY. The City Representative will notify CONTRACTOR as to CITY's  
31 needs for delivery of Approved Products throughout the Agreement Year. CITY shall  
32 select the types and quantities of Approved Products for CITY use. CONTRACTOR  
33 shall deliver compost and wood chips to the CITY facilities identified by the City  
34 Representative; such delivery shall be at no additional cost to CITY.

35 CITY will not sell Approved Products to any person or other  
36 entity without the express written consent of CONTRACTOR. CITY will not give away  
37 Approved Products to any single person or other entity in excess of two (2) cubic yards

---

1 per person or entity for each CITY-sponsored event without the prior written consent of  
2 CONTRACTOR.

3           6.03.5 Annual Reconciliation. If upon the last day of the Agreement  
4 Year of any Agreement Year of this Agreement, CONTRACTOR has not made available  
5 to CITY the amount of the Approved Product required by Section 6.03.4, CITY will be  
6 credited for the amount not made available and this credit shall be carried over to the  
7 next Agreement Year. If at the end of this Agreement, credit for Approved Products is  
8 still due to CITY, the cost of these materials will be deducted from CONTRACTOR's last  
9 payment.

10                           The cost of these materials will be based on the average rate  
11 being charged by not less than three (3) California compost retailers for similar  
12 materials, less ten percent (10%). Should the cost of materials exceed  
13 CONTRACTOR's last payment, CITY will bill CONTRACTOR for the amount due and  
14 CONTRACTOR shall remit payment to CITY in full within forty-five (45) days of receipt  
15 of the invoice.

16           6.03.6 Additional Provisions. CITY may elect to waive its option to  
17 utilize the full amount of Approved Products during any Agreement Year of this  
18 Agreement. If CITY does not take delivery of Approved Products made available by  
19 CONTRACTOR to CITY within three (3) months following the end of an Agreement  
20 Year, CONTRACTOR's obligation to deliver Approved Products for that Agreement Year  
21 shall be deemed to be satisfied.

22           **6.04 Disposal of Residue.** CONTRACTOR shall properly dispose of any and  
23 all residue removed at the Transfer Station or remaining after the processing of Organic  
24 Waste. Such disposal shall be at CONTRACTOR's sole cost and expense. The  
25 residue shall not be included in the disposal capacity provided by CITY pursuant to  
26 Article 12 of this Agreement.

## 27           **ARTICLE 7. RESIDENTIAL STREET SWEEPING SERVICES**

28           Beginning July 1, 2007, and continuing until the expiration or termination of this  
29 Agreement, CONTRACTOR shall provide Residential Street Sweeping Services in the  
30 Service District in accordance with the terms and conditions of this Agreement.

31           **7.01 Transition.** CONTRACTOR understands and agrees that the time  
32 between the Effective Date and July 1, 2007, is intended to provide CONTRACTOR with  
33 sufficient time to, among other things, order equipment, prepare necessary routing,  
34 obtain permits and licenses, establish/build facilities, begin the public awareness  
35 program as part of CONTRACTOR's transition program, coordinate with CITY's public  
36 awareness program, and integrate other changes as specified in this Agreement.

1 CONTRACTOR shall be responsible for the provision of all Residential Street Sweeping  
2 Service in the Service District beginning July 1, 2007. CONTRACTOR shall implement  
3 the transition in accordance with CONTRACTOR's Transition Plan which is set forth in  
4 Exhibit 7 to this Agreement. The Transition Plan may be modified from time to time by  
5 the mutual written agreement of CONTRACTOR and the City Representative in order to  
6 provide a smooth transition of services, provided that no such modification shall extend  
7 any time for performance beyond the dates set forth in this Agreement.

8 **7.02 Residential Street Sweeping Service.**

9 7.02.1 Manner of Service. CONTRACTOR shall provide a complete  
10 sweep of all Curb Miles on all publicly maintained Residential Streets located within the  
11 Service District. Within any Curb Mile, CONTRACTOR shall be responsible for  
12 sweeping all curbs including Median Islands, traffic calming islands and the corners  
13 from any cross street intersecting the subject street, but shall not be responsible for  
14 sweeping Traffic Islands. Service shall include the collection of debris and Acceptable  
15 Residue remaining after the collection of Yard Trimmings. CONTRACTOR shall obey all  
16 laws governing the operation of the sweepers on a public street, and shall perform its  
17 operations so that sweepers are traversing their routes in the normal direction of traffic.

18 7.02.2 Water. CONTRACTOR shall obtain water services from the  
19 appropriate water utility companies for the water necessary in the street sweeping  
20 operation. The cost of the water shall be borne by CONTRACTOR. The proper volume  
21 and pressure shall be supplied by the sweeper at all times for adequate dust control  
22 during the sweeping operation. CITY may direct CONTRACTOR to use reclaimed or  
23 recycled water due to increased availability of reclaimed water.

24 7.02.3 Sweeper Speed. CONTRACTOR shall operate the sweepers at  
25 a speed of not more than six (6) miles per hour when sweeping or when the sweeper  
26 brooms are down, unless CONTRACTOR can demonstrate that the sweeper can  
27 operate efficiently and safely at a higher speed. CITY will use industry standards,  
28 Environmental Protection Agency information, and the sweeper manufacturer's  
29 recommendation on the speed of sweepers when considering speeds greater than six  
30 (6) miles per hour.

31 7.02.4 Width of Sweeper Path. CONTRACTOR shall sweep a path,  
32 with all brooms down, with a width of not less than eight (8) feet unless parked vehicles,  
33 structures, or other objects prohibit the safe sweeping of this path width. The path shall  
34 begin at the face of the curb, and include the flow line of the gutter. Unless blocked by  
35 parked cars, Garbage carts, recycling carts, Yard Trimmings Carts or Yard Trimmings  
36 piles, the face of the curb and gutter shall always be included within the sweeper path.  
37 On those Residential Streets with no curb, the width of the sweeper path shall be not

1 less than eight (8) feet measured from the edge of the pavement toward the center of  
2 the street.

3           7.02.5    Frequency and Day of Service. CONTRACTOR shall provide  
4 Residential Street Sweeping Service for each Curb Mile in the Service District once  
5 every month (to be updated based on frequency selected by CITY) on a scheduled  
6 route basis. Residential Street Sweeping Service shall be scheduled on the Work Day  
7 following the normal Yard Trimmings Service day. However, in those instances where  
8 the scheduled Residential Street Sweeping Service day falls on a holiday,  
9 CONTRACTOR shall adjust the route schedule as set forth in Section 3.05. In the  
10 event the Yard Trimmings Service day is moved to Saturday as a result of a holiday, the  
11 Residential Street Sweeping Service will be performed on the next Work Day.

12           7.02.6    Hours of Service. CONTRACTOR shall provide Residential  
13 Street Sweeping Service commencing no earlier than 7:00 a.m. and terminating no later  
14 than 5:00 p.m., Monday through Friday with no service on Saturday, except for holiday  
15 service as set forth in Section 3.05 of this Agreement, or Sunday. The hours, days, or  
16 both of service may be extended due to extraordinary circumstances or conditions with  
17 the prior verbal consent of the City Representative.

18           7.02.7    Dumpsites. CONTRACTOR shall establish and maintain a list  
19 of assigned dumpsite locations for every route. Dumpsite locations shall be within the  
20 CITY right-of-way and located within a reasonable distance of every route served. To  
21 minimize the impact on CITY streets, CONTRACTOR may use the same dumpsite for  
22 multiple routes. CONTRACTOR shall obtain the approval of the City Representative for  
23 each dumpsite location, and shall use the approved dumpsite whenever the associated  
24 route(s) are swept. CONTRACTOR shall clearly post signs at all dumpsites indicating  
25 "Residential Street Sweeping Debris Only" to prevent illegal dumping. CONTRACTOR  
26 shall utilize Roll-Off Containers at the dumpsites for the collection of Sweep Waste. To  
27 the extent feasible the Roll-Off Containers shall be water-tight. All Sweep Waste left at  
28 the dumpsite shall be collected and the area shall be swept by CONTRACTOR prior to  
29 the end of the Work Day. CONTRACTOR shall use any measures necessary to ensure  
30 that no runoff from the debris ends up in the storm water system in accordance with  
31 *BMP Guidelines for Non-Point Source Pollutants*. Failure to use a dumpsite or failure to  
32 properly maintain a dumpsite shall result in administrative charges as described in  
33 Article 18.

34           7.02.8    Spillage. During hauling, all Sweep Waste shall be contained,  
35 covered or enclosed so that leaking, spilling and blowing of the Sweep Waste is  
36 prevented. CONTRACTOR shall be responsible for the immediate cleanup of any  
37 spillage caused by CONTRACTOR.

---

1                    7.02.9    Changes in Streets. In addition to street changes described in  
2 Section 4.03 and annexations described in Section 4.04, the City Representative may  
3 require some streets to be temporarily removed from the list of scheduled streets swept  
4 under this Agreement.

5                    Conditions which may cause the City Representative to order a  
6 street or an area to be bypassed temporarily include the following:

- 7                    ▪ Construction or development on or along a street
- 8                    ▪ Pavement maintenance activities, including the chip seal program  
9                    described in Section 7.06.3 and or the slurry seal program described in  
10                    Section 7.06.4
- 11                    ▪ Inclement weather when running water is in the gutter or street such that  
12                    sweeping is ineffective
- 13                    ▪ Special sweeping on alternative schedule
- 14                    ▪ Consistent non-compliance of citizens to remove parked cars during  
15                    sweep days
- 16                    ▪ Other legitimate reasons that make sweeping impractical as determined  
17                    by the City Representative

18                    In the event that the City Representative notifies  
19 CONTRACTOR not to sweep on a temporary basis, CONTRACTOR shall not be paid  
20 for the equivalent Curb Miles and no administrative charges will be assessed for failure  
21 to sweep such streets. The City Representative shall notify CONTRACTOR of the  
22 temporary suspension of service at least one day prior to the scheduled sweep, except  
23 that in the case where the reason for not performing service is because of inclement  
24 weather, the City Representative may notify CONTRACTOR at any time.

25                    Because of varying rain conditions throughout the City of San  
26 José, CONTRACTOR may verbally request permission from the City Representative to  
27 postpone or cancel sweeping during heavy and persistent rainstorms within the Service  
28 District. CONTRACTOR may postpone or cancel sweeping only with the prior consent  
29 of the City Representative. In the event CONTRACTOR has completed a portion of a  
30 route, CONTRACTOR shall so notify the City Representative within one (1) hour of the  
31 time the City Representative gives consent for CONTRACTOR to postpone or cancel  
32 sweeping. CONTRACTOR shall not be paid for the Curb Miles not swept and, provided  
33 that CONTRACTOR has obtained the consent of the City Representative to postpone or  
34 cancel sweeping, no administrative charges will be assessed for failure to sweep the  
35 approved routes or portions thereof. CONTRACTOR may propose a make-up schedule for  
36 Curb Miles that are not swept because of such rainstorms. If the make-up schedule is

---

1 approved by the City Representative, CONTRACTOR shall post informational signs at the  
2 entrance to all residential areas on the make-up route, shall perform Residential Street  
3 Sweeping Service on the scheduled make-up day approved by the City Representative,  
4 and shall be compensated for the make-up services at the Curb Mile rate then in effect. If  
5 an acceptable schedule cannot be agreed upon, no make-up sweep shall be performed.

6 **7.03 Special Street Sweeping Services.**

7 CITY and CONTRACTOR acknowledge that Residential Street Sweeping Service  
8 may be more difficult in certain areas because of the parking patterns of residents and  
9 visitors. In those areas, the CONTRACTOR will provide either Enhanced Street  
10 Sweeping (“ESS”) service or Tow Enforced Street Sweeping (“TESS”) service as  
11 described in Sections 7.03.1 and 7.03.2 below. The CONTRACTOR shall perform a  
12 maximum of four (4) ESS or TESS Service sweeps per month as identified by the CITY.  
13 The maximum length of each sweep will be three (3) curb miles, for a monthly maximum  
14 of twelve (12) curb miles.

15 7.03.1 **Enhanced Street Sweeping Service.** Enhanced Street  
16 Sweeping Service is based on a temporary posting of “No Parking” signs, enforced by  
17 ticketing. A minimum of two weeks before the sweep is to occur, the CITY will provide  
18 the CONTRACTOR with a list of the street segments to be swept. The CONTRACTOR  
19 shall then create a schedule for the sweep, and provide those details to the Department  
20 of Transportation as well as arrange for enforcement with the Parking Compliance  
21 Section of the Department of Transportation. “No Parking” signage shall be posted 24-  
22 48 hours before the sweep is to occur, and inspectors from the CITY shall verify the  
23 signage before the sweep occurs. “No Parking” signs will be provided by the  
24 CONTRACTOR and will display the CONTRACTOR’s phone number. Signs shall be  
25 posted a maximum of 200 feet apart, within 6 feet of the face of the curb on the side of  
26 the street on which parking is to be restricted. The sweep shall take place during the  
27 specified time listed on the signage, and the CONTRACTOR shall remove the  
28 temporary signs by the end of the Work Day following the day on which the ESS  
29 Service sweep occurs.

30 7.03.2 **Tow-Enforced Street Sweeping Service.** In those areas  
31 where ESS Service as described in Section 7.03.1 is not sufficient to allow street  
32 sweeping to occur, CONTRACTOR will provide Tow-Enforced Street Sweeping (TESS)  
33 service. TESS service will consist of regular Residential Street Sweeping Service in  
34 conjunction with tow-away enforcement of parking prohibitions.

35 A minimum of two weeks before the sweep is to occur, the CITY  
36 will provide CONTRACTOR with a list of the street segments to be swept. The  
37 CONTRACTOR shall create a schedule for the sweep, and provide details to the  
38 Department of Transportation as well as arrange for enforcement with the Parking

---

1 Compliance Section of Code Enforcement. At least seventy-two (72) hours before the  
2 sweep is to occur, the CONTRACTOR shall post temporary "Tow-Away No Stopping"  
3 signs affixed to A-frame barricades. Signs shall be posted a maximum of 50 feet apart  
4 at a consistent height. All signs must be posted within 6 feet of the face of the curb on  
5 the side of the street on which parking is to be restricted.

6 **7.04 Hazardous Waste.** CONTRACTOR shall not be required to remove any  
7 Hazardous Waste from the street surface. If in the course of performing Residential Street  
8 Sweeping Services, any suspected Hazardous Wastes are encountered, CONTRACTOR  
9 shall immediately report the location to the San Jose Fire Department or any other  
10 responsible agency and to the City Representative. Any Curb Mile not swept due to such  
11 circumstances shall not be subject to the reduction in payment due to non-performance as  
12 set forth in this Agreement. In the event Hazardous Waste is found, CONTRACTOR shall  
13 provide follow-up information to the City Representative, including the name of the agency  
14 to whom CONTRACTOR's report was made and how the incident was resolved.

15 **7.05 Disposal of Sweep Waste.** Except as set forth in this Section 7.05,  
16 CONTRACTOR shall transport and deliver to the Disposal Facility all Sweep Waste  
17 collected as a result of performing Residential Street Sweeping Services. CITY shall  
18 arrange for disposal capacity for the Sweep Waste so that if CONTRACTOR delivers  
19 the Sweep Waste to the Disposal Facility, disposal of the Sweep Waste shall be at no  
20 cost to CONTRACTOR. In the event the Disposal Facility is closed on a Work Day or is  
21 otherwise unable to accept the Sweep Waste for disposal, CONTRACTOR shall  
22 transport and dispose of the Sweep Waste at such other legally permitted Disposal  
23 Facility as designated in writing by the City Representative.

24 **7.06 Coordination with Other City Programs.** CONTRACTOR shall  
25 establish and maintain good working relationships with various work units in CITY's  
26 departments. The City Representative will provide CONTRACTOR with the name of a  
27 contact person for each of the various work units. CONTRACTOR shall be responsible  
28 for cooperating and coordinating with the following CITY programs in the performance  
29 of Residential Street Sweeping Service:

30 7.06.1 **ACB Sweeping Program.** Arterial, Commercial and Bike (ACB)  
31 routes are swept by CITY crews on either a weekly or twice-per-month frequency. Streets  
32 under this program are not included as part of the work to be performed by  
33 CONTRACTOR under this Agreement, and are excluded from CONTRACTOR's  
34 Residential Street Sweeping Service District.

35 7.06.2 **Chip Seal Program.** CITY's chip seal program is an annual  
36 Residential Street surface sealing performed by CITY's Department of Transportation. It  
37 usually commences on the first Monday after the Fourth of July and usually ends around  
38 mid-September. CITY reserves the right to suspend normal Residential Street Sweeping

1 Service on affected streets during the time the chip seal program is performed. The City  
2 Representative shall notify CONTRACTOR each year of the schedule and areas covered  
3 by the program. CONTRACTOR shall not be compensated for those Residential Streets  
4 that are not swept as a result of the suspension of service.

5 7.06.3 Slurry Seal Program. CITY's slurry seal program is an annual  
6 street surface sealing performed by private contractors but administered by CITY's  
7 Department of Transportation. It generally occurs during late spring and summer months.  
8 Typically, streets sealed under this program are those that are swept under the ACB  
9 Sweeping Program. CITY reserves the right to suspend normal Residential Street  
10 Sweeping Service on affected streets during the time the slurry seal program is performed.  
11 CONTRACTOR shall not be compensated for those Residential Streets that are not swept  
12 as a result of the suspension of service.

13 7.06.4 Parking Compliance. CITY's parking compliance program  
14 consists of enforcing parking regulations by such means as warnings, ticketing and/or  
15 towing of parked cars in specific areas that have been identified as having a high number  
16 of parked cars even after the implementation of public information measures. Parking  
17 compliance measures are performed by Parking and Traffic Compliance Officers in the  
18 Department of Transportation.

19 7.06.5 Community Groups. On occasion, some CITY agencies take  
20 interest in a particular neighborhood in order to revitalize its appearance. As part of their  
21 clean-up activities, "No Parking" signs (often with "Tow Away" enforcement) may be  
22 posted. These actions significantly reduce the impact of parking and benefit the  
23 Residential Street Sweeping Service program. Groups performing these activities include,  
24 but are not limited to Department of Transportation's Community Services, Project  
25 Crackdown, the Strong Neighborhoods Initiative, and individual Council District Offices.

## 26 **ARTICLE 8. EQUIPMENT**

### 27 **8.01 Equipment Specifications.**

28 8.01.1 General Provisions. All Yard Trimmings Service and  
29 Residential Street Sweeping Service equipment used by CONTRACTOR in the  
30 performance of services under this Agreement shall be the highest quality available.  
31 The vehicles shall be designed and operated so as to prevent collected materials from  
32 escaping from the vehicles. Hoppers shall be closed on top and on all sides with  
33 screening material to prevent collected materials from leaking, blowing or falling from  
34 the vehicles. All trucks and containers shall be watertight and shall be operated so that  
35 liquids do not spill during collection or in transit.

1                   8.01.2    **Clean Air Vehicles.** During the term of this Agreement, to the  
2 extent required by law, CONTRACTOR shall provide its Collection Service vehicles to  
3 be in full compliance with local, State and federal clean air requirements that have been  
4 adopted or are proposed to be adopted, including, but not limited to, the California Air  
5 Resources Board Heavy Duty Engine Standards as currently proposed to be contained  
6 in CCR Title 13, Section 2021 et seq; the Federal EPA's Highway Diesel Fuel Sulfur  
7 regulations; and any other applicable air pollution control laws

8                   8.01.3    **Lubricants.** Except as approved in writing by CITY's Director of  
9 Environmental Services on an individual vehicle basis, CONTRACTOR shall utilize re-  
10 refined motor oil and re-refined hydraulic oil in all vehicles used by CONTRACTOR in  
11 the performance of this Agreement.

12                  8.01.4    **Collection Vehicles.** CONTRACTOR shall not use any collection  
13 vehicle older than model year 2001, and shall not use any collection vehicle that is more  
14 than six (6) years old or has more than 250,000 miles unless such vehicle is a Rebuilt  
15 Vehicle. The limitations in this provision do not apply to CONTRACTOR's on-street  
16 collection equipment.

17                  8.01.5    **Street Sweeping Equipment.** CONTRACTOR shall maintain, at  
18 all times, sufficient street sweepers such that no sweeper is ever assigned to more than  
19 one (1) sweep route on any Work Day.

20                  8.01.6    **Safety Markings and Devices.** All Yard Trimmings Service and  
21 Residential Street Sweeping Service equipment used by CONTRACTOR in the  
22 performance of this Agreement shall have appropriate safety markings including, but not  
23 limited to, highway lighting, flashing and warning lights, and clearance lights. All such  
24 safety markings and devices shall be in accordance with the requirements of the  
25 California Vehicle Code, as may be amended from time to time, and shall be subject to  
26 the approval of the City Representative

27                  8.01.7    **Vehicle Signage and Painting.** All collection and Residential  
28 Street Sweeping Service vehicles shall be painted and numbered consecutively without  
29 repetition and shall have CONTRACTOR's name, CITY's customer service telephone  
30 number, (408) 535-3500, and the number of the vehicle painted in letters of contrasting  
31 color, at least four (4) inches high, on each side and on the rear of each vehicle. The  
32 City Representative may specify the format of the alpha-numeric numbering sequence  
33 to be used, so that all vehicles in use by all persons performing the types of services  
34 specified in this Agreement have a unique identifier. No advertising shall be permitted  
35 other than the name of CONTRACTOR except promotional advertisement of the  
36 Recycle Plus Program. Collection vehicles and sweepers shall be painted white and  
37 vehicle striping and logos shall be painted CONTRACTOR's primary corporate color.  
38 CONTRACTOR shall repaint all collection vehicles and sweepers (including the

1 vehicles' striping) during the term of this Agreement on a frequency as necessary to  
2 maintain a positive public image as reasonably determined by the City Representative,  
3 but not less often than every thirty (30) months beginning July 1, 2007.

4 Collection vehicles and sweepers shall be identified as City of  
5 San José Recycle Plus collection vehicles through the use of interchangeable signs.  
6 These signs will contain Recycle Plus related announcements in English, Spanish,  
7 Vietnamese, or other languages as directed by the City Representative.

8 CONTRACTOR shall equip both sides of its vehicles, other than claw equipment or  
9 bucket loaders, with frames capable of securing signs of dimensions 29-3/16" high by  
10 93-3/16" wide or other dimensions designated by the City Representative. CITY shall  
11 provide such signs to CONTRACTOR with a minimum of one (1) weeks notice prior to  
12 design changes. CONTRACTOR shall install the signs in the frames. CITY shall not  
13 require sign changes more frequently than once every quarter.

14 **8.02 Collection Vehicle Noise Level.** The noise level generated by collection  
15 vehicles using compaction mechanisms during the compaction process shall not exceed  
16 seventy-five (75) decibels at a distance of twenty-five (25) feet from the collection  
17 vehicle measured at an elevation of five (5) feet above ground level using the "A" scale  
18 of the standard sound level meter at slow response. CONTRACTOR shall cause each  
19 collection vehicle to be tested no less than once every three (3) years during the months  
20 of March and April, beginning March of 2008. CONTRACTOR shall maintain copies of  
21 all certificates of testing showing the results of the vehicle testing and shall make such  
22 certificates available for inspection upon request by the City Representative.

23 **8.03 Vehicle Registration, Licensing and Inspection.** All vehicles used by  
24 CONTRACTOR in the performance of services under this Agreement shall be in  
25 compliance with all registration, licensing and inspection requirements of the California  
26 Highway Patrol, the California Department of Motor Vehicles, and any other applicable  
27 laws or regulations. CONTRACTOR shall maintain copies of all certificates and reports  
28 evidencing compliance, and shall make such certificates and reports available for  
29 inspection upon request by the City Representative. CONTRACTOR shall not use any  
30 vehicle to perform Collection Services that is not in compliance with applicable  
31 registration, licensing and inspection requirements.

32 **8.04 Equipment Maintenance.** CONTRACTOR shall maintain all collection  
33 and Street Sweeping equipment in a clean condition and in good repair at all times. All  
34 parts and systems of the collection equipment shall operate properly and be maintained  
35 in good working order. CONTRACTOR shall wash all collection and Street Sweeping  
36 vehicles at least once a week using recycled water. All washings shall be conducted in  
37 a manner that conforms to the BMP Guidelines for Non-Point Source Pollutants in the

---

1 publication entitled *Storm Water Best Management Practices Handbook for Industrial*  
2 *Commercial*.

3       **8.05 Maintenance Log.** CONTRACTOR shall maintain a maintenance log for  
4 all collection and Street Sweeping vehicles. The log shall at all times be accessible to  
5 CITY via computer, or by physical inspection upon the request of the City  
6 Representative. The log shall show, at a minimum, for each vehicle the  
7 CONTRACTOR-assigned identification number, date purchased or initial lease, dates of  
8 performance of routine maintenance, dates of performance of any additional  
9 maintenance, and description of additional maintenance performed.

10       **8.06 Equipment Inventory.**

11           8.06.1     On or before October 1, 2006, CONTRACTOR shall submit a  
12 preliminary equipment estimate to the City Representative. The City Representative  
13 may provide written comments on CONTRACTOR's estimate no later than ten (10)  
14 Work Days after receipt and, if such comments are provided, CONTRACTOR shall  
15 respond to such comments within thirty (30) calendar days of receipt.

16           8.06.2     On or before June 15, 2007, CONTRACTOR shall provide to  
17 CITY an inventory of collection and Street Sweeping vehicles and major equipment  
18 used by CONTRACTOR for collection or transportation and performance of services  
19 under this Agreement. The inventory shall indicate each vehicle by CONTRACTOR-  
20 assigned identification number, DMV license number, the age of the chassis and body,  
21 mileage, type of fuel used, the type and capacity of each vehicle, the number of vehicles  
22 by type, the date of acquisition, the decibel rating and the maintenance and rebuilt  
23 status. CONTRACTOR shall submit to CITY an updated inventory annually or more  
24 often at the request of the City Representative. Each inventory shall also include the  
25 tare weight of each vehicle as determined by weighing at a public scale and not at a  
26 disposal or other facility scale used by CONTRACTOR. The specific procedure for  
27 performing the tare weighing shall be subject to the approval of the City Representative.  
28 Each vehicle inventory shall be accompanied by a certification by CONTRACTOR that  
29 all vehicles meet the requirements of this Agreement.

30       **8.07 Reserve Equipment.** CONTRACTOR shall have available to it, at all  
31 times, reserve collection and Residential Street Sweeping Service equipment which can  
32 be put into service and operation within one (1) hour of any breakdown. Such reserve  
33 equipment shall correspond in size and capacity to the equipment used by  
34 CONTRACTOR to perform CONTRACTOR's duties under this Agreement.

35                           **ARTICLE 9. SERVICE ROUTES**

36       **9.01 Yard Trimmings Service Routes.**

---

1                   9.01.1    Preliminary Routes. On or before January 1, 2007,  
2 CONTRACTOR shall submit to the City Representative preliminary estimates of hours  
3 to be worked per day and travel time per day for CONTRACTOR's performance of Yard  
4 Trimmings Service. CITY may provide written comments on the preliminary estimates  
5 within ten (10) Work Days of receipt of the estimates from CONTRACTOR.  
6 CONTRACTOR shall respond in writing to any CITY comments within thirty (30) Work  
7 Days of receipt of comments from CITY.

8                   9.01.2    Updated Routes. On or before October 1, 2006, CITY shall  
9 provide CONTRACTOR with base maps of CONTRACTOR's Service District in an  
10 electronic format. During the term of this Agreement, CITY shall continue to provide  
11 updated base maps to CONTRACTOR. Not less than ninety (90) days prior to  
12 commencement of Yard Trimmings Services, CONTRACTOR shall submit to the City  
13 Representative maps precisely defining Yard Trimmings Service routes, together with  
14 the days and the times at which collection shall regularly commence. The maps shall  
15 be printed and in an electronic format that is compatible with CITY's system. For  
16 purposes of this Section 9.01.2 compatible means the ability to import and export data  
17 between computer systems without the need for custom translation software.

18                               The City Representative may provide written comments on the  
19 maps to CONTRACTOR no later than ten (10) Work Days after receipt of the maps.  
20 CONTRACTOR shall revise the maps to reflect such comments and return them to the  
21 City Representative for CITY corroboration within ten (10) Work Days after receipt of the  
22 City Representative's comments. Upon the incorporation of the City Representative's  
23 comments and completion of corroboration by CITY, the City Representative shall send  
24 written approval of the maps to CONTRACTOR.

25                   **9.02    Residential Street Sweeping Service Routes**. On or before February 1,  
26 2007, CITY shall provide CONTRACTOR with a Residential Street Sweeping database  
27 for use in developing routes and maps. CONTRACTOR shall develop the routes and  
28 maps using this data. Not less than ninety (90) days prior to commencement of  
29 Residential Street Sweeping Services, CONTRACTOR shall submit Service District  
30 maps, precisely defining the Sweeper Routes for review and approval by the City  
31 Representative. The route maps shall include the days of the month sweeping shall  
32 occur, the sweeping schedules in adjacent areas, the portions of the Service District to  
33 be swept in the morning and in the afternoon, the start and finish locations (designated  
34 by morning and afternoon) of each route, the location of each dumpsite, and any special  
35 needs such as early starts, late finishes and Enhanced or Tow Enforced Street  
36 Sweeping Service locations. The City Representative may provide written comments on  
37 the preliminary maps to CONTRACTOR no later than ten (10) Work Days after receipt  
38 of the maps from CONTRACTOR. CONTRACTOR shall revise the maps to reflect such

---

1 comments and return them to the City Representative within ten (10) Work Days after  
2 receipt of the City Representative's comments for CITY corroboration. Upon approval  
3 by the City Representative of the final Sweeper Route maps, CONTRACTOR shall  
4 develop and maintain the Sweeping Routes on a computerized mapping system  
5 compatible with CITY's mapping system. CONTRACTOR shall have its own personal  
6 computer system with the latest version of the software specified by the City  
7 Representative to create and maintain the route maps.

8 Changes in maps due to the addition and deletion of certain  
9 Residential Streets shall be provided by CITY, and CONTRACTOR shall update the  
10 maps in CONTRACTOR's system every month. Such changes shall also be reflected in  
11 CONTRACTOR's printed route maps.

12 **9.03 Service Route Changes.** CONTRACTOR shall submit to the City  
13 Representative, in writing, any proposed route change (including maps thereof) not less  
14 than sixty (60) calendar days prior to the proposed date of implementation. The City  
15 Representative may provide written comments to CONTRACTOR on such proposed  
16 change no later than ten (10) Work Days after receipt of the proposal from  
17 CONTRACTOR, and CONTRACTOR shall revise the routes to reflect such comments  
18 and return them to the City Representative within ten (10) Work Days of receipt of such  
19 comments, for CITY corroboration. CONTRACTOR shall not implement any route  
20 changes without the prior approval of the City Representative. If the approved route  
21 change will change the day on which either Yard Trimmings Service or Residential  
22 Street Sweeping Service will occur, or will change the time of collection from morning to  
23 afternoon or vice versa, CONTRACTOR shall notify the affected Service Recipients of  
24 route changes not less than thirty (30) Work days before the proposed date of  
25 implementation in a manner approved by the City Representative.

26 **9.04 Yard Trimmings Collection Route Audits.**

27 9.04.1 Route Audits. CONTRACTOR shall conduct an annual route  
28 audit, in a manner subject to the approval of the City Representative, for each of  
29 CONTRACTOR's Yard Trimming Collection Service routes. The route audits shall be  
30 conducted once each calendar year during the term of this Agreement beginning in the  
31 year 2008, with each route being audited in a different quarter each year so that all  
32 routes are audited in each of the four (4) quarters during the term of this Agreement.  
33 CONTRACTOR shall conduct audits of all routes served by one Collection vehicle on  
34 five (5) consecutive Work Days. Not later than sixty (60) Work Days prior to the first  
35 route audit in each year, CONTRACTOR shall submit to the City Representative a  
36 schedule of route audits to be conducted in that year together with a description of the  
37 audit methodology. CITY reserves the right to determine which routes will be audited in  
38 a particular week and, if CITY exercises this right, shall notify CONTRACTOR of the

---

1 routes not less than three (3) Work Days in advance. CONTRACTOR shall include  
2 route audits and findings in CONTRACTOR's quarterly reports.

3 9.04.2 Audit Information. The route audits shall include the following  
4 information for each collection route:

- 5       ▪ The route number, the date of the audit, and the starting and ending  
6       times of collection during the audit.
- 7       ▪ A description of the route location, including the names of the streets  
8       covered.
- 9       ▪ The number of Service Units on the route.
- 10       ▪ The number of Service Units participating on the date of the audit and  
11       the number and type (cart or on-street) of collections.
- 12       ▪ The number of Service Units that set out containerized overages and  
13       the number of Service Units that set out overages on-street, and the  
14       address of the Service Recipient where the overage was located.
- 15       ▪ The number of carts that need repair or replacement, and the address  
16       of the Service Recipient where the cart was audited.
- 17       ▪ The number of collection vehicles used on the route by vehicle type  
18       (e.g., rear loader truck, side-loader truck), the tare weight of each  
19       vehicle, the weight of each vehicle each trip, the capacity of each  
20       vehicle by weight and volume, and the number of trips made by each  
21       vehicle to the Yard Trimmings Processing Facility, Transfer Station or  
22       Disposal Facility as appropriate.
- 23       ▪ The tonnage of Organic Waste delivered to the Yard Trimmings  
24       Processing Facility or Transfer Station per vehicle trip and the time of  
25       arrival and departure of each vehicle at the Yard Trimmings Processing  
26       Facility or Transfer Station.
- 27       ▪ A description of any changes in the route occurring since the  
28       immediately preceding route audit, including changes in the location of  
29       the route, the number of Service Units, equipment used, and collection  
30       methods employed.
- 31       ▪ Verification of the Yard Trimmings Cart size for each Service Unit on  
32       the route.
- 33       ▪ The name(s), telephone number(s), and signature(s) of the persons  
34       performing each route audit.

---

1           **9.05 Special Route Audits.** CITY may request performance of special route  
2 audits in addition to the route audits conducted pursuant to Section 9.04. Within fifteen  
3 (15) calendar days of a written request for a special route audit, CONTRACTOR shall  
4 provide to the City Representative a written cost proposal for performance of the special  
5 route audit. If the City Representative accepts CONTRACTOR's cost proposal,  
6 CONTRACTOR shall conduct the special route audit and CITY shall compensate  
7 CONTRACTOR at the rate described in CONTRACTOR's cost proposal.

8           **9.06 CITY-Conducted Collection Route Audits.** CITY reserves the right to  
9 conduct audits of CONTRACTOR's Yard Trimmings Service route audits.  
10 CONTRACTOR shall cooperate with CITY in connection therewith, including permitting  
11 CITY employees or agents, designated by the City Representative, to ride in the  
12 collection vehicles during the conduct of audits. CONTRACTOR shall have no  
13 responsibility or liability for the salary, wages, benefits or Worker's Compensation claims  
14 of any person designated by the City Representative to conduct such audits.

## 15                           **ARTICLE 10. CONTRACTOR'S COMPENSATION**

16           **10.01 Billing and Collection of Payments.** CITY shall be responsible for the  
17 billing and collection of payments from Service Units for all Yard Trimmings Services  
18 and Residential Street Sweeping Service.

19           **10.02 Monthly Invoices.** Beginning for services performed by CONTRACTOR  
20 during the month of July 2007, CITY shall produce a preliminary monthly invoice for  
21 services received under this Agreement no later than the fifteenth (15<sup>th</sup>) day of the  
22 month following the month such services were rendered.

23                   10.02.1 Review of Monthly Invoice by CONTRACTOR. CONTRACTOR  
24 shall review the monthly invoice prepared by CITY and within ten (10) Work Days of  
25 receipt of the invoice, CONTRACTOR shall notify the City Representative of any  
26 discrepancies or deficiencies in said invoice.

27                   10.02.2 Resolution of Discrepancies. CONTRACTOR shall meet with  
28 the City Representative within ten (10) Work Days of CITY's receipt of notice of  
29 discrepancies or deficiencies to resolve any such discrepancies or deficiencies and shall  
30 provide to the City Representative any documentation relating to the discrepancy or  
31 deficiency that is requested by the City Representative or which CONTRACTOR wishes  
32 to provide in support of CONTRACTOR's calculations. Within fifteen (15) calendar days  
33 of the receipt of documentation requested in writing by the City Representative or within  
34 fifteen (15) calendar days of the meeting between CONTRACTOR and the City  
35 Representative, whichever occurs later, the City Representative shall notify  
36 CONTRACTOR in writing of the City Representative's resolution of the discrepancies or

---

1 deficiencies. The City Representative's determination shall be final unless within ten  
2 (10) calendar days of the date of the determination CONTRACTOR requests review by  
3 the Director of Environmental Services.

4           10.02.3 If CONTRACTOR timely requests a review by the Director, the  
5 Director shall review the City Representative's determination, all relevant documentation  
6 presented to the City Representative, and any additional relevant documentation  
7 provided by CONTRACTOR at the time of CONTRACTOR's request for review. If  
8 requested by CONTRACTOR, the Director of Environmental Services or the Director's  
9 designee shall meet with CONTRACTOR within fifteen (15) calendar days of  
10 CONTRACTOR's request for review. The Director shall render a written decision to  
11 CONTRACTOR sustaining or reversing the City Representative's determination, in  
12 whole or in part, within thirty (30) calendar days of receipt of CONTRACTOR's request  
13 for review.

14           10.02.4 Partial Month Service. If, during a month, a Service Unit is  
15 added to or deleted from CONTRACTOR's Yard Trimmings Service Unit list, the billing  
16 for such Service Unit shall be pro-rated as follows: (1) if the Service Unit was eligible to  
17 receive Yard Trimmings Service for at least sixteen (16) calendar days during the  
18 month, CONTRACTOR shall be compensated for that Service Unit at the full monthly  
19 rate set out in Exhibit 1; and (2) if the Service Unit was eligible to receive Yard  
20 Trimmings Service for less than sixteen (16) calendar days during the month,  
21 CONTRACTOR shall not be compensated for that Service Unit for that month.

22           10.02.5 Payments. CITY shall make no payment for Yard Trimmings  
23 Service for any Service Unit that is not included on the list of Service Units maintained  
24 by CITY.

25           **10.03 Payments to CONTRACTOR**. Beginning for services performed during  
26 the month of July 2007, CITY shall pay CONTRACTOR for services performed in  
27 accordance with this Agreement at the service rates set forth in Exhibit 1 as such  
28 service rates may be adjusted pursuant to this Agreement. Except as otherwise  
29 provided in this Agreement, CITY shall make monthly payments to CONTRACTOR  
30 within thirty (30) calendar days of CONTRACTOR's approval of CITY's invoice. In the  
31 event there are any amounts listed on the invoice which remain in dispute after  
32 CONTRACTOR and CITY complete the Resolution of Discrepancies process set forth in  
33 Section 10.02.2 above, CITY shall pay to CONTRACTOR the amounts accepted by the  
34 City Representative or the Director of Environmental Services, as appropriate. CITY  
35 shall not make any payments to CONTRACTOR's subcontractors.

36           10.03.1 Wire Transfers. At the request of CONTRACTOR, CITY will  
37 make monthly invoice payments and/or additional payments by wire transfer to  
38 CONTRACTOR's bank account or accounts as are designated by CONTRACTOR.

1 CITY may deduct CITY's costs of the wire transfers from the monthly payment  
2 otherwise due to CONTRACTOR.

3 **10.04 Adjustments to Rates Using Refuse Rate Index (RRI).**

4 10.04.1 Refuse Rate Index (RRI). Beginning on July 1, 2008, and  
5 annually thereafter, CONTRACTOR shall, subject to compliance with all provisions of  
6 this Article, receive an annual adjustment in the following service rates as set forth in  
7 Exhibit 1 to this Agreement:

- 8 ▪ Part A. Base Service Rates (lines A.1 – A.5)
- 9 ▪ Part B. Additional Service Rates (lines B.1 – B.7)

10 10.04.2 At the start of the second year of the Agreement (July 1, 2008),  
11 and annually thereafter during the term of this Agreement, the service rates referenced  
12 in Section 10.04.1 above shall be increased or decreased by the percentage change in  
13 the Refuse Rate Index (RRI) from the base month, which shall be December of the prior  
14 preceding year, to December of the immediately preceding year as contained in the  
15 most recent publication of the source documents listed in **Exhibit 3** ("REFUSE RATE  
16 INDEX") to this Agreement. Therefore, the first rate adjustment will be based on the  
17 percentage change between the December 2006 indices and the December 2007  
18 indices.

19 10.04.3 On or before February 15, 2008, CONTRACTOR shall deliver to  
20 CITY financial information for the specific services performed under this Agreement from  
21 July 1, 2007, to December 31, 2007. On or before February 15, 2009, and annually  
22 thereafter during the term this Agreement, CONTRACTOR shall deliver to CITY financial  
23 information for the specific services performed under this Agreement for the preceding  
24 calendar year. Such financial information shall be the information described in the  
25 "Operating Cost Statement – Description" portion of Exhibit 3 and shall be in the format  
26 described in Exhibit 3, as may be revised by CITY from time to time. If CONTRACTOR  
27 fails to submit the financial information in the required format prior to February 15<sup>th</sup>, it is  
28 agreed that CONTRACTOR shall be deemed to have waived the right to the RRI rate  
29 adjustment for that year. CONTRACTOR's failure to provide the financial information  
30 shall not preclude CITY from applying the RRI using the prior year's financial data, or  
31 pro forma data if no prior year financial data is available, if that application would result  
32 in a decrease in the affected service rates.

33 10.04.4 Annual adjustments shall be made only in units of one cent  
34 (\$0.01). Fractions of less than one cent (\$0.01) shall not be considered in making  
35 adjustments. The indices shall be truncated at four (4) decimal places for the  
36 adjustment calculations.

---

1           10.04.5 If CONTRACTOR's failure to submit the financial information  
2 required by Section 10.04.3 is the result of extraordinary or unusual circumstances as  
3 demonstrated by CONTRACTOR to the satisfaction of CITY's Director of Environmental  
4 Services, CITY, at its sole discretion, may consider the request for the annual RRI rate  
5 adjustment.

6           10.04.6 As of June 1, 2008, and annually thereafter during the term of  
7 this Agreement, the City Representative shall notify CONTRACTOR of the RRI  
8 adjustment to the affected service rates to take place on the subsequent July 1<sup>st</sup>.

9           **10.05 Unit Count.** CITY will utilize the Consolidated Utility Billing System to  
10 maintain the customer database from which the Service Unit count for Yard Trimmings  
11 Service will be derived. In the event CONTRACTOR does not agree with the Service  
12 Unit count provided by CITY, CONTRACTOR may request at any time, but not more  
13 often than once per Agreement Year, that CITY and CONTRACTOR perform a joint  
14 route audit of the Service Units in the Service District. Such audit shall be at no cost to  
15 the CITY other than labor costs for CITY staff.

16           **10.06 Withholding of Payment.** In addition to express provisions contained  
17 elsewhere in this Agreement, CITY may withhold from any payment otherwise due  
18 CONTRACTOR such amount as reasonably determined necessary to protect CITY's  
19 interest, or, if CITY so elects, may withhold or retain all or a portion of any monthly  
20 payment or refund payment for any of the following reasons. CITY shall provide written  
21 notice to CONTRACTOR of the reason for withholding of payments.

- 22                   ▪ Unsatisfactory progress of the work not caused by any condition  
23                   beyond CONTRACTOR's control;
- 24                   ▪ Defective work not corrected;
- 25                   ▪ CONTRACTOR's failure to carry out instructions or orders of the  
26                   CITY or its representative;
- 27                   ▪ Execution of work not in accordance with this Agreement;
- 28                   ▪ Claims filed by or against CONTRACTOR or reasonable evidence  
29                   indicating probable filing of claims;
- 30                   ▪ Failure of CONTRACTOR to make payments to any subcontractor  
31                   for material or labor;
- 32                   ▪ Unsafe working conditions allowed to persist by CONTRACTOR;
- 33                   ▪ Failure of CONTRACTOR to provide route schedules and other  
34                   reports as required by CITY; or
- 35                   ▪ Use of any subcontractors without CITY's prior written approval.

1           **10.07 Payment Of Withheld Amounts.** Upon CONTRACTOR's remedy of the  
2 grounds for withholding payment and demonstration of the remedy to the reasonable  
3 satisfaction of the City Representative, CITY shall pay all withheld amounts within ten  
4 (10) Work Days. CITY shall not be liable for interest on any delayed or late payment.

## 5           **ARTICLE 11. DIVERSION AND PERFORMANCE STANDARDS**

### 6           **11.01 Yard Trimmings Diversion Standards.**

7                   11.01.1 Annual Diversion Standard. Beginning January 1, 2008,  
8 CONTRACTOR shall achieve an Organic Waste diversion rate of not less than ninety  
9 five percent (95%) per calendar year in CONTRACTOR's Service District.

10                   11.01.2 Annual Calculation. The Organic Waste ("OW") diversion rate  
11 will be calculated on a calendar year basis beginning January 1, 2008, as the tons of  
12 Organic Waste collected less the tons of Yard Trimmings Processing Residue divided by  
13 the tons of Organic Waste collected in the applicable calendar year:

$$\text{OW Diversion Rate} = \frac{\text{Tons of OW collected} - \text{Tons YT Processing Residue}}{\text{Tons of OW collected}}$$

14                   11.01.3 Calculation of Yard Trimmings Processing Residue Tonnage.  
15 CITY and CONTRACTOR acknowledge that Organic Waste collected pursuant to this  
16 Agreement may be commingled at the Transfer Station or at the Yard Trimmings  
17 Processing Facility after such Organic Waste has been separately weighed upon  
18 delivery, and that this necessitates there be a methodology for calculating the tonnage  
19 of Yard Trimmings Processing Residue that will be attributable to such Organic Waste.  
20 Therefore, unless and until the City Representative and CONTRACTOR agree in writing  
21 on an alternative methodology, for the purposes of calculating the Organic Waste  
22 diversion rate, the tons of Yard Trimmings Processing Residue will be determined as  
23 follows:

- 24           ▪ First, there shall be determined the fraction of the materials delivered to the Transfer  
25 Station and the Yard Trimmings Processing Facility that represents Organic Waste  
26 attributable to CITY pursuant to this Agreement. This fraction (the "CITY Fraction")  
27 shall be determined by adding the tons of CITY's Organic Waste delivered directly to  
28 the Transfer Station and the tons of CITY's Organic Waste delivered directly to the  
29 Yard Trimmings Processing Facility, and dividing that sum by the total tons of  
30 Organic Waste (from all sources) delivered to both facilities. The CITY fraction shall  
31 be truncated to four (4) decimal places.
- 32           ▪ Second, there shall be determined the total tonnage of residue generated at the  
33 Transfer Station and the Yard Trimmings Processing Facility.

- 
- 1   ▪ Third, the total tonnage of residue shall be multiplied by the CITY Fraction. That  
2   product shall be the tonnage of Yard Trimmings Processing Residue used in the  
3   calculation of the OW diversion rate as set forth in Section 11.01.2 above.
- 4       ○ Example: If (a) the tons of Organic Waste collected pursuant to this  
5       Agreement was 1,000 tons delivered directly to the Transfer Station and 500  
6       tons delivered directly to the Yard Trimmings Processing Facility, (b) the total  
7       tons of material delivered to the Transfer Station was 1,200 and the total tons  
8       delivered to the Yard Trimmings Processing Facility was 2,000, and (c) the  
9       residue generated at the Transfer Station was 28 tons and at the Yard  
10      Trimmings Processing Facility was 36 tons, then the Yard Trimmings  
11      Processing Residue would be 30 tons.

$$12 \qquad \qquad \qquad [(1,000 + 500) / (1,200 + 2,000)] \times (28 + 36) = 30$$

13           11.01.4 Alternate Capacity Facility. In the event CONTRACTOR  
14   delivers Organic Waste collected pursuant to this Agreement to an alternate facility as  
15   provided in Section 6.03.1, CONTRACTOR shall report to CITY all tonnages for the  
16   alternate facility as determined by the City Representative as necessary for the  
17   calculation of the Organic Waste diversion rate. If CONTRACTOR does not provide  
18   such tonnages, CITY may, at its option, not include that tonnage in the calculation of the  
19   Organic Waste diversion rate or may substitute alternative data that in the sole opinion  
20   of CITY's Director of Environmental Services is representative of the missing data.

21           11.01.5 Failure to Meet Minimum Requirement. CONTRACTOR's  
22   failure to meet the minimum diversion requirement may result in the termination of this  
23   Agreement or the imposition of administrative charges as provided in Article 18 of this  
24   Agreement.

## 25           **ARTICLE 12. CONTRACTOR DISPOSAL ALLOCATION**

26           **12.01 CITY's Responsibility.** CITY shall arrange for and pay for sufficient  
27   landfill disposal capacity for the disposal of all Sweep Waste collected by  
28   CONTRACTOR during the performance of Residential Street Sweeping Services in  
29   CONTRACTOR's Service District and wastes collected by CONTRACTOR in  
30   performing emergency services pursuant to Article 15 of this Agreement. CITY shall pay  
31   the Disposal Facility directly for the disposal of the above-described materials unless  
32   otherwise mutually agreed by CITY's Director of Environmental Services and  
33   CONTRACTOR.

### 34           **12.02 CONTRACTOR's Responsibility.**

35           12.02.1 Delivery of Materials. CONTRACTOR shall transport all Sweep  
36   Waste and waste collected by CONTRACTOR in the performance of emergency

1 services in CONTRACTOR's Service District pursuant to this Agreement, and shall  
2 deliver all such materials to the Disposal Facility, or to such other disposal facilities as  
3 the City Representative may designate in writing. In the event the Disposal Facility is  
4 closed on a Work Day, CONTRACTOR shall transport and dispose of the Sweep Waste  
5 at such other legally permitted disposal facility as designated in writing by the City  
6 Representative. Failure to comply with this provision shall result in the imposition of  
7 administrative charges as specified in Article 18 of this Agreement and may result in  
8 CONTRACTOR being in default under this Agreement. CONTRACTOR shall ensure  
9 that none of the Sweep Waste is mixed or commingled with any materials from any source  
10 other than CITY's Residential Street Sweeping Service program.

11 If the City Representative directs delivery of materials to a  
12 disposal facility other than the Disposal Facility, CITY shall compensate CONTRACTOR  
13 for reasonable additional out-of-pocket expenses incurred by CONTRACTOR and  
14 documented to the reasonable satisfaction of CITY's Director of Environmental  
15 Services.

16 12.02.2 Limitation on Use of CITY-Arranged Landfill Capacity.  
17 CONTRACTOR shall not, under any circumstances whatsoever, utilize the CITY-  
18 arranged disposal capacity for the disposal of any material that was collected by  
19 CONTRACTOR or by any other person, other than the materials specifically listed in this  
20 Article of this Agreement without the express prior written authorization of the City  
21 Representative.

22 12.02.3 Compliance with Regulations. CONTRACTOR shall observe  
23 and comply with all regulations in effect at the Disposal Facility or any other CITY-  
24 designated disposal facility at the time CONTRACTOR transports and disposes of  
25 materials at the site. CONTRACTOR shall at all times while at the Disposal Facility or  
26 any other CITY-designated disposal facility, operate according to safe industry practices.

27 12.02.4 CONTRACTOR's Acknowledgement. CONTRACTOR  
28 acknowledges that CITY will not arrange for or pay for the disposal of residue from  
29 processing Organic Waste. The disposal of all such materials is the sole responsibility  
30 of CONTRACTOR.

## 31 **ARTICLE 13. SERVICE INQUIRIES AND COMPLAINTS**

32 **13.01 CONTRACTOR's Office.** CONTRACTOR shall maintain an office within  
33 the municipal limits of the City of San José where inquiries and complaints can be  
34 received. Such office shall be open during the normal business hours of 8:00 a.m. to  
35 6:00 p.m. on all Work Days, and from 8:00 a.m. until all collection routes and/or  
36 sweeping routes have been completed on those Saturdays when services are

1 performed pursuant to this Agreement. CONTRACTOR shall ensure that responsible  
2 persons are in charge of the office during collection hours, and are available to receive  
3 inquiries and complaints during normal business hours.

4 **13.02 Telephone Requirements.** CONTRACTOR's office shall be equipped  
5 with sufficient telephones that all Collection Services-related calls received during  
6 normal business hours are answered by an employee within five (5) rings,  
7 CONTRACTOR shall provide either a telephone answering service or mechanical  
8 device to receive Service Recipient inquiries during those times when CONTRACTOR's  
9 office is closed. Calls received after normal business hours shall be addressed before  
10 12:00 noon on the next Work Day.

11 **13.03 Emergency Contact.** CONTRACTOR shall provide the City  
12 Representative with an emergency phone number where CONTRACTOR's  
13 representative authorized to act on CONTRACTOR's behalf can be reached outside of  
14 the required office hours.

15 **13.04 Multilingual/TDD Service.** CONTRACTOR shall at all times maintain the  
16 capability of responding to telephone calls in English, Spanish or Vietnamese and such  
17 other languages as the City Representative may reasonably direct. CONTRACTOR  
18 shall at all times maintain the capability of responding to telephone calls through  
19 Telecommunications Device for the Deaf (TDD) Services.

20 **13.05 Service Recipient Calls.** During normal business hours, CONTRACTOR  
21 shall maintain a telephone answering system capable of accepting at least fifteen (15)  
22 incoming calls at one time. CITY will direct service inquiries and complaints to  
23 CONTRACTOR through the Consolidated Utility Billing System. CONTRACTOR shall  
24 record all calls including any inquiries, service requests and complaints into the  
25 Consolidated Utility Billing System. Any such call received via CONTRACTOR's  
26 answering service shall be recorded in the Consolidated Utility Billing System no later  
27 than 12:00 noon on the following Work Day.

28 CONTRACTOR shall answer all incoming calls within five (5) rings. Any  
29 caller "on-hold" in excess of one and one-half (1.5) minutes shall have the option to  
30 remain "on-hold" or to be switched to a message center where the caller can leave a  
31 message. CONTRACTOR's customer service representatives shall return Service  
32 Recipient calls as provided in this Section 13.05. For all messages left before 3:00  
33 p.m., CONTRACTOR shall attempt all "call backs" at least one time prior to 6:00 p.m. on  
34 the day of the call. For messages left after 3:00 p.m., CONTRACTOR shall attempt all  
35 "call backs" at least one time prior to noon the next Work Day. CONTRACTOR shall  
36 make a minimum of three (3) attempts within twenty-four (24) hours of the receipt of the  
37 call. If CONTRACTOR is unable to reach the Service Recipient on the next Work Day,  
38 CONTRACTOR shall send a postcard to the Service Recipient on the second Work Day

---

1 after the call was received, indicating that CONTRACTOR has attempted to return the  
2 call. All attempts to contact the caller shall be recorded and provided to the CITY in  
3 electronic format.

4 **13.06 Service Complaints.**

5 13.06.1 CONTRACTOR shall handle all service complaints in a prompt  
6 and efficient manner. In the case of a dispute between CONTRACTOR and a Service  
7 Recipient, CONTRACTOR will refer the matter to the City Representative for review.  
8 The City Representative will review the matter and make a determination as to the  
9 resolution of the dispute.

10 13.06.2 For those complaints related to missed collections that are  
11 received by CONTRACTOR by 3:00 p.m. on a Work Day, CONTRACTOR will return to  
12 the Service Unit address and collect the missed materials before leaving the Service  
13 District for the day. For those complaints related to missed collections that are received  
14 by CONTRACTOR after 3:00 p.m. on a Work Day, CONTRACTOR shall have until the  
15 end of the following Work Day to collect the materials. For those complaints related to  
16 repair or replacement of Yard Trimmings Carts, the appropriate provisions of Article 5 of  
17 this Agreement shall apply. At the end of each Work Day CONTRACTOR shall utilize  
18 the Consolidated Utility Billing System to provide the City Representative with a  
19 response to each complaint which was received from a Service Recipient, or CITY in  
20 the event the complaint was made by CITY, during the preceding Work Day.

21 13.06.3 For those complaints related to missed sweeps that are  
22 received by CONTRACTOR by 3:00 p.m. on a Work Day, CONTRACTOR will return to  
23 the service area and sweep the missed materials before leaving the Service District for  
24 the day. For those complaints related to missed sweeps that are received by  
25 CONTRACTOR after 3:00 p.m. on a Work Day, CONTRACTOR shall have until the end  
26 of the following Work Day to return and sweep the missed area.

27 **13.07 Missed Collections.** CONTRACTOR acknowledges and agrees that it is  
28 in the best interest of CITY that all Yard Trimmings and Civic Yard Trimmings be  
29 collected on the scheduled collection day. Accordingly, CONTRACTOR will remedy  
30 missed collections as set forth in Sections 13.06.2 and 13.06.3 above regardless of the  
31 reason that the collection was missed. However, in the event a Service Recipient  
32 requests missed collection service more than two (2) times in any consecutive two (2)  
33 month period CITY will work with CONTRACTOR to determine an appropriate resolution  
34 to that situation. In the event CONTRACTOR believes any complaint to be without  
35 merit, CONTRACTOR shall notify the City Representative immediately. The City  
36 Representative will investigate all disputed complaints and render a determination within  
37 ten (10) Work Days of receipt of CONTRACTOR's notification.

1           **13.08 Customer Service Representative Training.**

2           All of CONTRACTOR's customer service representatives shall be  
3 required to attend training as may be provided by CITY. The City Representative shall  
4 coordinate with CONTRACTOR to schedule such training.

5                           **ARTICLE 14. ADDITIONAL SERVICES**

6           **14.01 Public Education and Outreach Services ("PEOP").** Beginning

7 September 30, 2007, and every year thereafter, CONTRACTOR, at its own expense, shall  
8 prepare, submit and implement an annual (calendar year) PEOP that is in addition to  
9 CITY's Public Education and Outreach Program. CONTRACTOR shall submit the  
10 proposed PEOP annually for CITY approval no later than September 30<sup>th</sup> with plans for  
11 the next calendar year. The PEOP must include a minimum of four (4) public education  
12 campaigns per calendar year, designed to increase diversion and resident participation.  
13 Campaigns should target "problem" areas of CONTRACTOR's Service District where  
14 improvements can be maximized. Targets of outreach should be based on local trends  
15 and patterns based on information obtained by both CITY and CONTRACTOR staff.  
16 Required elements of the annual PEOP are listed in **Exhibit 11** ("CONTRACTOR  
17 OUTREACH REQUIREMENTS") to this Agreement.

18           **14.02 Annual Street Sweeping Calendars.** Each calendar year during the

19 term of this Agreement, CITY shall publish and CONTRACTOR shall distribute, or  
20 contribute to the distribution of annual Sweeping Calendars to each Service Unit  
21 adjacent to streets being swept in the Residential Street Sweeping Service program.  
22 This mailing shall be provided in English, Spanish, Vietnamese, and other languages as  
23 reasonably directed by the City Representative and shall describe the program, inform  
24 each Service Recipient of the sweep day(s) for the upcoming year, and provide CITY's  
25 customer service phone number. The mailing shall occur no later than December 15,  
26 2007, and mailing shall occur annually thereafter during the term of this Agreement. In  
27 addition, up to two (2) times per month, CONTRACTOR shall distribute additional flyers  
28 and door hangers in neighborhoods where parked cars severely hamper sweeping  
29 efforts and such other areas as may be designated by the City Representative.  
30 CONTRACTOR will also have available any other information in connection with the  
31 Recycle Plus Program as required by CITY for public distribution.

32           **14.03 News Media Relations.** CONTRACTOR shall notify the City

33 Representative by fax or phone of all requests for news media interviews related to the  
34 Recycle Plus Program within twenty-four (24) hours of CONTRACTOR's receipt of the  
35 request. Before responding to any inquiries involving issues related to Yard Trimmings  
36 collection or street sweeping or any issues likely to affect participation or Service

1 Recipient perception of services, CONTRACTOR will discuss CONTRACTOR's  
2 proposed response with the City Representative.

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

9 Copies of articles resulting from media interviews or news releases  
10 related to CONTRACTOR's providing services under this Agreement shall be provided  
11 to the City Representative within five (5) Work Days after publication.

12 **14.04 Pilot Programs.**

13 14.04.1 CITY may request CONTRACTOR to conduct pilot test programs  
14 that temporarily change the collection method, the type of service, or the service  
15 schedule for a portion of the Service Units in CONTRACTOR's Service Districts. In the  
16 case of Yard Trimmings Service, a pilot test program shall be limited to no more than ten  
17 percent (10%) of the Service Units in the Service District unless otherwise specifically  
18 agreed by CONTRACTOR and CITY's Director of Environmental Services. Each pilot  
19 test program shall be limited to a term of no more than eighteen (18) months unless  
20 otherwise specifically agreed by CONTRACTOR and CITY's Director of Environmental  
21 Services. CONTRACTOR shall perform any additional record keeping required by a pilot  
22 test program. If CONTRACTOR agrees to perform a pilot test program, CONTRACTOR  
23 and CITY's Director of Environmental Services shall execute a letter of agreement  
24 executed prior to the start of the pilot test program. The letter of agreement shall set  
25 forth the terms of the pilot test program including program costs, program operating  
26 parameters, and program duration.

27 14.04.2 If a pilot test program affects the cost of providing a service, the  
28 program costs set forth in the letter of agreement may include an adjustment to the  
29 monthly payments otherwise payable to CONTRACTOR under this Agreement to reflect  
30 the benefits and/or burdens of the pilot test program. The adjustment shall be set so as  
31 to capture any increase or decrease in CONTRACTOR's direct operating costs resulting  
32 from the pilot test program. "Direct operating cost" includes planning costs; labor  
33 expense, including supervision (wages employment taxes, and fringe benefits);  
34 materials, supplies and fuel; and amortized costs of new equipment purchased or  
35 equipment modified for the pilot test program. Any increases in direct operating costs  
36 must be established by CONTRACTOR and must be capable of verification by an  
37 independent auditor.

---

1           **14.05 Street Sweeping.** If during the term of this Agreement, circumstances  
2 exist which require work associated with the Residential Street Sweeping Service  
3 program that are not specifically provided for in this Agreement, the City Representative  
4 may require CONTRACTOR to perform such other associated work (OAW). When  
5 CONTRACTOR performs OAW, the labor, materials, and equipment used in the  
6 performance of such work shall be subject to the prior written approval of the City  
7 Representative. Examples of OAW that CONTRACTOR may be required to perform  
8 include:

- 9                   ▪ Performance of special sweeps
- 10                  ▪ Flood clean-up
- 11                  ▪ Street sanitation for parades and celebrations
- 12                  ▪ Neighborhood clean-up activities
- 13                  ▪ Any contingency where sweeper and supporting sweeper  
14                    equipment could assist in a particular instance.

15                   CONTRACTOR will be compensated for the performance of OAW based  
16 on the rates set forth in Exhibit 1 provided that CONTRACTOR has first secured written  
17 authorization and approval from the City Representative to perform the work.

18           **14.06 Other Programs and Services.** CONTRACTOR shall provide other  
19 services and programs related to the Recycle Plus Program as requested by CITY at a  
20 price to be mutually agreed upon between CONTRACTOR and the Director of  
21 Environmental Services. In the event CONTRACTOR and the Director of  
22 Environmental Services cannot reach a mutually agreed upon price for the requested  
23 service or program within sixty (60) calendar days of CITY's request, CITY shall have  
24 the right to procure the service of other vendors or contractors to provide the requested  
25 service.

## 26                   **ARTICLE 15. EMERGENCY SERVICE PROVISIONS**

27           **15.01 Route Variances.** In the event of a tornado, major storm, earthquake,  
28 fire, natural disaster, or other such event, the City Representative may grant  
29 CONTRACTOR a variance from regular routes and schedules. As soon as practicable  
30 after such event, CONTRACTOR shall advise the City Representative when it is  
31 anticipated that normal routes and schedules can be resumed. The CITY shall make an  
32 effort through the local news media to inform the public when regular services may be  
33 resumed. Clean-up from some events may require that CONTRACTOR hire additional  
34 equipment, employ additional personnel, or work existing personnel on overtime hours  
35 to clean debris resulting from the event. CONTRACTOR shall receive additional

---

1 compensation, above the normal compensation contained in this Agreement, to cover  
2 the costs of rental equipment, additional personnel, overtime hours and other  
3 documented expenses based on the rates set forth in Exhibit 1 to this Agreement,  
4 provided CONTRACTOR has first secured written authorization and approval from the  
5 City Representative to perform the work.

6 **15.02 Collection Services.** CONTRACTOR may be required to provide Yard  
7 Trimmings Services on an emergency services basis. If CITY requires CONTRACTOR  
8 to provide such emergency services, CONTRACTOR shall be compensated for such  
9 services at the service rates set forth on Exhibit 1 to this Agreement.

## 10 **ARTICLE 16. REPORTING REQUIREMENTS AND SYSTEM**

11 **16.01 Requirements.** CONTRACTOR shall provide and record operating and  
12 customer service data elements as set forth in **Exhibit 10** ("DATA AND REPORTING  
13 REQUIREMENTS") to this Agreement. CONTRACTOR is required to communicate with  
14 the City's PeopleSoft Revenue Management System (Consolidated Utility Billing  
15 System) either via an internet portal or using an electronic interface as described in  
16 **Exhibit 13** ("CONTRACTOR ELECTRONIC INTERFACE REQUIREMENTS") of this  
17 Agreement.

18 16.01.1 The Consolidated Utility Billing System includes the basic  
19 functions CONTRACTOR needs in order to perform its customer service and specific  
20 operational services. CONTRACTOR access is limited to customer information, service  
21 location service type and service level information, collection days, and field activities.  
22 CITY shall have access to all the information available to CONTRACTOR and,  
23 additionally, will control access to the financial and billing functions of the Consolidated  
24 Utility Billing System.

25 16.01.2 CITY will maintain all service location and property owner  
26 information. Changes to the database will be made by CITY. CITY will also have and  
27 control the property ownership database that is used to update property owner records.

28 **16.02 Field Activity Descriptions.** CONTRACTOR shall use the field activity  
29 descriptions that have been set up in the Consolidated Utility Billing System by CITY.  
30 CITY will provide field activity descriptions for all the services provided under this  
31 Agreement.

### 32 **16.03 Reports.**

33 16.03.1 **CITY Reports.** Except as set forth in this Agreement or as  
34 requested by the City Representative, CITY shall generate operational reports and  
35 information required to provide payment to CONTRACTOR, including the monthly

1 invoice. CONTRACTOR will have access to reports and information through the  
2 Consolidated Utility Billing System related to the Service Districts that are necessary, in  
3 the opinion of the City Representative, for CONTRACTOR's operations and for  
4 providing information requested by CITY. CONTRACTOR access to the Consolidated  
5 Utility Billing System's report writer function.

6           16.03.2 CONTRACTOR Reports. CONTRACTOR shall submit reports  
7 through the Consolidated Utility Billing System for daily collection data and processing  
8 data as described in Exhibit 10. CONTRACTOR shall submit to the City Representative  
9 quarterly and annual reports containing the information, in the format, and at the times  
10 described in Exhibit 10.

## 11           **ARTICLE 17. NONDISCRIMINATION & WAGE POLICY**

12           **17.01 Nondiscrimination.** In the performance of all work and services under  
13 this Agreement, CONTRACTOR shall not discriminate against any person on the basis  
14 of such person's race, sex, color, national origin, religion, marital status or sexual  
15 orientation or disability. CONTRACTOR shall comply with all applicable local, state and  
16 federal laws and regulations regarding nondiscrimination, including those prohibiting  
17 discrimination in employment.

18           **17.02 Wage Policy.** CONTRACTOR and its approved subcontractors, as set  
19 forth on **Exhibit 9**, ("APPROVED SUBCONTRACTORS") shall pay those employees  
20 performing work related to this Agreement those specified wage rates as set forth in  
21 **Exhibit 12** ("WAGE REQUIREMENTS") and shall meet the documentation and  
22 reporting requirements set forth therein.

## 23           **ARTICLE 18. QUALITY OF PERFORMANCE OF CONTRACTOR**

24           **18.01 Intent.** CONTRACTOR acknowledges and agrees that among CITY's  
25 primary goals in entering into this Agreement are to ensure that the services are of the  
26 highest caliber, that Service Recipient satisfaction remains at the highest level, that  
27 maximum diversion levels are achieved, and that materials collected are put to the  
28 highest and best use to the extent possible.

29           **18.02 Service Supervisor.** CONTRACTOR shall assign a qualified supervisor  
30 to be in charge of the Yard Trimmings Service and a qualified supervisor to be in charge  
31 of the Residential Street Sweeping Service within CONTRACTOR's Service District and  
32 shall provide the name of those persons in writing to the City Representative on or  
33 before May 1, 2007, and annually by July 1<sup>st</sup> of each subsequent Agreement Year of the  
34 term of this Agreement, and any other time a person in either position changes. The  
35 supervisors shall be physically located in the Service District and available to the

1 Contract Manager through the use of telecommunication equipment at all times that  
2 CONTRACTOR is providing services under this Agreement. In the event a supervisor is  
3 unavailable due to illness or vacation, CONTRACTOR shall designate an acceptable  
4 substitute who shall be available and who has the authority to act in the same capacity  
5 as the supervisor.

6 **18.03 Contract Manager.** CONTRACTOR shall designate a Contract Manager  
7 and shall provide the name of that person in writing to the City Representative within  
8 thirty (30) calendar days of the Effective Date of this Agreement and annually by July 1<sup>st</sup>  
9 of each subsequent Agreement Year of this Agreement and any other time the person in  
10 that position changes. The Contract Manager shall be available to the City  
11 Representative and CITY's Director of Environmental Services through the use of  
12 telecommunications equipment at all times that CONTRACTOR is providing services  
13 pursuant to this Agreement. The Contract Manager shall provide CITY with an  
14 emergency phone number where the Contract Manager can be reached outside of  
15 normal business hours.

16 **18.04 Street Sweeping Quality of Work.** The standards of performance which  
17 CONTRACTOR is obligated to meet are those good street sweeping practices which  
18 leave the serviced area in a debris and dirt free condition. Pictorial representations  
19 contained in a binder on file in the Department of Transportation shall be used to  
20 establish the standards to determine compliance for this portion of the work.

21 **18.05 Administrative Charges.** It shall be the duty of CONTRACTOR to  
22 perform services under this Agreement in such a manner as to implement practices,  
23 policies and procedures designed to achieve the goals set forth in Section 18.01 above.  
24 In the event CONTRACTOR fails to perform the services as set forth in this Agreement,  
25 CITY may assess an administrative charge against CONTRACTOR and may deduct  
26 such charge from any monies due or which may become due to CONTRACTOR in the  
27 following amounts:

| List of Administrative Charges |   |  |
|--------------------------------|---|--|
| a.                             | Failure or neglect to resolve each complaint within the time set forth in this Agreement. | \$500.00 per incident per Service Recipient. |
| b.                             | Failure to clean up spillage or litter caused by CONTRACTOR.                              | \$300.00 per incident per location.          |
| c.                             | Failure to repair damage to customer property caused by CONTRACTOR or its personnel.      | \$500.00 per incident per location.          |
| d.                             | Failure to maintain equipment in a clean, safe, and sanitary manner.                      | \$500.00 per incident per Work Day.          |

| List of Administrative Charges |   |  |
|--------------------------------|---|--|
| e.                             | Failure to have a vehicle operator properly licensed.   | \$500.00 per incident per Work Day.      |
| f.                             | Failure to maintain office hours as required by this Agreement.   | \$500.00 per incident per Work Day.      |
| g.                             | Failure to maintain or timely submit to CITY all documents and reports required under the provisions of this Agreement.                               | \$500.00 per incident per Work Day.      |
| h.                             | Failure to properly cover materials in collection vehicles.   | \$500.00 per incident.                   |
| i.                             | Failure to display CONTRACTOR's name and CITY's customer service phone number on collection and Street Sweeping vehicles.                             | \$500.00 per incident per Work Day.      |
| j.                             | Failure to comply with the hours of operation as required by this Agreement.  | \$500.00 per incident per Work Day.      |
| k.                             | Failure or neglect to complete at least 90 percent of each route on the regular scheduled collection or Residential Street Sweeping Service Work Day. | \$1,000.00 for each route not completed. |
| l.                             | Changing routes without proper notification to the City Representative.   | \$500.00 per incident per Work day.      |
| m.                             | Commingling of Organic Waste collected inside and outside the City of San Jose prior to weighing.   | \$1,000.00 per incident.                 |
| n.                             | Failure to repair or replace damaged carts within the time required by this Agreement.  | \$100.00 per incident per Work Day.      |
| o.                             | Failure to deliver or exchange carts within the time required by this Agreement.  | \$100.00 per incident per Work Day.      |
| p.                             | Failure to provide adequate primary and alternate capacity to accept and process Organic Waste.   | \$1,000.00 per Work Day.                 |
| q.                             | Failure of CONTRACTOR's personnel to carry photographic identification.   | \$100.00 per incident per Work Day.      |
| r.                             | Disposal of Organic Waste in the Disposal Facility without first obtaining the required permission of CITY.   | \$500.00 per occurrence.                 |
| s.                             | Failure to provide required communications equipment.   | \$100.00 per incident per Work Day.      |
| t.                             | Failure to comply with alternate daily cover requirements.  | \$1,000 per incident per Work Day.       |

| List of Administrative Charges |  |  |
|--------------------------------|--|--|
| u.                             | Incomplete or improper sweeping of a street.   | \$50.00 per block (i.e., a cul-de-sac or, for any through street, the part of the street between two consecutive cross streets). |
| v.                             | Failure to clean up Yard Trimmings piles in the proper manner.   | \$100.00 per incident per Work Day.  |
| w.                             | Failure to clean and sweep each Street Sweeping dumpsite at the end of each Work Day in the proper manner.   | \$1,000 per incident per Work Day.   |
| x.                             | Failure to deliver any collected materials to the Disposal Facility or Yard Trimmings Processing Facility, as appropriate, except as otherwise expressly provided in this Agreement. | \$5,000 first failure<br>\$25,000 each subsequent failure  |
| y.                             | Delivery to the Disposal Facility of any Sweep Waste collected outside of Service Districts commingled with that collected as part of this Agreement.                                | \$5,000 first delivery<br>\$25,000 each subsequent delivery  |
| z.                             | Emptying Yard Trimming from a Yard Trimmings Cart onto the ground for purposes of collection   | \$100.00 per incident per Work Day.  |
| aa.                            | Failure to comply with the provisions of the “plans” set forth in Exhibit 7 to this Agreement.   | \$500 per incident per Work Day.   |
| bb.                            | Failure to meet the Organic Waste minimum diversion requirements of this Agreement (calculated per calendar year per Service District).  | Shortfall of less than 2%:<br>\$10,000.<br>Shortfall of 2% or more:<br>\$25,000  |

1           **18.06 Procedure for Review of Administrative Charges.** The City  
 2 Representative may assess administrative charges pursuant to this Article 18 by issuing  
 3 a written notice to CONTRACTOR (“Notice of Assessment”) of the administrative  
 4 charges assessed, if any, and the basis for each assessment.

5           18.06.1 The administrative charges assessment shall become final  
 6 unless, within ten (10) calendar days of the date of the Notice of Assessment,  
 7 CONTRACTOR submits a written request for a meeting with the Director of  
 8 Environmental Services (“Director”) to present evidence that the assessment should not  
 9 be made.

1 18.06.2 The City Representative shall schedule a meeting between  
2 CONTRACTOR and the Director or the Director's designee as soon as reasonably  
3 possible after timely receipt of CONTRACTOR's request.

4 18.06.3 The Director or the Director's designee shall review  
5 CONTRACTOR's evidence and render a decision sustaining or reversing the  
6 administrative charges as soon as reasonably possible after the meeting. Written notice  
7 of the decision shall be provided to CONTRACTOR.

8 18.06.4 In the event CONTRACTOR does not submit a written request  
9 for a meeting within ten (10) calendar days of the date of the Notice of Assessment, the  
10 City Representative's determination shall be final and CITY may deduct the  
11 administrative charges from amounts otherwise due to CONTRACTOR.

12 **18.07 Exercise of Rights.** CITY's assessment or collection of administrative  
13 charges shall not prevent CITY from exercising any other right or remedy, including the  
14 right to terminate this Agreement, for CONTRACTOR's failure to perform the work and  
15 services in the manner set forth in this Agreement.

## 16 **ARTICLE 19. PERFORMANCE BOND**

17 **19.01 Performance Bond.** Within ten (10) calendar days from the Effective  
18 Date, CONTRACTOR shall furnish to the City Clerk, and keep current, a performance  
19 bond in a form as set forth in **Exhibit 4** ("FORM OF PERFORMANCE BOND") to this  
20 Agreement, for the faithful performance of this Agreement and all of CONTRACTOR's  
21 obligations arising hereunder in an amount as follows:

22 19.01.1 From ten (10) calendar days from the Effective Date until June  
23 30, 2008, an amount not less than (amount to be inserted equal to 25% of the  
24 CONTRACTOR's final proposal).

25 **19.02 Licensed Surety.** The performance bond shall be executed by a surety  
26 company licensed to do business in the State of California; having an "A-" or better  
27 rating by A. M. Best or Standard and Poors; and included on the list of surety companies  
28 approved by the Treasurer of the United States. If the term of the performance bond is  
29 shorter than the term of this Agreement, CONTRACTOR shall submit proof of renewal  
30 or extension at least thirty (30) calendar days prior to the performance bond expiration  
31 date.

## 32 **ARTICLE 20. INSURANCE**

33 **20.01 Insurance Policies.** CONTRACTOR shall secure and maintain  
34 throughout the term of this Agreement insurance against claims for injuries to persons

---

1 or damages to property which may arise from or in connection with CONTRACTOR's  
2 performance of work or services under this Agreement. CONTRACTOR's performance  
3 of work or services shall include performance by CONTRACTOR's employees, agents,  
4 representatives and subcontractors.

5 **20.02 Minimum Scope of Insurance.** Insurance coverage shall be at least as  
6 broad as:

7 20.02.1 Insurance Services Office Commercial General Liability  
8 coverage ("occurrence" form CG 0001), including products and completed operations,  
9 X, C, U (Explosion, Collapse and Underground) where applicable.

10 20.02.2 Insurance Services Office Form No.CA 0001 covering  
11 Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA  
12 0025. Coverage shall also include code 8, "hired autos" and code 9 "non-owned autos".

13 20.02.3 Workers' Compensation insurance as required by the California  
14 Labor Code and Employers Liability Insurance.

15 20.02.4 Hazardous Waste and Environmental Impairment Liability  
16 Insurance.

17 **20.03 Minimum Limits of Insurance.** CONTRACTOR shall maintain insurance  
18 limits no less than:

19 20.03.1 Comprehensive General Liability: \$3,000,000 combined single  
20 limit per occurrence for bodily injury, personal injury and property damage. If  
21 Commercial General Liability insurance with a general aggregate limit is used, either the  
22 general aggregate limit shall apply separately to this Agreement or the general  
23 aggregate limit shall be \$5,000,000.

24 20.03.2 Automobile Liability: \$3,000,000 combined single limit per  
25 accident for bodily injury and property damage.

26 20.03.3 Workers' Compensation and Employers Liability: Workers'  
27 Compensation limits as required by the California Labor Code and Employers Liability  
28 limits of \$3,000,000 per accident.

29 20.03.4 Hazardous Waste and Environmental Impairment Liability:  
30 \$3,000,000 per occurrence.

31 **20.04 Deductibles and Self-Insured Retention.** Any deductibles or self-  
32 insured retention must be declared to, and approved by, CITY's Risk Manager. At the  
33 option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-  
34 insured retention as respects CITY, its officers, employees, agents and contractors; or  
35 CONTRACTOR shall procure a bond guaranteeing payment of losses and related

1 investigations, claim administration and defense expenses in an amount specified by  
2 CITY's Risk Manager.

3 **20.05 Endorsements.** The policies are to contain, or be endorsed to contain,  
4 the following provisions:

5 20.05.1 General Liability and Automobile Liability Coverage.

6 20.05.1.1 The City of San José, its officers, employees, agents and  
7 contractors are to be covered as additional insureds as respects: Liability arising out of  
8 activities performed by, or on behalf of, CONTRACTOR; products and completed  
9 operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; and  
10 automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall  
11 contain no special limitations on the scope of protection afforded to CITY, its officers,  
12 employees, agents and contractors.

13 20.05.1.2 CONTRACTOR's insurance coverage shall be primary  
14 insurance as respects CITY, its officers, employees, agents and contractors. Any  
15 insurance, or self-insurance maintained by CITY, its officers, employees, agents or  
16 contractors shall be in excess of CONTRACTOR's insurance and shall not contribute  
17 with it.

18 20.05.1.3 Any failure to comply with reporting provisions of the  
19 policies shall not affect coverage provided to CITY, its officers, employees, agents, or  
20 contractors.

21 20.05.1.4 Coverage shall state that CONTRACTOR's insurance  
22 shall apply separately to each insured against whom claim is made or suit is brought,  
23 except with respect to the limits of the insurer's liability.

24 20.05.2 All Coverage. Each insurance policy required by this  
25 Agreement shall be endorsed to state that coverage shall not be suspended, voided,  
26 canceled, or reduced in limits except after thirty (30) days prior written notice has been  
27 given to CITY' Risk Manager.

28 **20.06 Acceptability of Insurers.** Insurance is to be placed with insurers  
29 acceptable to CITY's Risk Manager.

30 **20.07 Verification of Coverage.** CONTRACTOR shall furnish CITY with  
31 certificates of insurance and with original endorsements affecting coverage required by  
32 this Agreement. The certificates and endorsement for each insurance policy are to be  
33 signed by a person authorized by that insurer to bind coverage on its behalf.  
34 CONTRACTOR shall furnish CITY with a new certificate of insurance and  
35 endorsements on each renewal of coverage or change of insurers.

1                   20.07.1 Proof of insurance shall be mailed to the following address or  
2 any subsequent address as may be directed in writing by the CITY's Risk Manager:

3                   Risk Management  
4                   Finance  
5                   City of San Jose  
6                   200 East Santa Clara Street  
7                   San Jose, CA 95113-1905

8                   **20.08 Subcontractors.** CONTRACTOR shall include all subcontractors as  
9 insureds under its policies or shall obtain separate certificates and endorsements for  
10 each subcontractor.

11                   **20.09 Modification of Insurance Requirements.** The insurance requirements  
12 provided in this Agreement may be modified or waived by CITY's Risk Manager, in  
13 writing, upon the request of CONTRACTOR if the CITY's Risk Manager determines  
14 such modification or waiver is in the best interest of CITY considering all relevant  
15 factors, including exposure to CITY.

16                   **20.10 Rights of Subrogation.** All required insurance policies shall preclude  
17 any underwriter's rights of recovery or subrogation against CITY with the express  
18 intention of the parties being that the required insurance coverage protects both parties  
19 as the primary coverage for any and all losses covered by the above-described  
20 insurance. CONTRACTOR shall ensure that any companies issuing insurance to cover  
21 the requirements contained in this Agreement agree that they shall have no recourse  
22 against CITY for payment or assessments in any form on any policy of insurance. The  
23 clauses "Other Insurance Provisions" and "Insured Duties in the Event of an  
24 Occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is  
25 named as an additional insured shall not apply to CITY.

26                   **ARTICLE 21. INDEMNIFICATION**

27                   **21.01 Indemnification.** CONTRACTOR shall indemnify and hold harmless  
28 CITY, CITY's contractors, and the public officials, officers, directors, employees, agents  
29 and other contractors of each of them, from and against any and all claims, costs,  
30 losses and damages (including but not limited to all fees and charges of engineers,  
31 architects, attorneys and other professionals as well as all Court or other dispute  
32 resolution costs), liabilities, expenditures or causes of action of any kind (including  
33 negligent, reckless, willful or intentional acts or omissions of the CONTRACTOR, any  
34 subcontractor, any supplier, any person or organization directly or indirectly employed  
35 by any of them to perform or furnish any services or anyone for whose acts any of them  
36 may be liable), arising from, relative to or caused by the performance of the services  
37 pursuant to this Agreement. This indemnity includes but is not limited to claims

1 attributable to bodily injury, sickness, disease or death and to injury or destruction of  
2 tangible property. CONTRACTOR agrees, at CONTRACTOR's expense, after written  
3 notice from CITY, to defend any action against CITY that falls within the scope of this  
4 indemnity, or CITY, at CITY's option, may elect not to tender such defense and may  
5 elect instead to secure its own attorneys to defend any such action and the reasonable  
6 costs and expenses of such attorneys incurred in defending such action shall be  
7 payable by CONTRACTOR. Additionally, if CONTRACTOR, after receipt of written  
8 notice from CITY, fails to make any payment due under this Agreement to CITY,  
9 CONTRACTOR shall pay any reasonable attorneys' fees or costs incurred by CITY in  
10 securing any such payment from CONTRACTOR. Payment of any amount due  
11 pursuant to the foregoing indemnity shall, after receipt of written notice by  
12 CONTRACTOR from CITY that such amount is due, be made by CONTRACTOR prior  
13 to CITY being required to pay same, or in the alternative, CITY, at CITY's option, may  
14 make payment of an amount so due and CONTRACTOR shall promptly reimburse CITY  
15 for same.

16 **21.02 Consideration.** It is specifically understood and agreed that the  
17 consideration inuring to CONTRACTOR for the execution of this Agreement includes  
18 the promises, payments, covenants, rights and responsibilities contained in this  
19 Agreement.

20 **21.03 Obligation.** The execution of this Agreement by CONTRACTOR shall  
21 obligate CONTRACTOR to comply with the foregoing indemnification provision;  
22 however, the collateral obligation of providing insurance must also be complied with as  
23 set forth in Article 20 above.

24 **21.04 Subcontractors.** CONTRACTOR shall require all subcontractors to  
25 enter into a contract containing the provisions set forth in Section 21.01 in which  
26 contract the subcontractor fully indemnifies CITY in accordance with this Agreement.

27 **21.05 Exception.** Notwithstanding Sections 21.01, 21.02 and 21.03 above,  
28 CONTRACTOR's obligation to indemnify, hold harmless and defend CITY, its officers  
29 and employees shall not extend to any loss, liability, penalty, plain, damage, action or  
30 suit arising or resulting from acts or omissions constituting willful misconduct or gross  
31 negligence on the part of CITY its officers or employees.

32 **21.06 Damage by CONTRACTOR.** If CONTRACTOR's employees or  
33 subcontractors cause any injury, damage or loss to CITY property, including but not  
34 limited to CITY streets or curbs (excepting normal wear and tear), CONTRACTOR shall  
35 reimburse CITY for CITY's cost of repairing such injury, damage or loss. Such  
36 reimbursement is not in derogation of any right of CITY to be indemnified by  
37 CONTRACTOR for any such injury, damage or loss. With the prior written approval of

1 CITY's Director of Environmental Services, CONTRACTOR may repair the damage at  
2 CONTRACTOR's sole cost and expense.

3 **ARTICLE 22. DEFAULT OF AGREEMENT**

4 **22.01 Termination.** CITY may cancel this Agreement, except as otherwise  
5 provided below in this Article, by giving the CONTRACTOR thirty (30) days advance  
6 written notice, to be served as provided in Section 24.20, upon the happening of any  
7 one of the following events:

8 22.01.1 CONTRACTOR shall take the benefit of any present or future  
9 insolvency statute, or shall make a general assignment for the benefit of creditors, or file  
10 a voluntary petition in bankruptcy (court) or a petition or answer seeking an  
11 arrangement for its reorganization or the readjustment of its indebtedness under the  
12 federal bankruptcy laws or under any other law or statute of the United States or any  
13 state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or  
14 substantially all of its property; or

15 22.01.2 By order or decree of a Court, CONTRACTOR shall be  
16 adjudged bankrupt or an order shall be made approving a petition filed by any of its  
17 creditors or by any of the stockholders of CONTRACTOR, seeking its reorganization or  
18 the readjustment of its indebtedness under the federal bankruptcy laws or under any  
19 law or statute of the United States or of any state thereof, provided that if any such  
20 judgment or order is stayed or vacated within sixty (60) calendar days after the entry  
21 thereof, any notice of default shall be and become null, void and of no effect; unless  
22 such stayed judgment or order is reinstated in which case, said default shall be deemed  
23 immediate; or

24 22.01.3 By, or pursuant to, or under the authority of any legislative act,  
25 resolution or rule or any order or decree of any Court or governmental board, agency or  
26 officer having jurisdiction, a receiver, trustee or liquidator shall take possession or  
27 control of all or substantially all of the property of CONTRACTOR, and such possession  
28 or control shall continue in effect for a period of sixty (60) calendar days; or

29 22.01.4 CONTRACTOR has defaulted, by failing or refusing to pay in a  
30 timely manner the administrative charges or other monies due CITY and said default is  
31 not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

32 22.01.5 CONTRACTOR has defaulted by allowing any final judgment for  
33 the payment of money to stand against it unsatisfied and said default is not cured within  
34 thirty (30) calendar days of receipt of written notice by CITY to do so; or

35 22.01.6 In the event that the monies due CITY under Section 22.01.4  
36 above or an unsatisfied final judgment under Section 22.01.5 above is the subject of a

1 judicial proceeding, CONTRACTOR shall not be in default if the sum of money is  
2 bonded. All bonds shall be in a form acceptable to the City Attorney; or

3           22.01.7 CONTRACTOR has defaulted, by failing or refusing to perform  
4 or observe the terms, conditions or covenants in this Agreement or any of the rules and  
5 regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused to  
6 comply with the instructions of the City Representative relative thereto and said default  
7 is not cured within thirty (30) calendar days of receipt of written notice from CITY to do  
8 so, or if by reason of the nature of such default, the same cannot be remedied within  
9 thirty (30) calendar days following receipt by CONTRACTOR of written demand from  
10 CITY to do so, CONTRACTOR fails to commence the remedy of such default within  
11 said thirty (30) calendar days following such written notice or having so commenced  
12 shall fail thereafter to continue with diligence the curing thereof (with CONTRACTOR  
13 having the burden of proof to demonstrate (a) that the default cannot be cured within  
14 thirty (30) days, and (b) that it is proceeding with diligence to cure said default, and such  
15 default will be cured within a reasonable period of time). However, notwithstanding  
16 anything contained herein to the contrary, for the failure of CONTRACTOR to provide  
17 Yard Trimmings Service or Residential Street Sweeping Service for a period of three (3)  
18 consecutive Work Days, the CITY may secure CONTRACTOR's records and Collection  
19 Services equipment on the fourth (4th) Work Day in order to provide interim services  
20 until such time as the matter is resolved and CONTRACTOR is again able to perform  
21 pursuant to this Agreement; provided, however, if CONTRACTOR is unable for any  
22 reason or cause to resume performance at the end of thirty (30) calendar days all  
23 liability of CITY under this Agreement to the CONTRACTOR shall cease and this  
24 Agreement may be deemed terminated upon notice by the City Manager. In the event  
25 CITY secures CONTRACTOR's equipment in order to provide interim services,  
26 ownership of such equipment shall remain with CONTRACTOR and shall not transfer to  
27 CITY.

28           **22.02 Violations.** Notwithstanding the foregoing and as supplemental and  
29 additional means of termination of this Agreement under this Article, in the event that  
30 CONTRACTOR's record of performance show that CONTRACTOR has frequently,  
31 regularly or repetitively defaulted in the performance of any of the covenants and  
32 conditions required herein to be kept and performed by CONTRACTOR, in the opinion  
33 of the City Manager and regardless of whether CONTRACTOR has corrected each  
34 individual condition of default, CONTRACTOR shall be deemed a "habitual violator",  
35 shall be deemed to have waived the right to any further notice or grace period to  
36 correct, and all of said defaults shall be considered cumulative and collectively shall  
37 constitute a condition of irredeemable default. The City Manager shall thereupon issue  
38 CONTRACTOR a final warning citing the circumstances therefore, and any single  
39 default by CONTRACTOR of whatever nature, subsequent to the occurrence of the last

1 of said cumulative defaults, shall be grounds for immediate termination of the  
2 Agreement. In the event of any such subsequent default, the City Manager may  
3 terminate this Agreement upon giving of written final notice to CONTRACTOR, such  
4 termination to be effective upon the date specified in the City Manager's written notice  
5 to CONTRACTOR. Upon such termination, and all contractual fees due hereunder plus  
6 any and all charges and interest, if any, shall be payable to the date of termination, and  
7 CONTRACTOR shall have no further rights hereunder. Immediately upon the specified  
8 date in such final notice CONTRACTOR shall cease any further performance of  
9 services under this Agreement.

10 **22.03 Effective Date of Termination.** In the event of the aforesaid events  
11 specified in Sections 22.01 and 22.02 above, and except as otherwise provided in said  
12 Sections, termination shall be effective upon the date specified in the City Manager's  
13 written notice to CONTRACTOR and upon said date this Agreement shall be deemed  
14 immediately terminated and upon such termination all liability of CITY under this  
15 Agreement to CONTRACTOR, other than the payment of moneys due, shall cease, and  
16 CITY shall have the right to call the performance bond and shall be free to negotiate  
17 with other contractors for the performance of the services specified in this Agreement.  
18 In the event of CONTRACTOR's failure to perform, CONTRACTOR shall reimburse  
19 CITY for all direct and indirect costs incurred by CITY in providing interim services.

20 **22.04 Immediate Termination.** The City Manager may terminate this  
21 Agreement immediately upon written notice to CONTRACTOR in the event  
22 CONTRACTOR fails to provide and maintain the Performance Bond as required by this  
23 Agreement, CONTRACTOR fails to obtain or maintain insurance policies endorsements  
24 as required by this Agreement, CONTRACTOR fails to provide the proof of insurance as  
25 required by this Agreement, or CONTRACTOR offers or gives any gift prohibited by  
26 Chapter 12.08 of the San José Municipal Code.

27 **22.05 Termination Cumulative.** CITY's right to terminate this Agreement is  
28 cumulative to any other rights and remedies provided by law or by this Agreement.

## 29 **ARTICLE 23. FUND APPROPRIATION**

30 **23.01 Fiscal Year Authorization.** CONTRACTOR understands and agrees  
31 that CITY, during any fiscal year, is not authorized to expend money, incur any liability or  
32 enter into any contract which, by its terms, involves the expenditure of money in excess  
33 of the amounts appropriated as available for expenditure during such fiscal year and  
34 that any contract or agreement, verbal or written, made in violation of this provision is  
35 null and void and that consequently, no money may be paid on such contract or  
36 agreement beyond such limits. Nothing contained in this Agreement shall prevent the  
37 making of agreements or contracts for periods exceeding one (1) year, but any

---

1 agreement or contract so made shall be executory only for the value of the services to  
2 be rendered or agreed to be paid for in succeeding fiscal years. If the City Council does  
3 not appropriate funds for the services under this Agreement by June 30<sup>th</sup> of each year,  
4 CITY shall so notify CONTRACTOR and CONTRACTOR shall suspend services under  
5 this Agreement until CITY provides written verification that the funds necessary for  
6 CONTRACTOR's compensation and other necessary expenditures are budgeted as  
7 available within the appropriate fiscal year budget.

8       **23.02 Adoption.** CITY does not represent that said appropriation item will be  
9 actually adopted, said determination being the determination of the City Council at the  
10 time of the adoption of the appropriation.

## 11                   **ARTICLE 24. MISCELLANEOUS PROVISIONS**

12       **24.01 Modifications.** CITY shall have the power to make changes in this  
13 Agreement as the result of changes in law, changes in the City of San José Municipal  
14 Code, or both, to impose new rules and regulations on CONTRACTOR under this  
15 Agreement relative to the scope and methods of providing Collection Services as shall  
16 from time-to-time be necessary and desirable for the public welfare. CITY shall give  
17 CONTRACTOR notice of any proposed change and an opportunity to be heard  
18 concerning those matters. The scope and method of providing Collection Services as  
19 referenced herein shall also be liberally construed to include, but is not limited to the  
20 manner, procedures, operations and obligations, financial or otherwise, of the  
21 CONTRACTOR.

22       **24.02 Change in Law.** CITY and CONTRACTOR understand and agree that  
23 the California Legislature has the authority to make comprehensive changes in Solid  
24 Waste Management legislation and that these and other changes in law in the future  
25 which mandate certain actions or programs for counties or municipalities may require  
26 changes or modifications in some of the terms, conditions or obligations under this  
27 Agreement. CONTRACTOR agrees that the terms and provisions of the City of San  
28 José Municipal Code, as it now exists or as it may be amended in the future, shall apply  
29 to all of the provisions of this Agreement and the Service Recipients of the  
30 CONTRACTOR located within the Service District. In the event any future change in  
31 the San José Municipal Code, materially alters the obligations of CONTRACTOR, then  
32 the affected service rates, as established in Exhibit 1 of this Agreement shall be  
33 adjusted. Nothing contained in this Agreement shall require any party to perform any  
34 act or function contrary to law. CITY and CONTRACTOR agree to enter into good faith  
35 negotiations regarding modifications to this Agreement which may be required in order  
36 to implement changes in the interest of the public welfare or due to change in law.

---

1 When such modifications are made to this Agreement, CITY and CONTRACTOR shall  
2 negotiate in good faith, a reasonable and appropriate compensation adjustment for any  
3 increase or decrease in the services or other obligations required of CONTRACTOR  
4 due to any modification in the Agreement under this Article. CITY and CONTRACTOR  
5 shall not unreasonably withhold agreement to such compensation adjustment.

6 **24.03 Acknowledgement Of Legal Representation.** It is acknowledged that  
7 each party was, or had the opportunity to be, represented by counsel in the preparation  
8 and negotiation of this Agreement and had the opportunity to contribute to the terms and  
9 conditions of this Agreement and, accordingly, the rule that a contract shall be  
10 interpreted strictly against the party preparing the same shall not apply herein due to the  
11 joint contributions of both parties.

12 **24.04 Financial Interest Representation.** CONTRACTOR warrants and  
13 represents that no elected official, officer, agent or employee of CITY has a financial  
14 interest, directly or indirectly, in this Agreement or in the compensation to be paid under  
15 it and, further, that no CITY employee who acts in the CITY as a “purchasing agent” as  
16 defined in the appropriate Section of California Statutes, nor any elected or appointed  
17 officer of CITY, nor any spouse or child of such purchasing agent, employee or elected  
18 or appointed officer, is a partner, officer, director or proprietor of CONTRACTOR and,  
19 further, that no such CITY employee, purchasing agent, CITY elected or appointed  
20 officer, or the spouse or child of any of them, alone or in combination, has a material  
21 interest in CONTRACTOR. Material interest means direct or indirect ownership of more  
22 than five percent (5%) of the total assets or capital stock of CONTRACTOR.

23 **24.05 CONTRACTOR’s Personnel Requirements.** CONTRACTOR shall  
24 employ and assign qualified personnel to perform all services set forth herein.  
25 CONTRACTOR shall be responsible for ensuring that its employees comply with all  
26 applicable laws and regulations and meet all federal, state and local requirements  
27 related to their employment and position.

28 24.05.1 CITY may request the transfer of any employee of  
29 CONTRACTOR who materially violates any provision hereof, or who is wanton,  
30 negligent, or discourteous in the performance of his or her duties.

31 24.05.2 CONTRACTOR’s field operations personnel shall be required to  
32 wear a clean uniform shirt bearing CONTRACTOR’s name. CONTRACTOR’s  
33 employees who normally come into direct contact with the public, including drivers, shall  
34 bear some means of individual photographic identification such as a name tag or  
35 identification card.

1           24.05.3 Each driver of a collection vehicle shall at all times carry a valid  
2 California driver's license and all other required licenses for the type of vehicle that is  
3 being operated.

4           24.05.4 Each driver of a collection vehicle shall at all times comply with  
5 all applicable local, state and federal laws, regulations and requirements.

6           24.05.5 CONTRACTOR's employees, officers, and agents shall at no  
7 time be allowed to identify themselves or in any way represent themselves as being  
8 employees of CITY.

9           **24.06 Exempt Waste.** CONTRACTOR shall not be required to collect of  
10 Exempt Waste, but may offer such services. Collection and disposal of Exempt Waste  
11 is not regulated under this Agreement, but if provided by CONTRACTOR shall be in  
12 strict compliance with all federal, state and local laws and regulations.

13           **24.07 Independent Contractor.** In the performance of services pursuant to  
14 this Agreement, CONTRACTOR shall be an independent contractor and not an officer,  
15 agent, servant or employee of CITY. CONTRACTOR shall have exclusive control of the  
16 details of the services and work performed and over all persons performing such  
17 services and work. CONTRACTOR shall be solely responsible for the acts and  
18 omissions of its officers, agents, employees, contractors and subcontractors, if any.  
19 Neither CONTRACTOR nor its officers, employees, agents, contractors or  
20 subcontractors shall obtain any right to retirement benefits, Workers' Compensation  
21 benefits, or any other benefits which accrue to CITY employees and CONTRACTOR  
22 expressly waives any claim it may have or acquire to such benefits.

23           **24.08 Law To Govern.** The law of the State of California shall govern the  
24 rights, obligations, duties and liabilities of CITY and CONTRACTOR under this  
25 Agreement and shall govern the interpretation of this Agreement.

26           **24.09 Venue.** Any litigation between CITY and CONTRACTOR concerning or  
27 arising out of this Agreement shall be filed and maintained exclusively in the Superior  
28 Courts of Santa Clara County, State of California, or in the United States District Court  
29 for the Northern District of California to the fullest extent permissible by law. Each party  
30 consents to service of process in any manner authorized by California law.

31           **24.10 Assignment.** No assignment of this Agreement or any right occurring  
32 under this Agreement shall be made in whole or in part by CONTRACTOR without the  
33 express written consent of the Director of Environmental Services. CITY shall have full  
34 discretion to approve or deny, with or without cause, any proposed or actual assignment  
35 by CONTRACTOR. Any assignment of this Agreement made by CONTRACTOR  
36 without the express written consent of the Director of Environmental Services shall be  
37 null and void and shall be grounds for CITY to declare a default of this Agreement and

---

1 immediately terminate this Agreement by giving written notice to CONTRACTOR, and  
2 upon the date of such notice this Agreement shall be deemed immediately terminated,  
3 and upon such termination all liability of CITY under this Agreement to CONTRACTOR,  
4 other than the payment of moneys due as of the date of termination, shall cease, and  
5 CITY shall have the right to call the performance bond and shall be free to negotiate  
6 with other contractors, CONTRACTOR, or any other person or company for the service  
7 which is the subject of this Agreement. In the event of any assignment, the assignee  
8 shall fully assume all the liabilities of CONTRACTOR.

9       **24.11 Subcontractors.** The use of a subcontractor to perform services under  
10 this Agreement shall not constitute delegation of CONTRACTOR's duties provided that  
11 CONTRACTOR has received prior written authorization from the Director of  
12 Environmental Services to subcontract such services and the Director of Environmental  
13 Services has approved a subcontractor who will perform such services.  
14 CONTRACTOR shall be responsible for directing the work of CONTRACTOR's  
15 subcontractors and any compensation due or payable to CONTRACTOR's  
16 subcontractor shall be the sole responsibility of CONTRACTOR. The Director of  
17 Environmental Services shall have the right to require the removal of any approved  
18 subcontractor for reasonable cause. The subcontractors listed in Exhibit 9 to this  
19 Agreement, are hereby approved by CITY as to the scope of work specified in Exhibit 9  
20 for each subcontractor. Additional subcontractors may be used upon written approval of  
21 the Director of Environmental Services in accordance with this Section 24.11.

22       **24.12 Compliance With Laws.** In the performance of this Agreement,  
23 CONTRACTOR shall comply with all applicable laws, regulations, ordinances and codes  
24 of the federal, state and local governments, including without limitation the Charter of  
25 the City of San José and the San José Municipal Code.

26       **24.13 Amendments To Municipal Code.** CITY shall provide written notice to  
27 CONTRACTOR of any planned amendment to Chapter 9.10 of the San José Municipal  
28 Code that would substantially affect the performance of CONTRACTOR's services  
29 pursuant to this Agreement. Except in the case of an amendment determined by the  
30 City Council to be an urgency measure, such notice shall be provided at least thirty (30)  
31 days prior to the City Council's approval of such an amendment.

32       **24.14 Permits And Licenses.** CONTRACTOR shall obtain, at its own expense,  
33 all permits and licenses required by law or ordinance and maintain same in full force  
34 and effect throughout the term of this Agreement. CONTRACTOR shall provide proof of  
35 such permits, licenses or approvals and shall demonstrate compliance with the terms  
36 and conditions of such permits, licenses and approvals upon the request of the City  
37 Representative.

---

1           **24.15 Ownership Of Written Materials.** All reports, documents, brochures,  
2 public education materials, and other written, printed, electronic or photographic  
3 materials developed by CITY or CONTRACTOR in connection with the services to be  
4 performed under this Agreement or in connection with the Recycle Plus Program,  
5 whether developed directly or indirectly by CITY or CONTRACTOR, shall be and shall  
6 remain the property of CITY without limitation or restrictions on the use of such  
7 materials by CITY. CONTRACTOR shall not use such materials in connection with any  
8 project not connected with this Agreement without the prior written consent of the City  
9 Representative. This Section 24.15 does not apply to ideas or concepts described in  
10 such materials and does not apply to the format of such materials.

11           **24.16 Waiver.** The waiver by CITY or CONTRACTOR of any breach for  
12 violation of any term covenant or condition of this Agreement shall not be deemed to be  
13 a waiver of any other term, covenant or condition or any subsequent breach or violation  
14 of the same or of any other term, covenant or condition. The subsequent acceptance by  
15 CITY of any fee, tax, or any other monies which may become due from CONTRACTOR  
16 to CITY shall not be deemed to be a waiver by CITY of any breach for violation of any  
17 term, covenant or condition of this Agreement.

18           **24.17 Prohibition Against Gifts.** CONTRACTOR represents that  
19 CONTRACTOR is familiar with CITY's prohibition against the acceptance of any gift by  
20 a CITY officer or employee, which prohibition is found in Chapter 12.08 of the San José  
21 Municipal Code. CONTRACTOR shall not offer any CITY officer or designated  
22 employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited  
23 by Chapter 12.08 shall constitute a material breach of this Agreement and, in addition to  
24 any other remedy CITY may have in law or in equity, CITY may terminate this  
25 Agreement for such breach as provided in Section 22.04 of this Agreement.

26           **24.18 Disqualification Of Former Employees.** CONTRACTOR represents  
27 that CONTRACTOR is familiar with the provisions of Chapter 12.10 of the San José  
28 Municipal Code relating to the disqualification of former officers and employees of CITY  
29 in matters that are connected with former duties or official responsibilities ("Revolving  
30 Door Ordinance"). CONTRACTOR shall not utilize, either directly or indirectly, any  
31 officer, employee, or agent of CONTRACTOR to perform services under this  
32 Agreement, if in the performance of such services the officer, employee or agent would  
33 be in violation of the Revolving Door Ordinance.

34           **24.19 Point Of Contact.** For Yard Trimmings Service, the day-to-day dealings  
35 between CONTRACTOR and CITY shall be between CONTRACTOR's \_\_\_\_\_ and  
36 the City Representative. For Residential Street Sweeping Service, the day-to-day  
37 dealings between CONTRACTOR and CITY shall be between CONTRACTOR's  
38 and the City Representative.

1           **24.20 Notices.**

2           24.20.1 Except as otherwise provided in this Agreement, whenever  
3 either party desires to give notice to the other, the notice must be in writing and given as  
4 provided in this Section 24.20. For the present, the parties designate the following as  
5 the respective persons and places for giving of notice:

6           To CITY:

7                     Director  
8                     Department of Environmental Services  
9                     200 East Santa Clara Street, 10<sup>th</sup> Floor  
10                    San Jose, CA 95113-1905  
11                    Fax: (408) 292-6212

12           With a copy to:

13                    City Representative  
14                    Recycle Plus Program  
15                    Department of Environmental Services  
16                    200 East Santa Clara Street, 10<sup>th</sup> Floor  
17                    San Jose, CA 95113-1905  
18                    Fax: (408) 292-6212

19           To CONTRACTOR:

20                    To be inserted

21           With a copy to:

22                    To be inserted

23           24.20.2 Notices shall be effective when deposited in the U.S. mail,  
24 postage prepaid, or when personally delivered to the address specified above or to such  
25 other address as designated by a party by providing written notice of a change in  
26 address. Notice may also be sent by facsimile transmission and shall be effective when  
27 received, provided that facsimile transmissions received (i.e. printed) after 4:30 p.m. or  
28 on weekends or holidays, will be deemed received on the next Work Day. The original  
29 of items that are transmitted by facsimile must also be mailed or personally delivered as  
30 provided above within three (3) Work Days of the facsimile transmission.

31           24.20.3 Notice by CITY to CONTRACTOR of a Collection or other  
32 Service Recipient problem or complaint may be given to CONTRACTOR orally by  
33 telephone at CONTRACTOR's local office with confirmation sent to CONTRACTOR  
34 through the Consolidated Utility Billing System by the end of the Work Day.

---

1           **24.21 Transition To Next Contractor.** In the event CONTRACTOR is not  
2 awarded an agreement to continue to provide Yard Trimmings Services or Residential  
3 Street Sweeping Services following the expiration or early termination of this  
4 Agreement, CONTRACTOR shall cooperate fully with CITY and any subsequent  
5 contractor(s) to assure a smooth transition of services described in this Agreement.  
6 Such cooperation shall include but not be limited to transfer of computer data, files and  
7 tapes; providing routing information, route maps, vehicle fleet information, and list of  
8 Service Recipients; not less than one hundred twenty (120) calendar days prior to the  
9 termination of this Agreement, providing a list of workers who will be displaced by the  
10 transfer of services to a successor contractor; providing a complete inventory of all carts  
11 and bins; providing adequate labor and equipment to complete performance of all  
12 Collection Services required under this Agreement; taking all actions necessary to  
13 transfer ownership of Yard Trimmings Carts to CITY; including transporting such  
14 containers to a location designated by the City Representative; coordinating collection of  
15 materials set out in new containers if new containers are provided for a subsequent  
16 Agreement; and providing other reports and data required by this Agreement.

17           **24.22 Contractor's Records.**

18           24.22.1 CONTRACTOR shall maintain any and all letters, books of  
19 account, invoices, vouchers, canceled checks, and other records or documents  
20 evidencing or relating to charges for services or expenditures and disbursements  
21 charged to CITY for a minimum period of three (3) years, or for any longer period  
22 required by law, from the date of final payment to CONTRACTOR pursuant to this  
23 Agreement.

24           24.22.2 CONTRACTOR shall maintain all documents and records which  
25 demonstrate performance under this Agreement for a minimum period of three (3)  
26 years, or for any longer period required by law, from the date of termination or  
27 completion of this Agreement.

28           24.22.3 Any records or documents required to be maintained pursuant  
29 to this Agreement shall be made available for inspection or audit, at any time during  
30 regular business hours, upon written request by the City Representative, the Director of  
31 Environmental Services, City Attorney, City Auditor, City Manager, or a designated  
32 representative of any of these officers. Copies of such documents shall be provided to  
33 CITY for inspection at Environmental Services office when it is practical to do so.  
34 Otherwise, unless an alternative site is mutually agreed upon, the records shall be  
35 available at CONTRACTOR's address indicated for receipt of notices in this Agreement.

36           24.22.4 Where CITY has reason to believe that such records or  
37 documents may be lost or discarded due to the dissolution, disbandment or termination  
38 of CONTRACTOR's business, CITY may, by written request or demand of any of the

---

1 above named officers, require that custody of the records be given to CITY and that the  
2 records and documents be maintained in City Hall. Access to such records and  
3 documents shall be granted to any party authorized by CONTRACTOR,  
4 CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

5 **24.23 Use Of Recycled Products.** For services rendered pursuant to this  
6 Agreement, CONTRACTOR shall use recycled paper for all printed material such as  
7 brochures, reports, studies, and promotional literature, that exceeds ten (10) pages, or if  
8 the cumulative total number of pages per document or printed material times the  
9 number of copies made is in excess of ten (10) pages.

10 24.23.1 For the purposes of this Agreement, "recycled paper" means a  
11 paper or woodpulp product with not less than fifty percent (50%) off its total weight  
12 consisting of secondary and postconsumer waste and with not less than thirty percent  
13 (30%) of its total weight consisting of postconsumer waste. "Postconsumer waste"  
14 means a finished material that would normally be disposed of as a solid waste, having  
15 completed its life cycle as a consumer item. "Secondary waste" means fragments of  
16 products or finished products of a manufacturing process that has converted a virgin  
17 resource into a commodity of real economic value and includes postconsumer waste  
18 but does not include fibrous waste generated during the manufacturing process such as  
19 fibers recovered from waste water or trimmings of paper machine rolls (mill broke),  
20 wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

21 24.23.2 CONTRACTOR may request an exemption from the  
22 requirements of this Section by submitting such request in writing to CITY's Director of  
23 Environmental Services. Such a request may be approved or denied, in whole or in  
24 part, at said Director's sole discretion. CONTRACTOR shall not use, in the  
25 performance of services under this Agreement, any product or material that does not  
26 meet the standards set forth above without the prior written approval of said Director.

27 **24.24 Entire Agreement.** This Agreement and the Exhibits attached hereto  
28 constitute the entire agreement and understanding between the parties hereto, and this  
29 Agreement shall not be considered modified, altered, changed or amended in any  
30 respect unless in writing and signed by the parties hereto. This Agreement incorporates  
31 and includes all prior negotiations, correspondence, conversations, agreements and  
32 understandings applicable to the matters contained in this Agreement and the parties  
33 agree that there are no commitments, agreements or understandings concerning the  
34 subject matter of this Agreement that are not contained in this document. Accordingly, it  
35 is agreed that no deviation from the terms of this Agreement shall be predicated upon  
36 any prior representations or agreements, whether oral or written.

37 **24.25 Severability.** If any provision of this Agreement or the application of it to  
38 any person or situation shall to any extent be held invalid or unenforceable, the

1 remainder of this Agreement and the application of such provisions to persons or  
2 situations other than those as to which it shall have been held invalid or unenforceable,  
3 shall not be affected, shall continue in full force and effect, and shall be enforced to the  
4 fullest extent permitted by law.

5 **24.26 Right To Require Performance.** The failure of CITY at any time to  
6 require performance by CONTRACTOR of any provision hereof shall in no way affect  
7 the right of CITY thereafter to enforce same. Nor shall waiver by CITY of any breach of  
8 any provision hereof be taken or held to be a waiver of any succeeding breach of such  
9 provision or as a waiver of any provision itself.

10 **24.27 Headings.** Headings in this document are for convenience of reference  
11 only and are not to be considered in any interpretation of this Agreement.

12 **24.28 Exhibits.** Each Exhibit referred to in this Agreement forms an essential  
13 part of this Agreement. Each such Exhibit is a part of this Agreement and each is  
14 incorporated by this reference.

15 **IN WITNESS WHEREOF,** CITY and CONTRACTOR have executed this Agreement on the  
16 respective date(s) below each signature.

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal corporation

\_\_\_\_\_  
SUSAN DEVENCENZI  
Senior Deputy City Attorney

By:

\_\_\_\_\_  
LEE PRICE, CMC  
City Clerk

Date:

\_\_\_\_\_

CONTRACTOR

By:

\_\_\_\_\_  
CONTRACTOR

Date:

\_\_\_\_\_

1 This page intentionally left blank.

2

# EXHIBITS

- 1 Compensation Rates
- 2 Recycle Plus Service Districts
- 3 Refuse Rate Index
- 4 Form of Performance Bond
- 5 Cart Specifications and Performance Criteria
- 6 Small Civic Service Units
- 7 Plans
- 8 (Intentionally left blank)
- 9 Approved Subcontractors
- 10 Data and Reporting Requirements
- 11 Contractor Outreach Requirements
- 12 Wage Policy
- 13 Contractor Electronic Interface Requirements
- 14 Approved Products
- 15 Large Civic Service Units

## EXHIBIT 1 COMPENSATION RATES

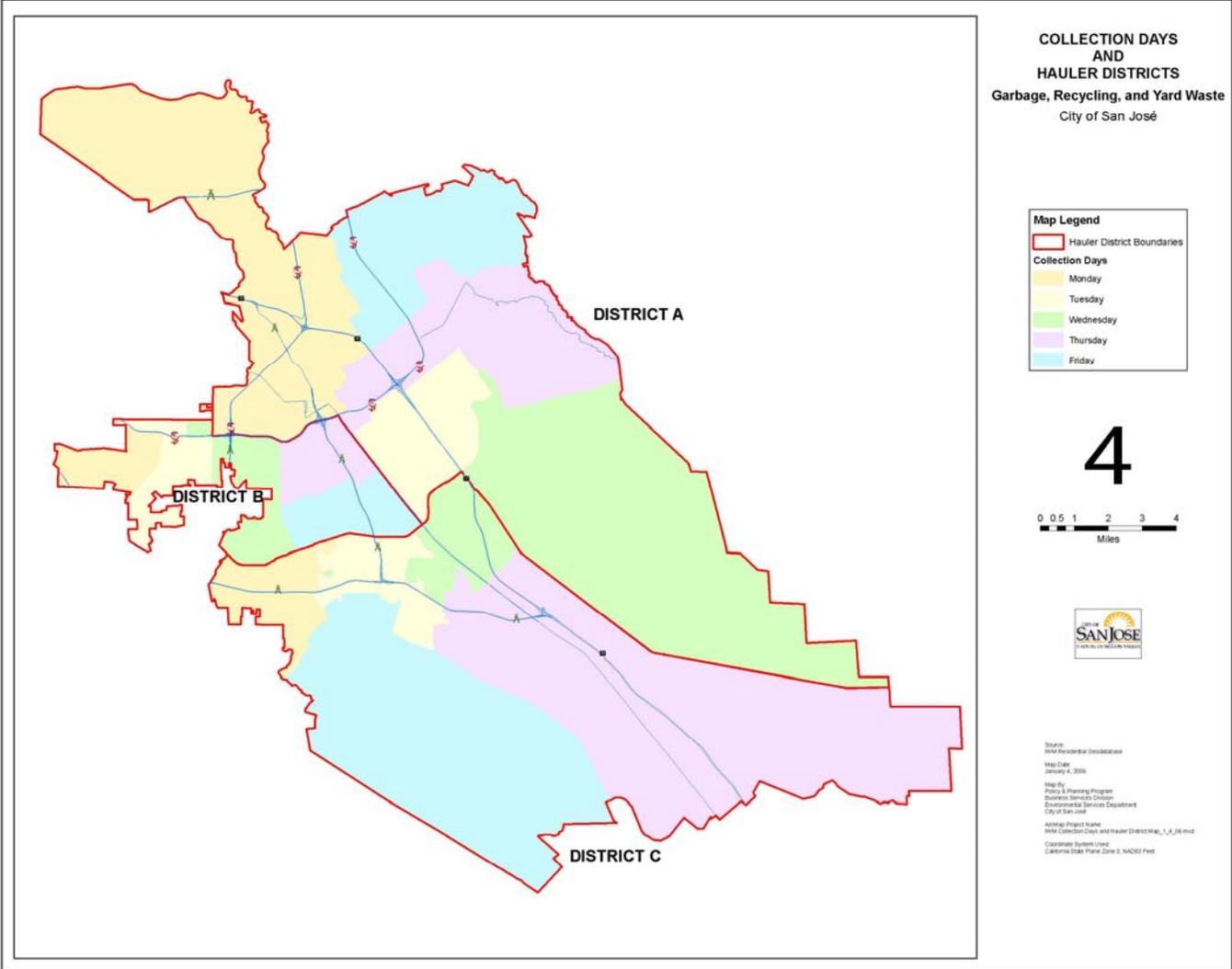
Beginning for services performed in July 2007, CITY shall compensate CONTRACTOR for Yard Trimmings Services and Residential Street Sweeping Services performed in accordance with this Agreement at the following rates:

| <b>A. BASE SERVICE RATES</b>   |   |                              |
|--|---|------------------------------|
| 1.   | SFD On-Street Yard Trimmings Collection                     | \$ _____ /Service Unit/Month |
| 2.   | Cart Yard Trimmings Collection                              | \$ _____ /Cart/Month         |
| 3.   | MFD On-Street Yard Trimmings Collection                     | \$ _____ /Complex/Month      |
| 4.   | Large Civic Collection & Pruning                            | \$ _____ /Ton                |
| 5.   | Monthly Street Sweeping                                     | \$ _____ /Curb Mile/Month    |
| <b>B. ADDITIONAL SERVICE RATES</b>   |   |                              |
| 1.   | SFD Subscription On-Premises Cart Collection <sup>(1)</sup> | \$ _____ /Cart/Month         |
| 2.   | Cart Exchanges in Excess of Once per Year                   | \$ _____ /Occurrence         |
| 3.   | Delivery of Home Composting Bins                            | \$ _____ /Bin Delivered      |
| 4.   | Emergency Street Sweeping up to 4 hrs.                      | \$ _____ /Sweeper            |
| 5.   | Emergency Street Sweeping over 4 hrs.                       | \$ _____ /Sweeper/Hour       |
| 6.   | Posting & Removal of Temporary Signs for Enhanced Sweep     | \$ _____ /Curb Mile          |
| 7.   | Posting & Removal of Temporary Signs for Tow Enforced Sweep | \$ _____ /Curb Mile          |
| Notes:   |   |                              |
| (1) This rate will be added to line A.2 of the Base Service Rate for each Service Unit receiving On-Premises Cart Collection Service |   |                              |

**EXHIBIT 1  
COMPENSATION RATES**

| <b>EMERGENCY SERVICE RATES</b><br>(TO BE COMPLETED AFTER AGREEMENT AWARD) |                         |                    |    |       |
|---|-------------------------|--------------------|----|-------|
|   |                         | Page               | of | Pages |
| <b>Labor Position or<br/>Equipment Type</b>                               | <b>Make &amp; Model</b> | <b>Hourly Rate</b> |    |       |
|   |                         |                    |    |       |
|   |                         |                    |    |       |
|   |                         |                    |    |       |
|   |                         |                    |    |       |
|   |                         |                    |    |       |
|   |                         |                    |    |       |
|   |                         |                    |    |       |
|   |                         |                    |    |       |
|   |                         |                    |    |       |
|   |                         |                    |    |       |

# EXHIBIT 2 RECYCLE PLUS SERVICE DISTRICTS



### EXHIBIT 3 REFUSE RATE INDEX

The "Refuse Rate Index" adjustment shall be calculated in the following manner:

1. The expenses of the collection services for the designated fiscal period shall be prepared in the format set forth in the Operating Cost Statement - Description on the following page of this Exhibit.
2. The expenses of the collection services shall be broken down into the following five cost categories: Labor; Diesel Fuel; Vehicle Replacement; Vehicle Maintenance and All Other. Each cost category is assigned a weighted percentage factor on that cost category's proportionate share of the total of the costs shown for all cost categories.
3. The following indices published by the United States Department of Labor, Bureau of Labor Statistics (BLS), are used to calculate the adjustment for each cost category. The change in each index is calculated on a twelve-month fiscal period in accordance with the terms of the Agreement. In the event any index is discontinued, a successor index shall be selected by CITY. Successor indices shall be those indices that are most closely equivalent to the discontinued indices as recommended by the BLS.

| <u>Cost Category</u> | <u>Index</u>  |
|----------------------|---|
| Labor                | Series ID: ecs12102i Service-Producing Industries   |
| Diesel Fuel          | Series ID: wpu057303 #2 Diesel Fuel   |
| Vehicle Replacement  | Series ID: pcu3362113362111 Truck, bus, car, and other vehicle bodies, for sale separately                |
| Vehicle Maintenance  | Series ID: pcu3339243339243 Parts and attachments for industrial work trucks                              |
| All Other            | Series ID: cuur0000sa0 seventy-five percent (75%) of Consumer Price Index, All Urban Consumers, All Items |

4. The percentage weight for each cost category is multiplied by the change in each appropriate index to calculate a weighted percentage for each cost category. The weighted percentage changes for each cost category are added together to calculate the Refuse Rate Index (see Example).

## **EXHIBIT 3 REFUSE RATE INDEX**

### **Operating Cost Statement - Description**

**Labor:** List all administrative, officer, operation and maintenance salary accounts.

List payroll tax accounts directly related to the above salary accounts.

**Diesel Fuel:** List all diesel fuel accounts.

**Vehicle Replacement:**

List all collection and collection related vehicle depreciation accounts.

List all vehicle lease or rental accounts related to collection or collection related vehicles.

**Vehicle Maintenance:**

List all collection or collection related vehicle parts accounts.

**All Other:**

List all other expense accounts related to the services provided under this Agreement. This category includes all insurance including general liability, fire, truck damage, extended coverage and employee group medical and life; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; non-diesel fuel; office supplies; postage; trade association dues and subscription; advertising; employee retirement or profit sharing contributions; and miscellaneous other expenses.

## EXHIBIT 3 REFUSE RATE INDEX

### Example

| Item # | Category                | Data Source  | Percentage Change <sup>(1)</sup> | Item Weight <sup>(2)</sup> | Weighted Percentage Change <sup>(3)</sup> |
|--------|-------------------------|--|----------------------------------|----------------------------|---|
| 1      | Average Hourly Earnings | Series ID: ecs12102i<br>Service-Producing Industries   | 2.19%                            | 49.05%                     | 1.07%                                     |
| 2      | Diesel Fuel             | Series ID: wpu057303<br>#2 Diesel Fuel   | 4.74%                            | 13.15%                     | 0.62%                                     |
| 3      | Vehicle Replacement     | Series ID: pcu3362113362111<br>Truck, bus, car, and other vehicle bodies, for sale separately                | 6.79%                            | 2.57%                      | 0.17%                                     |
| 4      | Vehicle Maintenance     | Series ID: pcu3339243339243<br>Parts and attachments for industrial work trucks                              | 0.16%                            | 13.46%                     | 0.02%                                     |
| 5      | CPI All Items           | Series ID: cuur0000sa0<br>seventy-five percent (75%) of Consumer Price Index, All Urban Consumers, All Items | 1.70%                            | 21.77%                     | 0.28%                                     |
| Total  |                         |  |                                  | 100.00%.                   | <b>2.16%</b>                              |

- (1) Assume these are the percentage changes in the indices from year to year.
- (2) Assume the categories represent these percentages as a total of CONTRACTOR's operating costs.
- (3) Represents the product of Percentage Change x Item Weight

In this example, the Refuse Rate Index is 2.16%.

**EXHIBIT 4  
FORM OF PERFORMANCE BOND**

\_\_\_\_\_ **SERVICES**  
**FOR THE**  
CITY OF SAN JOSE, CALIFORNIA

**KNOW ALL MEN BY THESE PRESENTS:** that

(here insert full name and address or legal title of contractor)

as Principal, hereinafter called Contractor, and,  
(Name of insurer)

as Surety, hereinafter called Surety, are held firmly bound unto the CITY OF SAN JOSE, CALIFORNIA as Obligee, hereinafter called the City, in the amount of \*\*\* (to be inserted) DOLLARS (\$00,000.00)\*\*\* for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated \_\_\_\_\_, 2006, entered into an Agreement with the City for providing (to be inserted) Services in accordance with RFP specifications and Agreement of the CITY OF SAN JOSE, CALIFORNIA, which Agreement is by reference made a part hereof, and is hereinafter referred to as the Agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the City.

Whenever Contractor shall be, and declared by the City to be in default under the Agreement, the City having performed the City's obligations thereunder, the Surety may promptly remedy the default, or shall promptly perform one of the following:

1. Complete the Agreement in accordance with its terms and conditions.
2. Obtain a bid or bids for completing the Agreement in accordance with the terms and conditions, and upon determination by the Surety of the lowest responsible bidder, or if the City elects, upon determination by the City and the Surety jointly

**EXHIBIT 4  
FORM OF PERFORMANCE BOND**

obtain a bid or bids for completing the Agreement in accordance with the terms and conditions, and upon determination by the Surety of the lowest responsible bidder, or if the City elects, upon determination by the City and the Surety jointly of the lowest responsible bidder, arrange for an agreement between such bidder and the City, and make available as work progresses (even though there should be a default or a succession of defaults under the Agreement or Agreements of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Agreement price; but not exceeding, including costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Agreement price," as used in this paragraph, shall mean the total amount payable by the City to Contractor under the Agreement and any amendments thereto, less the amount properly paid by the City to Contractor.

Any suit under this bond must be instituted before the expiration date of the Agreement or if extended for an additional term by the City, the expiration of the extended term.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the executor, administrator or successors of the City of San Jose, California.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

(Principal)                      (Seal)

(Witness)

\_\_\_\_\_  
(Title)

Surety                      (Seal)  
                                    (Name of Insurer)

(Witness)

By:

(Attorney-in-Fact)

## EXHIBIT 5 CART SPECIFICATONS AND PERFORMANCE CRITERIA

CONTRACTOR shall provide Yard Trimmings carts that meet the following specifications and minimum performance criteria.

| <b>Specifications and Performance Criteria For 32-, 64-, and 96-Gallon Capacity</b> |   |
|---|---|
| <b>Volumetric Capacity – Garbage Carts</b>  | <ul style="list-style-type: none"> <li>• 32-gallons +/- 2%, 64-gallons +/- 2%, and 96-gallons +/- 2%, excluding volume resulting from a crowned lid in the closed position</li> </ul>   |
| <b>Minimum Load Rating</b>  | <ul style="list-style-type: none"> <li>• 32-gal: 100 lb.</li> <li>• 64-gal: 175 lb.</li> <li>• 96-gal: 250 lb.</li> </ul>   |
| <b>Compatibility</b>  | <ul style="list-style-type: none"> <li>• Compatible with commercially available fully automated lifting mechanisms that are or will be used in San Jose</li> </ul>  |
| <b>Standards of Design</b>  | <ul style="list-style-type: none"> <li>• Designed to meet all relevant sections of American National Standards Institute (ANSI) Z245.30-1999 and Z245.60-1999</li> <li>• Designed such that wastes flow freely out of the cart when dumped by a fully automated lifting mechanism</li> </ul>  |
| <b>Materials of Construction &amp; Recycled Content</b>                             | <ul style="list-style-type: none"> <li>• Body of cart: HDPE</li> <li>• At least 20% post-consumer recycled content</li> </ul>   |
| <b>Dimensions &amp; Design</b>  | <ul style="list-style-type: none"> <li>• Maximum width of 31" including lid and wheels</li> <li>• Leak proof</li> </ul>   |
| <b>Lid</b>  | <ul style="list-style-type: none"> <li>• Manufactured from the same material as the body of the cart.</li> <li>• Rotate at least 270 degrees</li> <li>• Watertight, must prevent rain entry when closed, with or without latches</li> <li>• Snug-fitting and must overlap the cart rim</li> <li>• Self-draining</li> </ul>                            |
| <b>Handle</b>   | <ul style="list-style-type: none"> <li>• Handle mounts must either:               <ol style="list-style-type: none"> <li>1. be an integrally molded part of the cart body; or</li> <li>2. if bolt-on handle mounts are used, they must be designed such as to prevent them from working loose over the active life of the cart</li> </ol> </li> </ul> |

## EXHIBIT 5 CART SPECIFICATONS AND PERFORMANCE CRITERIA

| <b>Specifications and Performance Criteria For 32-, 64-, and 96-Gallon Capacity</b> |  |
|---|--|
| <b>Wheels</b>   | <ul style="list-style-type: none"> <li>• Minimum tire diameter: 10 inches for 64- and 96-gal carts, 8 inches for 32-gal carts</li> <li>• Minimum tread width: 1.5 inches</li> <li>• Tire material must be natural rubber or polymeric compound</li> <li>• Each wheel must be rated for the minimum load rating of the carts and not deform plastically when subjected to the rated load of the carts</li> <li>• Axle must pass through the cart body outside of the area for waste storage</li> <li>• Wheels must have a locking device to secure them to the cart axle</li> </ul> |
| <b>Fasteners</b>  | <ul style="list-style-type: none"> <li>• No fasteners are to penetrate the body of the cart where waste will be contained</li> <li>• All fasteners are to be corrosion resistant and free of sharp edges</li> </ul>  |
| <b>Finish Surfaces</b>  | <ul style="list-style-type: none"> <li>• Interior surface must be smooth with a semi- or high-gloss finish</li> <li>• Exterior surface must be suitable for hot stamping on lid and body</li> <li>• Exterior must be free of sharp edges and corners, protrusions, or other structures that could pose a nuisance or hazard to humans</li> </ul>   |
| <b>Assembly</b>   | <ul style="list-style-type: none"> <li>• Carts must be easy to assemble</li> <li>• Nuts must be self-locking</li> <li>• Nuts and/or rivets must be designed such that they cannot be removed with ordinary tools by the public</li> </ul>  |

## EXHIBIT 5 CART SPECIFICATONS AND PERFORMANCE CRITERIA

| <b>Specifications and Performance Criteria For 32-, 64-, and 96-Gallon Capacity</b> |  |
|---|--|
| <b>Performance</b>  | <ul style="list-style-type: none"> <li>• Carts must pass ANSI standards 245.30-1999, clauses 7.2.4.2 (testing requirements for two-wheeled carts) for the following parameters:               <ol style="list-style-type: none"> <li>1. volumetric loading capacity</li> <li>2. slope stability</li> <li>3. durability during pulling</li> <li>4. loading and unloading (cycle test)</li> <li>5. center of balance position</li> <li>6. force to tip cart</li> <li>7. lid (collapse)</li> </ol> </li> <li>• All metal components of the cart must meet the corrosion resistance requirements of 500 hours of salt spray exposure as described in ASTM B117</li> <li>• Carts must pass the Leakage performance test (Appendix A)</li> <li>• Empty carts must pass the Wind Stability performance test (Appendix A)</li> </ul> |
| <b>Testing</b>  | <ul style="list-style-type: none"> <li>• Performance testing of production samples shall be conducted at a frequency of 3 per 1,000 units manufactured</li> </ul>  |
| <b>Environmental</b>  | <ul style="list-style-type: none"> <li>• Ultra-violet stability: All plastic components must contain UV inhibitors and the cart must maintain performance during the warranty period when exposed to ultra-violet radiation of the sun</li> <li>• Temperature stability: Cart must not plastically deform when subjected to temperatures in the range of 25 deg F to 170 deg F and a compressive load of 200 lb</li> </ul>   |
| <b>Identification &amp; Markings</b>  | <ul style="list-style-type: none"> <li>• The lid must have a suitable area to affix a label for recycling education</li> <li>• The following must be hot-stamped on the lid:               <ol style="list-style-type: none"> <li>1. facing street arrow</li> </ol> </li> <li>• The following must be hot-stamped on the cart body:               <ol style="list-style-type: none"> <li>1. City's logo</li> <li>2. serial number (sequentially numbered)</li> <li>3. production batch number and date</li> <li>4. maximum load weight rating</li> <li>5. cart type, per clause 4.2.1f of ANSI Z245.30-99</li> </ol> </li> </ul>   |
| <b>Color</b>  | <ul style="list-style-type: none"> <li>• Yard Trimmings: green body with green lid</li> </ul>  |

**EXHIBIT 5  
CART SPECIFICATONS AND PERFORMANCE CRITERIA**

| <b>Specifications and Performance Criteria For 32-, 64-, and 96-Gallon Capacity</b> |   |
|---|---|
| <b>Warranty</b>   | <ul style="list-style-type: none"><li>• Minimum 10 years for all parts of cart; not prorated; any failure under warranty shall be replaced with a newly manufactured whole cart, which is defined to be the body of the cart, wheel, lid, handles, other ancillary features and fasteners</li></ul> |

# EXHIBIT 5 CART SPECIFICATONS AND PERFORMANCE CRITERIA

## Appendix A

### Performance Tests

#### **Wind Stability**

This test is designed to assure that a cart will remain stationary and in the upright position under severe wind conditions.

The cart must be able to remain upright and stationary in a wind flow of 25 mph. The test surface shall be a flat finished asphalt surface. Place one sidewall of cart perpendicular to a horizontal flow of air at 25 mph for one minute. Record whether or not the cart tips over and distance, if any, the cart slides or rolls. Repeat the test for each of the other sides.

To pass this test, the cart shall not tip over, or slide or roll more than 6.0 in., in any of the tests.

#### **Leakage**

The purpose of this test is to determine if the cart is designed to minimize leakage.

The cart shall be filled with water to a level within 8 in. from the inside bottom of the container. The container shall be covered with its own lid. The filled container shall then be placed in a covered area over a dry drip pan to collect any leakage and allowed to stand for a period of 24 hour exposed to temperatures within the range of 65 to 75 F. The water level within the container after the test shall be measured and recorded to within the nearest 0.1 in. The results of the test shall be reported in terms of final water level, ambient temperature, visible leakage, and quantity of water collected in the drip pan. Containers that exhibit any leakage shall fail the test.

**EXHIBIT 6  
SMALL CIVIC SERVICE UNITS**

| <b>SERVICE DISTRICT C</b> |                                   |                  |                              |              |
|---------------------------|-----------------------------------|------------------|------------------------------|--------------|
| Department                | Facility Name                     | Facility Address | Facility Street              | Facility Zip |
| Library                   | Almaden Branch #6                 | 6455             | Camden Avenue                | 95120        |
| PRNS                      | Almaden Community Center          | 6445             | Camden Avenue                | 95120        |
| PRNS                      | Almaden Winery Center / Park      | 5730             | Chambertin Drive             | 95118        |
| PRNS                      | Avenida Espana                    |                  | Downs Drive                  | 95139        |
| PRNS                      | Basking Ridge Park                |                  | Chelsea Crossing             | 95138        |
| PRNS                      | Butcher Park                      | 1700             | Lancaster Drive              | 95124        |
| PRNS                      | Cahalan Park                      | 5840             | Cahalan Avenue               | 95123        |
| PRNS                      | Calero Park                       |                  | Lean Avenue                  | 95123        |
| Library                   | Cambrian Branch #8                | 1780             | Hillsdale Avenue             | 95124        |
| PRNS                      | Carrabelle Park                   |                  | Villagewood Way              | 95120        |
| PRNS                      | Chynoweth Park                    |                  | Chynoweth Ave @ Edenvale     | 95136        |
| PRNS                      | Comanche Park                     |                  | Comanche Lane                | 95123        |
| PRNS                      | Coy Park                          | 1586             | Coy Dr/Sigrid way            | 95123        |
| PRNS                      | Danna Rock Park                   |                  | Houndshaven Way              | 95111        |
| PRNS                      | De Anza Park                      | 5480             | Marquette Drive              | 95118        |
| PRNS                      | Edenvale Garden Park              | 200              | Edenvale Avenue              | 95136        |
| PRNS                      | Edenvale/Great Oaks Senior Center | 285              | Azucar Avenue                | 95111        |
| PRNS                      | Erickson Park                     |                  | Oyster Bay Drive             | 95136        |
| PRNS                      | Foothill Park                     |                  | Foothill Drive               | 95123        |
| PRNS                      | George Page Park                  |                  | Miyuki Drive/Cheryl Beck Dr. | 95119        |
| PRNS                      | Glenview Park                     |                  | Glenview Drive               | 95120        |
| PRNS                      | Golden Oaks Park                  |                  | McAbee @ Thorntree           | 95120        |
| PRNS                      | Graystone Park                    |                  | Mt. Carmel Drive             | 95120        |
| PRNS                      | Great Oaks Park                   |                  | Snow Drive                   | 95111        |
| PRNS                      | Guadalupe Oak Grove               |                  | Thorntree Drive              | 95120        |
| PRNS                      | Houge Park                        | 3960             | Twilight Drive               | 95124        |
| PRNS                      | La Colina Park                    |                  | Ansdell Drive                | 95123        |
| PRNS                      | La Colina Community Garden        |                  | Allegan Circle               | 95123        |
| PRNS                      | Laguna Seca Community Garden      |                  | Manresa Court                | 95139        |
| PRNS                      | Lone Hill Park                    |                  | Michon Drive                 | 95124        |
| PRNS                      | Los Paseos Park                   |                  | Via Vista                    | 95139        |
| PRNS                      | Meadows Park                      |                  | Bluefield Drive              | 95136        |
| PRNS                      | Melody Park                       |                  | LaTorre Avenue               | 95111        |
| PRNS                      | Metcalfe Park                     | 7300             | Forsum Road                  | 95138        |

**EXHIBIT 6  
SMALL CIVIC SERVICE UNITS**

| <b>SERVICE DISTRICT C</b> |                            |                  |                      |              |
|---------------------------|----------------------------|------------------|----------------------|--------------|
| Department                | Facility Name              | Facility Address | Facility Street      | Facility Zip |
| PRNS                      | Miner Park                 |                  | Lean Avenue          | 95123        |
| PRNS                      | Olinder Community Center   | 848              | Williams St. E.      | 95116        |
| PRNS                      | Palmia Park                |                  | Palmia Drive         | 95123        |
| PRNS                      | Parkview 1                 |                  | Viewpark Circle      | 95136        |
| PRNS                      | Parkview 2                 |                  | Sposito Circle       | 95136        |
| PRNS                      | Parkview 3                 |                  | Monet Place          | 95136        |
| PRNS                      | Parma Park                 |                  | Little Falls Drive   | 95120        |
| PRNS                      | Paul Moore Park            | 1427             | Myrtle               | 95118        |
| Library                   | Pearl Branch #11           | 4270             | Pearl Avenue         | 95136        |
| PRNS                      | Pfeiffer Park              |                  | Pfeiffer Ranch Road  | 95120        |
| Library                   | Santa Teresa Branch #12    | 290              | International Circle | 95119        |
| PRNS                      | Scottsdale Park            |                  | Tampico Way          | 95118        |
| PRNS                      | Shady Oaks Park            | 953              | Coyote Road          | 95111        |
| PRNS                      | Silver Leaf Park           |                  | Southpine Drive      | 95138        |
| PRNS                      | Solari Community Center    | 3590             | Cas Drive            | 95111        |
| PRNS                      | Solari Park                | 3956             | Cas Drive            | 95111        |
| PRNS                      | Southside Community Center | 5585             | Cottle Road          | 95125        |
| Fire                      | Station 12                 | 502              | Calero               | 95123        |
| Fire                      | Station 13                 | 4380             | Pearl Avenue         | 95136        |
| Fire                      | Station 17                 | 1494             | Ridgewood            | 95118        |
| Fire                      | Station 18                 | 4430             | Monterey Highway S.  | 95111        |
| Fire                      | Station 22                 | 6461             | Bose Lane            | 95120        |
| Fire                      | Station 27                 | 239              | Bernal Road          | 95119        |
| Fire                      | Station 28                 | 20399            | Almaden Road         | 95120        |
| Fire                      | Station 9                  | 3410             | Ross Avenue          | 95124        |
| PRNS                      | TJ Martin Park             |                  | Burchell Avenue      | 95120        |
| PRNS                      | Terrell Park               |                  | Terrell Street       | 95136        |
| PRNS                      | Thousand Oaks Park         |                  | Thousand Oaks Drive  | 95136        |
| PRNS                      | Vista Park                 |                  | New Compton Drive    | 95136        |
| PRNS                      | Waterford Park             |                  | Sand Pebble Drive    | 95136        |

PRNS = Parks, Recreation and Neighborhood Services

**CITY may add or delete Small Civic Service Units in District C upon written notice to CONTRACTOR.**

## **EXHIBIT 7 PLANS**

- 7 A- Transition Plan
- 7 B - Diversion Plan
- 7 C - Public Education and Outreach Plan
- 7 D - Customer Service Plan
- 7 E - Collection Operations Plan
- 7 F - Processing Operations Plan
- 7 G - Equipment Plan
- 7 H - Employee and Labor Relations Plan

**EXHIBIT 8  
(INTENTIONALLY LEFT BLANK)**

**EXHIBIT 9**  
**APPROVED SUBCONTRACTORS**

The subcontractors listed below are hereby approved by CITY as to the scope of work specified for each listed subcontractor. CONTRACTOR may employ additional subcontractors may only with the prior written approval of CITY's Director of Environmental Services as to the subcontractor(s) and the scope of work to be performed by the subcontractor(s).

| Name of Company/Firm | Address | Area of Responsibility |
|----------------------|---------|------------------------|
|                      |         |                        |
|                      |         |                        |

## **EXHIBIT 10 DATA AND REPORTING REQUIREMENTS**

### **I. DAILY COLLECTION AND SWEEPING DATA**

CONTRACTOR shall compile data on a daily basis and report the following information monthly by electronic format.

#### **A. Load Data for Residential Yard Trimmings Service**

For Residential Yard Trimmings Service, CONTRACTOR shall provide data for each load collected and delivered directly to the Yard Trimmings Processing Facility, Transfer Station or alternate facility. Data shall include, at a minimum, the following information:

1. Name of Yard Trimmings Processing Facility or Transfer Station or alternate facility receiving the load
2. Weight tag number (unique, non-repeating number)
3. Date of collection
4. Day of week collected
5. Date delivered to Yard Trimmings Processing Facility or Transfer Station or alternate facility
6. Time of arrival at facility
7. Truck number
8. Weight of load (gross, tare, and net, in tons)
9. Route number(s)
10. District(s) serviced
11. Number of set-outs by Service Unit and Service Type (SFD on-street, SFD cart, MFD on-street, MFD cart, or small civic)
12. Time on route(s) (collection, transport, and downtime)

#### **B. Load Data for Large Civic Yard Trimmings Collection Service**

For collection from Large Civic Service Units, CONTRACTOR shall provide data for each load collected and delivered directly to the Yard Trimmings Processing Facility, Transfer Station or alternate facility. Data shall include, at a minimum, the following information:

1. Name of Yard Trimmings Processing Facility or Transfer Station or alternate facility receiving load
2. Weight tag number (unique, non-repeating number)
3. Date of collection
4. Day of week collected
5. Date delivered to Processing Facility or Transfer Station or alternate facility
6. Time of arrival at facility

## **EXHIBIT 10 DATA AND REPORTING REQUIREMENTS**

7. Truck number
8. Weight of load (gross, tare, and net, in tons)
9. Name of Large Civic Service Unit(s) serviced, Small Civic Service Unit(s) receiving on-call service, or location(s) of street tree pruning collection
10. District(s) serviced

### **C. Non-Collection Notices**

CONTRACTOR shall provide data for each Non-Collection Notice (NCN) issued. Data shall include, at a minimum, the following information:

1. NCN number (unique, non-repeating number)
2. Date issued
3. Day of the week issued
4. Route number
5. Recipient address
6. Service district
7. Reason for improper setout (codes and definition of codes to be provided by City)

## **II. MONTHLY LOAD DATA**

CONTRACTOR shall compile data on a monthly basis and report the following information monthly by electronic format.

### **A. Load Data for Residential Street Sweeping Service**

For Residential Street Sweeping Service, CONTRACTOR shall provide data for each portion of the route swept. Data shall include, at a minimum, the following information:

1. Date of sweep
2. Time in and time out for each portion of route
3. Sweeper route number
4. Street sweeper identification number performing each route
5. Name of sweeper operator on each route
6. Total miles scheduled on entire route
7. Total number of miles swept on portion of route completed
8. Beginning and ending odometer readings for portion of route completed
9. District(s) serviced
10. Location of dumpsite
11. Estimate of tons of debris collected and delivered to dumpsite

## **EXHIBIT 10 DATA AND REPORTING REQUIREMENTS**

12. Estimate of volume (in cubic yards) of debris collected and delivered to dumpsite
13. Listing of streets not swept, and reason for not sweeping
14. Approximate number of parked cars using on-street parking on each sweep route
15. Location of street trees that interfere with sweeping operations

### **B. Load Data for Sweep Waste**

CONTRACTOR shall provide data for each load of Sweep Waste delivered to the Disposal Facility or alternate facility. Data shall include, at a minimum, the following information:

1. Weight tag number (unique, non-repeating number)
1. Date of collection
2. Day of week collected
3. Location(s) of dumpsite collected from
4. Route number(s) serviced by dumpsite
5. District(s) serviced by dumpsite
6. Date delivered to Disposal Facility or alternate facility
7. Time of arrival at facility
8. Truck number
9. Weight of load (gross, tare, and net, in tons)

### **III. MONTHLY PROCESSING DATA**

CONTRACTOR shall report on a monthly basis all data described in Article 6 of this Agreement, including the following:

#### **A. Transfer Station**

1. Weight of all Organic Waste (collected pursuant to this Agreement) delivered directly to Transfer Station
2. Total weight of all materials delivered to Transfer Station (from all sources)
3. Total weight of all residue generated from handling materials at the Transfer Station (from all sources)

#### **B. Processing Facility**

1. Weight of all Organic Waste (collected pursuant to this Agreement) delivered to Processing Facility
2. Total weight of all materials delivered to Processing Facility (from all sources)
3. Total weight of all residue generated from handling materials at the Processing Facility (from all sources)

## **EXHIBIT 10 DATA AND REPORTING REQUIREMENTS**

4. Weight of all approved products (by type) delivered from the Processing Facility to any other facility.

### **C. Disposal Facility**

1. Weight of all Organic Waste (collected pursuant to this Agreement) delivered directly to Disposal Facility (as in the case of a contaminated load)
2. Total weight of all materials delivered to Disposal Facility (from Processing Facility or Transfer Station)
3. Weight of Sweep Waste delivered to Disposal Facility

## **IV. ON-REQUEST DATA**

The following information shall be kept by CONTRACTOR and made available to the City Representative upon request.

### **A. Windrow Data**

CONTRACTOR shall keep sufficient records to verify that 50% of the products made from Yard Trimmings collected pursuant to this Agreement meet the criteria of “compost” as defined in Exhibit 14. Such records shall include, but are not limited to dated temperature records from the composting process.

### **B. Lab Tests of Finished Compost**

CONTRACTOR shall follow procedures and perform tests on material to satisfy all permits, as well as any testing protocol to participate in California Compost Quality Council certification program or the U.S. Composting Council Seal of Testing Assurance program. CONTRACTOR shall provide testing results upon request of the City Representative.

### **C. Permits**

CONTRACTOR shall provide the City Representative with copies of all applicable facility permits for the Yard Trimmings Processing Facility and the Transfer Station.

### **D. Approved Product Sales Summary**

Upon the request of the City Representative, CONTRACTOR shall make available for inspection the following sales information for all approved products sold or donated:

- Buyer/End User
- Unit Price (\$ per cubic yard or \$ per ton)
- Revenue received

## **EXHIBIT 10 DATA AND REPORTING REQUIREMENTS**

### **V. MONTHLY, QUARTERLY AND ANNUAL REPORT REQUIREMENTS**

#### **A. Monthly Reports**

CONTRACTOR shall submit Monthly Reports within five (5) days of the end of each calendar month. The Monthly Report shall follow the report format requested by the City Representative.

#### **B. Quarterly Reports**

CONTRACTOR shall submit Quarterly Reports within thirty (30) days of the end of the previous calendar quarter. The Quarterly Report shall follow the report outline detailed below, focusing on analysis and narrative of quarterly activity, with trend comparisons to previous quarter and same quarter of previous year, if applicable.

#### **C. Annual Reports**

CONTRACTOR shall submit Annual Reports on or before February 15<sup>th</sup> for the previous calendar year. The first report, due February 15, 2003, shall cover the first six months of service. The final report covering the last six months of service under this Agreement shall be submitted by August 15<sup>th</sup> following the end of service. The Annual Report shall follow the report outline detailed below, with analysis and narrative to cover the reporting year activity.

#### **D. Report Outline**

The following provides an outline of the Quarterly and Annual Report requirements. The purpose of the reports is to provide an analysis of activities and significant events, including service delivery, CONTRACTOR performance, waste stream analysis, commodity prices, and community outreach and relations.

# EXHIBIT 10 DATA AND REPORTING REQUIREMENTS

## REPORT OUTLINE

### SECTION I - DATA

#### **A. Tonnage Collected**

##### 1. Organic Waste

This section shall include analysis of tons of Organic Waste collected and apparent trends and causes for any tonnage changes.

##### 2. Residential Street Sweeping

This section shall include analysis of tons of Sweep Waste collected and apparent trends and causes for any tonnage changes.

#### **B. Residue Tonnage Disposed**

This section shall include analysis of Processing Facility and Transfer Station residue level and apparent trends and causes for any tonnage changes.

#### **C. Processing Operations Summary**

This section shall provide a detailed analysis of Organic Waste processing, sales, donations, and diversion, including apparent trends, causes, and challenges. Summary shall include processing operation features, and any significant operational changes. In addition, CONTRACTOR shall report on all accomplishments, highlights, and areas for improvement in processing of Organic Waste.

#### **D. Approved Product Summary**

This section shall focus on a detailed analysis of Approved Products marketing, sales activity, and apparent trends and causes. CONTRACTOR shall provide the following information for each sales transaction:

- San Jose tons sold or donated
- Product type (compost, mulch, wood chips, etc.)

#### **E. Street Sweeping Summary**

This section shall focus on detailed analysis of street sweeping activity. A discussion on all enhanced sweeping activities and their results shall also be included. In addition, CONTRACTOR shall report on all accomplishments, highlights, and areas for improvement in street sweeping services.

#### **F. Home Composting Bin Delivery**

This section shall provide a detailed analysis of compost bin delivery activity.

## **EXHIBIT 10 DATA AND REPORTING REQUIREMENTS**

Discussion shall include delivery issues and data, as well as inventory levels of bins in storage.

### **G. Non-Collection and Courtesy Notices**

This section shall focus on detailed analysis of Non-Collection Notices and courtesy notices activity, by category and type, including apparent trends and causes for any changes.

### **H. Missed Collections**

This section shall focus on detailed analysis of the number missed collections, apparent trends and causes and possible remedies for increased misses.

### **I. Cart Activity**

This section shall focus on detailed analysis of Yard Trimmings Cart activity, and apparent trends and causes for significant changes.

### **J. Customer Service Calls**

This section shall focus on detailed analysis of customer service activity, apparent trends, major issues and causes. Additional analysis shall be provided on specific service requests and complaint calls.

### **K. Complaints Regarding Processing Facilities**

This section shall detail any public complaints or agency violations regarding odors, leachate or other nuisances or hazards. Additional detail shall include a discussion regarding resolution of complaint.

## **SECTION II – ROUTE AUDITS**

In this section, CONTRACTOR shall include the route audits conducted during the quarter and the findings from the route audits. This section shall include all of the route audit information required in Section 9.04.2 of this Agreement.

## **SECTION III - VEHICLE INFORMATION**

- A. **Vehicle Inventory and Compliance Reports**
- B. **Vehicle Mileage Report**
- C. **Vehicle Maintenance/Preventative Maintenance Activity**
- D. **Status of State Inspection Requirements**

## **EXHIBIT 10 DATA AND REPORTING REQUIREMENTS**

### **SECTION IV – COMMUNITY OUTREACH SUMMARY**

- A. **LIST OF EVENTS**
- B. **OUTREACH PIECES, DISTRIBUTION, TARGETED AUDIENCES, AND PERFORMANCE MEASURES**
- C. **NUMBER OF CUSTOMERS REACHED THROUGH EACH CAMPAIGN**
- D. **RESULTS OF OUTREACH EFFORTS**

### **SECTION V - SIGNIFICANT EVENTS**

This section shall discuss any significant events occurring in the organization.

### **SECTION VI – STRIKE CONTINGENCY PLAN (*ONLY IF CONTRACTOR'S WORKERS ARE REPRESENTED BY A COLLECTIVE BARGAINING UNIT*)**

In this section CONTRACTOR shall detail how normal operations will be maintained to the fullest extent possible if a labor strike should occur. Plan should include but not be limited to: what steps will be taken to have replacement labor available to maintain operations, how security of the facilities will be maintained, who will be point of contact and spokes person for communication with the media and what measures will be taken to protect company non-union personnel.

### **SECTION VII - CALENDAR**

- A. **REPORTS DELIVERED THIS QUARTER**
- B. **REPORTS DUE NEXT QUARTER**

## **EXHIBIT 11 CONTRACTOR OUTREACH REQUIREMENTS**

### **A. Annual Outreach Plan**

CONTRACTOR shall submit an annual Public Education and Outreach Program Plan (“Plan”) for each calendar year of the term of this Agreement. The plan must be submitted by September 30<sup>th</sup> of the preceding calendar year and must be approved by the City Representative. The Plan shall include a minimum of four (4) public education and outreach campaigns designed to increase diversion. Campaigns should target certain recyclable materials or “problem” areas of CONTRACTOR’s service area where improvements can be maximized. Targets of outreach should be based on local trends and recycling patterns based on information obtained by both CITY and CONTRACTOR staff. Required elements of the annual plan include:

1. One direct mail piece. The piece must be submitted with the Plan, and must be approved by the City Representative before publication. Contractor shall distribute the piece to all SFD and MFD households, either through direct mail or by hand-delivery.
2. Grass roots, door to door interaction with residents.
3. Promote and support specific recycle plus programs, including the San José Composts! Program, as directed by the City Representative.
4. A list of community events such as fairs, workshops, and cultural festivals CONTRACTOR will attend to promote the recycle plus program, as needed or directed by the City Representative.
5. Attend community and neighborhood association meetings as needed or directed by the City Representative.
6. School presentations.
7. Distribute city-developed collateral materials at events, schools, community meeting, etc.
8. Create display materials for events and school presentations.
9. Placement of city-provided signs on collection vehicles
10. Maintenance of a Website with direct links to CITY’s Recycle Plus Website ([www.recycleplus.org](http://www.recycleplus.org)). The Website must include relevant program information with regular updates as needed, or as directed by the City Representative. The Website must also allow for customer comments and questions.

## **EXHIBIT 11 CONTRACTOR OUTREACH REQUIREMENTS**

### **B. Quarterly Coordination Meetings**

Contractor shall attend quarterly coordination meetings with CITY. Contractor will report on outreach efforts, including quantifiable results. City staff will report on city outreach efforts, and provide input regarding CONTRACTOR's public education programs.

### **C. Additional Outreach Materials**

Contractor may develop informational or promotional materials about the program for Contractor's own use only with the express written permission of the City Representative. All materials shall be reviewed and approved by the City Representative prior to publication. All such materials developed by Contractor shall be printed at Contractor's expense without compensation from City.

## **EXHIBIT 12 WAGE POLICY**

Pursuant to City of San José Prevailing Wage policy, Contractor and any subcontractor shall be obligated to pay not less than the prevailing wage as indicated in this Exhibit.

### **I. CITY COUNCIL WAGE POLICY**

#### **A. PREVAILING WAGE POLICY**

California Labor Code and/or Resolutions of the City of San José require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.

Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement.

Prevailing Wages established by the City of San José shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing workers who perform services pursuant to this agreement; or

If there is no collective bargaining agreement as described above, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San José's Office of Equality Assurance.

The City Prevailing Wage will be subject to annual adjustment on the anniversary of the Agreement. Adjustment will be based on the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San José).

#### **B. REPORTS**

The Office of Equality Assurance will monitor the payment of prevailing wage by requiring the Contractor and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.

The Contractor and covered Subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policy.

Labor compliance statements must be filed in the Office of Equality Assurance no later July 10, 2007 at the address below.

## **EXHIBIT 12 WAGE POLICY**

City of San José  
Office of Equality Assurance  
200 East Santa Clara Street  
Fifth Floor  
San José, CA 95113  
Phone: 408.535-8430

**THIS EXHIBIT INCLUDES THE LABOR COMPLIANCE WORKFORCE STATEMENT AND LABOR COMPLIANCE FRINGE BENEFIT STATEMENT TO BE SUBMITTED BY THE AWARDED CONTRACTOR ONLY. DO NOT SUBMIT THESE FORMS WITH YOUR PROPOSAL.**

### **C. EMPLOYEE RETENTION REQUIREMENTS**

Contractor acknowledges that when collection services are transferred to Contractor, workers who perform services for City's current Contractor will be displaced from their employment. Contractor shall offer employment to all qualified displaced workers who have been employed by the current Contractor for at least 120 calendar days prior to July 1, 2007 provided that Contractor shall not be required to create additional positions that Contractor does not need nor to lay-off or discharge Contractor's employees in order to employ qualified displaced workers. A qualified displaced worker includes non-management workers of the current Contractor who have been employed for at least 120 calendar days prior to July 1, 2007 and who would otherwise be laid-off. Contractor is prohibited from discharging any qualified displaced workers for at least 90 days after the Collection Start-up Date except for cause. After the initial 90 days, the continued employment of qualified displaced workers will be under the terms and conditions established for all of Contractor's workers in the particular job classification. Contractor shall submit displaced worker hiring status reports to the City Representative on the last working day of October 2007 and on the last working day of June 2008.

The following provisions are applicable to this RFP and will become part of the Agreement:

#### 1. Qualified Displaced Worker Defined

Qualified Displaced Worker means any person employed by the predecessor Contractor or any subcontractor to the predecessor Contractor who meets the following requirements:

- i. The person provides direct labor or service on the City Agreement;
- ii. The person is not an "exempt" employee under the Fair Labor Standards Act (FSLA); and

## **EXHIBIT 12 WAGE POLICY**

- iii. The person has been employed on the City Agreement by the predecessor service Contractor or subcontractor for at least 120 calendar days prior to July 1, 2007.

### **2. Current Eligible Retention Employee Defined**

Current Eligible Retention Employee means a current employee of the new Contractor who meets the following requirements:

- i. The person has been employed by the Contractor for at least the six month period prior to the date of the new service or labor contract;
- ii. The person would otherwise need to be terminated as a result of the implementation of the retention requirements; and
- iii. The Contractor chooses to designate the person as a Current Eligible Retention Employee.

The Contractor must establish requirements i. and ii. above by submitting payroll records or other reliable evidence satisfactory to the Director of Equality Assurance by the date specified in writing by the Director of Equality Assurance. If the Contractor cannot submit such evidence, the employee cannot be designated a Current Eligible Retention Employee.

### **D. Employment of Displaced Workers**

The new Contractor shall offer continued employment to all Displaced Workers who are interested in such continued employment.

The City will provide the new Contractor with information regarding which employees of the Predecessor are Qualified Displaced Workers.

Notwithstanding anything to the contrary in this provision, the new Contractor may deem an employee not to be a Qualified Displaced Worker if, and only if:

- 1. The employee has been convicted of a crime that is related to the job or to his/her job performance; or
- 2. The Contractor can demonstrate to the City that the employee presents a significant danger to customers, co-workers or City staff.

In the event that the new Contractor does not have enough positions available to hire all Qualified Displaced Workers desiring continued employment and to retain its Current Eligible Retention Employees, the new Contractor shall hire Qualified Displaced Workers and retain Current Eligible Retention Employees by seniority within each employment classification. For any positions that become available during the initial ninety (90) day period of the Agreement, the new Contractor shall hire Qualified Displaced Workers

## **EXHIBIT 12 WAGE POLICY**

and rehire its Current Eligible Retention Employees by seniority within each employment classification.

1. Retention Requirements

- a. Qualified Displaced Workers hired by the new Contractor may not be discharged without cause during the initial ninety (90) day period of their employment.
- b. The new Contractor shall offer continued employment to each Qualified Displaced Worker who receives a satisfactory performance evaluation at the end of the initial ninety (90) day period of employment. Such employment shall be offered under the same terms and conditions established by the new Contractor for all of its employees.

2. Third Party Beneficiary

Qualified Displaced Workers are third party beneficiaries of this Agreement, which means that the employee has the right to enforce the provisions of the Agreement independent of the City's right to enforce the provisions of the Agreement. The third party rights will become effective only when the Agreement becomes effective. No third party rights are intended to apply to any employee regarding the RFP process.

3. Obligations Upon Termination

Upon termination of this Agreement Contractor shall fully cooperate with all City requests regarding contacts with Contractor's employees to enable a transition in the workforce to a new Contractor.

### **E. JOB FAIR**

Contractor shall participate in a job fair for the displaced workers to be held on a City-scheduled day during the period April 1 to April 8, 2007 to discuss employment opportunities with such workers. The City Representative shall notify Contractor of the date and place of the job fair at least seven (7) calendar days in advance.

### **F. EMPLOYEE WORK ENVIRONMENT EVALUATION (THIRD TIER REVIEW)**

All service or labor contracts are required to undergo an Employee Work Environment Evaluation, commonly referred to as "Third Tier Review." This Review looks into a proposer's history as an employer and work condition commitments. Each proposer is required to complete an Employee Work Environment Questionnaire and return it with the proposal.

## **EXHIBIT 12 WAGE POLICY**

If the Questionnaire is not returned, the proposal will be deemed to be non-responsive. All proposals are required to address: employee health benefits; compensated days off; employee complaint procedures; compliance with state and federal workplace standards; Employee Retention requirements, if applicable; and Service Disruption/Labor Peace provisions, if applicable.

### **G LABOR PEACE (*FINAL LANGUAGE DEPENDENT ON PROPOSAL ACCEPTED BY CITY*)**

The Office of Equality Assurance has determined that the level of vulnerability of the proposed Agreement to service or labor disputes is sufficient to warrant that labor peace is essential to the propriety interests of the City. The determination was based on considerations including, but not limited to the following factors:

1. The service or labor will be provided on city site or a site which is important to the propriety interests of the city;
2. The service provider relies on a significant amount of public patronage;
3. The economic effect of any disruption of city expenditures or revenues is significant;
4. The effect of any disruption on the citizens, tourists and businesses in the community is significant.

Proposers are to include in their proposal how they will assure that no labor dispute or unrest will occur during the term of the City Agreement. Failure to address this topic in the submission of the proposal will deem the proposal to be non-responsive.

Proposers are cautioned that the City Agreement will include details and requirements of Labor Peace based on the proposal response.

### **H. ENFORCEMENT**

#### **1. General**

Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to pay workers prevailing wage (“Wage Provision”) and to submit certain documentation to the City establishing its compliance with such requirement. (“Documentation Provision.”) Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively “Goals”):

## **EXHIBIT 12 WAGE POLICY**

- A) IT PROTECTS CITY JOB OPPORTUNITIES AND STIMULATES THE CITY'S ECONOMY BY REDUCING THE INCENTIVE TO RECRUIT AND PAY A SUBSTANDARD WAGE TO LABOR FROM DISTANT, CHEAP-LABOR AREAS.**
  - B) IT BENEFITS THE PUBLIC THROUGH THE SUPERIOR EFFICIENCY OF WELL-PAID EMPLOYEES, WHEREAS THE PAYMENT OF INADEQUATE COMPENSATION TENDS TO NEGATIVELY AFFECT THE QUALITY OF SERVICES TO THE CITY BY FOSTERING HIGH TURNOVER AND INSTABILITY IN THE WORKPLACE.**
  - C) PAYING WORKERS A WAGE THAT ENABLES THEM NOT TO LIVE IN POVERTY IS BENEFICIAL TO THE HEALTH AND WELFARE OF ALL CITIZENS OF SAN JOSE BECAUSE IT INCREASES THE ABILITY OF SUCH WORKERS TO ATTAIN SUSTENANCE, DECREASES THE AMOUNT OF POVERTY AND REDUCES THE AMOUNT OF TAXPAYER FUNDED SOCIAL SERVICES IN SAN JOSE.**
  - D) IT INCREASES COMPETITION BY PROMOTING A MORE LEVEL PLAYING FIELD AMONG CONTRACTORS WITH REGARD TO THE WAGES PAID TO WORKERS.**
- 2. Remedies for Contractor's breach of prevailing wage/living wage provisions**
- A) SUSPENSION OR TERMINATION: SUSPEND AND/OR TERMINATE THE AGREEMENT OR FINANCIAL ASSISTANCE AGREEMENT FOR CAUSE;**
  - B) RESTITUTION: REQUIRE THE EMPLOYER TO PAY ANY AMOUNTS UNDERPAID IN VIOLATION OF THE REQUIRED PAYMENTS AND CITY'S ADMINISTRATIVE COSTS AND LIQUIDATED DAMAGES. AND IN THE CASE OF FINANCIAL ASSISTANCE TO REFUND ANY SUMS DISBURSED BY THE CITY.**
  - C) DEBARMENT: DEBAR THE CONTRACTOR OR SUBCONTRACTOR FROM FUTURE CITY CONTRACTS AND/OR DEEM THE RECIPIENT INELIGIBLE FOR FUTURE FINANCIAL ASSISTANCE.**

## EXHIBIT 12 WAGE POLICY

**D) WITHHOLDING OF PAYMENT: CONTRACTOR AGREES THAT THE DOCUMENTATION PROVISION IS CRITICAL TO THE CITY'S ABILITY TO MONITOR CONTRACTOR'S COMPLIANCE WITH THE WAGE PROVISION AND TO ULTIMATELY ACHIEVE THE GOALS. CONTRACTOR FURTHER AGREES ITS BREACH OF THE DOCUMENTATION PROVISION RESULTS IN THE NEED FOR ADDITIONAL ENFORCEMENT ACTION TO VERIFY COMPLIANCE WITH THE WAGE PROVISION. IN LIGHT OF THE CRITICAL IMPORTANCE OF THE DOCUMENTATION PROVISION, THE CITY AND CONTRACTOR AGREE THAT CONTRACTOR'S COMPLIANCE WITH THIS PROVISION, AS WELL AS THE WAGE PROVISION, IS AN EXPRESS CONDITION OF CITY'S OBLIGATION TO MAKE EACH PAYMENT DUE TO THE CONTRACTOR PURSUANT TO THIS AGREEMENT. THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. ANY PAYMENT BY THE CITY DESPITE CONTRACTOR'S FAILURE TO FULLY PERFORM ITS OBLIGATIONS UNDER THESE PROVISIONS SHALL NOT BE DEEMED TO BE A WAIVER OF ANY OTHER TERM OR CONDITION CONTAINED IN THIS AGREEMENT OR A WAIVER OF THE RIGHT TO WITHHOLD PAYMENT FOR ANY SUBSEQUENT BREACH OF THE WAGE PROVISION OR THE DOCUMENTATION PROVISION.**

**E) LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION: CONTRACTOR AGREES ITS BREACH OF THE WAGE PROVISION WOULD CAUSE THE CITY DAMAGE BY UNDERMINING THE GOALS, AND CITY'S DAMAGE WOULD NOT BE REMEDIED BY CONTRACTOR'S PAYMENT OF RESTITUTION TO THE WORKERS WHO WERE PAID A SUBSTANDARD WAGE. CONTRACTOR FURTHER AGREES THAT SUCH DAMAGE WOULD INCREASE THE GREATER THE NUMBER OF EMPLOYEES NOT PAID THE APPLICABLE PREVAILING WAGE AND THE LONGER THE AMOUNT OF TIME OVER WHICH SUCH WAGES WERE NOT PAID. THE CITY AND CONTRACTOR MUTUALLY AGREE THAT MAKING A PRECISE DETERMINATION OF THE AMOUNT OF CITY'S DAMAGES AS A RESULT OF CONTRACTOR'S BREACH OF THE WAGE PROVISION WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT. THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD BE PAID.**

### I. AUDIT RIGHTS

## **EXHIBIT 12 WAGE POLICY**

All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Provision shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Agreement.

### **J. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS**

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

## EXHIBIT 12 WAGE POLICY



### Office of Equality Assurance Wage

**AGREEMENT: RECYCLE PLUS COLLECTION SERVICES**

| Classification                  | Basic Hourly Pay Rate | Health Welfare & Pension | Vacation Minimum (7 Days) | Paid Sick Leave (11 days) | Paid Holidays (12 Days) | Total Hourly Pay |
|---------------------------------|-----------------------|--------------------------|---------------------------|---------------------------|-------------------------|------------------|
| Garbage Driver                  | 24.57                 | 7.24                     | .66                       | 1.04                      | 1.13                    | \$34.64          |
| Recycle Driver                  | 24.57                 | 7.24                     | .66                       | 1.04                      | 1.13                    | \$34.64          |
| Yard Trimming Claw Driver       | 24.57                 | 7.24                     | .66                       | 1.04                      | 1.13                    | \$34.64          |
| Yard Trimming Collection Driver | 24.57                 | 7.24                     | .66                       | 1.04                      | 1.13                    | \$34.64          |

| Breakdown of Benefits |                            |                     |
|-----------------------|----------------------------|---------------------|
| Paid Vacation Days    | After 1 year               | 7 Days – 56 Hours   |
|                       | After 5 years              | 15 Days – 120 Hours |
|                       | After 10 years             | 20 Days – 160 Hours |
|                       | After 15 years             | 25 Days – 200 Hours |
|                       | After 20 years             | 30 Days – 240 Hours |
|                       | After 25 years             | 35 Days – 280 Hours |
|                       | After 30 years             | 40 Days – 320 Hours |
| Paid Sick Leave       | Eleven (11) paid Sick Days |                     |
| Paid Holidays         | Twelve (12) paid Holidays  |                     |

NOTE: Pursuant to the Labor Code and/or City Resolution, the awarding body is responsible for determining classifications to be used on Construction, Maintenance, Service and other contracts subject to prevailing wage and/or living wage requirements. Upon award of Agreement, the successful contractor/service provider will be required to submit: (1) Labor Compliance Workforce Statement; (2) Labor Compliance Fringe Benefit Statement with supporting documentation. As a condition of its Agreement, this firm may also be required to complete and file certified payrolls as requested by the Office of Equality Assurance.

## EXHIBIT 12 WAGE POLICY

Office of Equality Assurance Wage Determination continued

**AGREEMENT: RECYCLE PLUS COLLECTION SERVICES**

| Classification             | Basic Hourly Pay Rate | Health Welfare & Pension | Vacation Minimum( 7 Days) | Paid Sick Leave (11 days) | Paid Holidays (12 Days) | Total Hourly Pay |
|----------------------------|-----------------------|--------------------------|---------------------------|---------------------------|-------------------------|------------------|
| Residential Street Sweeper | 18.89                 | 2.66                     | .51                       | .80                       | .87                     | \$23.73          |

| Breakdown of Benefits  |                            |                     |
|--|----------------------------|---------------------|
| Paid Vacation Days   | After 1 year               | 7 Days – 56 Hours   |
|  | After 5 years              | 15 Days – 120 Hours |
|  | After 10 years             | 20 Days – 160 Hours |
|  | After 15 years             | 25 Days – 200 Hours |
|  | After 20 years             | 30 Days – 240 Hours |
|  | After 25 years             | 35 Days – 280 Hours |
|  | After 30 years             | 40 Days – 320 Hours |
| Paid Sick Leave  | Eleven (11) paid Sick Days |                     |
| Paid Holidays  | Twelve (12) paid Holidays  |                     |
| <p>NOTE: Pursuant to the Labor Code and/or City Resolution, the awarding body is responsible for determining classifications to be used on Construction, Maintenance, Service and other contracts subject to prevailing wage and/or living wage requirements. Upon award of Agreement, the successful contractor/service provider will be required to submit: (1) <u>Labor Compliance Workforce Statement</u>; (2) <u>Labor Compliance Fringe Benefit Statement</u> with supporting documentation. As a condition of its Agreement, this firm may also be required to complete and file certified payrolls as requested by the Office of Equality Assurance.</p> |                            |                     |

## EXHIBIT 12 WAGE POLICY

Office of Equality Assurance Wage Determination continued

**AGREEMENT: RECYCLE PLUS COLLECTION SERVICES**

| Classification     | Basic Hourly Pay Rate | Health Welfare & Pension | Vacation Minimum (6 Days) | Paid Sick Leave (7 days) | Paid Holidays (8 Days) | Total Hourly Pay |
|--------------------|-----------------------|--------------------------|---------------------------|--------------------------|------------------------|------------------|
| Sorter             | 11.95                 | 3.46                     | .36                       | .41                      | .47                    | \$16.65          |
| Floor Sorter/Raker | 17.84                 | 3.46                     | .49                       | .57                      | .66                    | \$23.02          |
| Spotter            | 13.91                 | 3.46                     | .40                       | .47                      | .53                    | \$18.77          |
| Buy Back Operator  | 16.38                 | 3.46                     | .46                       | .53                      | .61                    | \$21.44          |
| Mechanic           | 28.35                 | 3.46                     | .73                       | .86                      | .98                    | \$34.38          |
| Equipment Operator | 17.70                 | 3.46                     | .49                       | .57                      | .65                    | \$22.87          |
| Baler Operator     | 17.81                 | 3.46                     | .49                       | .57                      | .65                    | \$22.98          |
| Scale Operator     | 18.79                 | 3.46                     | .51                       | .60                      | .68                    | \$24.04          |

| Breakdown of Benefits |                          |                     |
|-----------------------|--------------------------|---------------------|
| Paid Vacation Days    | After 1 year             | 6 Days – 48 Hours   |
|                       | After 5 years            | 15 Days – 120 Hours |
|                       | After 10 years           | 20 Days – 160 Hours |
|                       | After 15 years           | 25 Days – 200 Hours |
|                       | After 20 years           | 30 Days – 240 Hours |
|                       | After 25 years           | 35 Days – 280 Hours |
| Paid Sick Leave       | Seven (7) paid Sick Days |                     |
| Paid Holidays         | Eight (8) paid Holidays  |                     |

NOTE: Pursuant to the Labor Code and/or City Resolution, the awarding body is responsible for determining classifications to be used on Construction, Maintenance, Service and other contracts subject to prevailing wage and/or living wage requirements. Upon award of Agreement, the successful contractor/service provider will be required to submit: (1) Labor Compliance Workforce Statement; (2) Labor Compliance Fringe Benefit Statement with supporting documentation. As a condition of its Agreement, this firm may also be required to submit certified payrolls as requested by the Office of Equality Assurance.

## **EXHIBIT 12 WAGE POLICY**

Office of Equality Assurance Wage Determination continued

### **Determination Notes**

\*The full amount of the total hourly wage must be paid directly to the worker, UNLESS the Contractor is making payments to a benefit plan. If the Contractor is making payments to a benefit plan but the benefits being paid do not add up to the full amount of benefits identified, the Contractor must pay the difference directly to the worker.

Hours and Days of Work

### **(Industrial Welfare Commission Order No. 16-2001)**

City of San José contracts subject to City prevailing wage or living wage policies will use the same guidelines for all covered classifications/employees.

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a workweek; and

Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7<sup>th</sup>) consecutive day of work in a workweek.

Rates will be subject to annual adjustment beginning July 1, 2006. (Adjustments will be based on the Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San José)

**EXHIBIT 12  
WAGE POLICY**



**LABOR COMPLIANCE  
WORKFORCE STATEMENT**

Page \_\_\_\_ of \_\_\_\_

**CONTRACTOR NAME:** \_\_\_\_\_

**YT & RSS SERVICES AGREEMENT:** \_\_\_\_\_

**In the chart below, list the name, prevailing wage or living wage classification(s) to be used, rate of pay and hire date for each employee expected to work on the above Agreement. See example below.**

| <b>EMPLOYEE NAME</b>      | <b>CRAFT/TRADE CLASSIFICATION</b> | <b>BASIC HOURLY RATE OF PAY<br/>(On City of San José Agreement)</b> | <b>DATE OF HIRE<br/>(Indenture Date If Apprentice)</b> |
|---------------------------|-----------------------------------|---|--|
| <i>Example: Bob Jones</i> | <i>Recycle Driver</i>             | <b>\$24.28</b>  | <b>6/1/2002</b>  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |
|                           |                                   |   |  |

Questions regarding classifications allowed on San José projects should be directed to the Office of Equality Assurance at 408-535-8430.

## EXHIBIT 12 WAGE POLICY



### LABOR COMPLIANCE FRINGE BENEFIT STATEMENT

**CONTRACTOR NAME:** \_\_\_\_\_

**YT & RSS SERVICES AGREEMENT:** \_\_\_\_\_

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

| Classification  | Fringe Benefit<br>Hourly Amount  | Name of the Plan or Fund<br>(Attach Premium Transmittal)         |
|---|--|--|
| <p>1. _____</p> <div style="background-color: #d3d3d3; padding: 5px; border: 1px solid black; margin-top: 5px;"> <p><b>Documentation of Plan contribution <u>must</u> be returned with this statement</b></p> <p>Please attach a copy of your most recent transmission into each medical, pension, or profit sharing plan account indicating worker name and amount of contribution.</p> </div> | <p>Vacation<br/>\$ _____</p> <p>Health &amp; Welfare<br/>\$ _____</p> <p>Pension<br/>\$ _____</p> <p>Apprentice<br/>\$ _____</p> <p>Other (specify)<br/>\$ _____</p> | <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> |
| <p>2. _____</p>   | <p>Vacation<br/>\$ _____</p> <p>Health &amp; Welfare<br/>\$ _____</p> <p>Pension<br/>\$ _____</p> <p>Apprentice<br/>\$ _____</p> <p>Other (specify)<br/>\$ _____</p> | <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> |
| <p>3. _____</p>   | <p>Vacation<br/>\$ _____</p> <p>Health &amp; Welfare<br/>\$ _____</p> <p>Pension<br/>\$ _____</p> <p>Apprentice<br/>\$ _____</p> <p>Other (specify)<br/>\$ _____</p> | <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> |

All (or some) fringes are paid in cash by adding the amount to the employee's basic hourly rate.

\_\_\_\_\_  
Company Name (Please Print)

\_\_\_\_\_  
Name and Title (Please Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**EXHIBIT 13  
CONTRACTOR ELECTRONIC INTERFACE REQUIREMENTS**

**CONTRACTOR ELECTRONIC  
INTERFACE REQUIREMENTS**

*CONTRACTOR BACK-END INTEGRATION  
INTERFACE FUNCTIONAL  
REQUIREMENTS AND DESIGN*

# EXHIBIT 13 CONTRACTOR ELECTRONIC INTERFACE REQUIREMENTS

## 1 FUNCTIONAL REQUIREMENTS

### 1.1 OVERVIEW

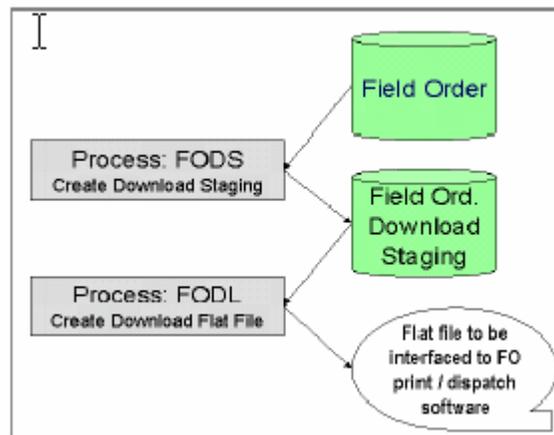
PeopleSoft RM provides the ability for users (City and Hauler staff) to create and dispatch Field Activities from within the application / portal. However, residential contractors may use an interface (inbound) to process Service Orders created within their applications. This reduces duplicative data entry by hauler staff and minimizes the need for Contractor Customer Service Representatives (CSRs) to be versatile in two applications. For Field Activities created by the City CSRs (for Contractors), a set of interfaces (outbound/inbound) is required. Although a real-time interface is desired, the Contractors could be faced with technology challenges in performing a point to point integration with PeopleSoft RM. Considering this and the cost of a real-time interface, a near real-time interface using batch processes is the preferred option.

## 2 FUNCTIONAL DESIGN

### 2.1 APPROACH

**For Field Activities (FA) created by City CSR:**

The following diagram illustrates the processes involved in the creation of the flat file that is interfaced to each Hauler.



### FDS – Create Download Staging

This process looks for all field orders that are marked for extraction (a field order gets marked for extraction when it is first created if its dispatch group is dispatchable). For each record found, the system creates a field order download staging record.

Each download staging record is marked with a batch control ID & run number when it's

## EXHIBIT 13 CONTRACTOR ELECTRONIC INTERFACE REQUIREMENTS

created.

- The batch control ID comes from the field order's dispatch group. This ID corresponds with a specific extraction method.
- The run number is the batch control ID's current run number.

### FDL – Create Download Flat File

This process reads all download staging records marked with a given batch control ID & run number, and creates the flat files for the Haulers. This process is re-runnable and the flat-files can be reproduced at any time. The no. of files created in each run is dependant on the distinct Distributor Ids (Haulers) for the batch and run number being processed. The file structure is as follows:

| PeopleSoft RM Field Name | Structure | Comments   |
|--------------------------|-----------|--|
| FA_ID                    | AN (10)   | The Field Activity ID in PeopleSoft Revenue Management   |
| FA_TYPE_CD               | AN (8)    | The Field Activity type code   |
| FA_DESCR                 | AN (30)   | The corresponding FA Description.  |
| SP_ID                    | AN (10)   | The Service Point ID associated to the Field Activity  |
| SP_TYPE_CD               | AN (8)    | The SP Type Code for the SP_ID that is referenced on the FA. Since the same FA Type can be used across all services, the combination of the FA Description with the SP Type Code will indicate for which service the activity is being performed for.                                |
| EXTRACT_DTTM             | DATE (26) | CI_FO.EXTRACT_DTTM   |
| SCHED_DT                 | DATE (10) | CI_FO.SCHED_DT   |
| SCHED_TM                 | TIME (15) | CI_FO.SCHED_TM   |
| FA_STATUS_FLG            | AN (2)    | "P" → <i>Pending</i>   |
| INSTRUCTIONS             | AN (254)  | For applicable FA Types, the current and new Multi-Information will be transferred. This is only applicable for single-row SFDs or Yard Trimming/Street Sweeping Service. For e.g. multi-row SDF and MFDs, the user (City CSR) is required to manually input the instruction for the |

## EXHIBIT 13 CONTRACTOR ELECTRONIC INTERFACE REQUIREMENTS

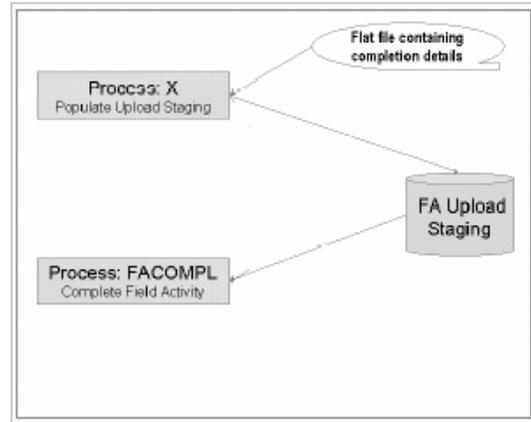
| PeopleSoft RM Field Name | Structure  | Comments   |
|--------------------------|------------|--|
|                          |            | Hauler.  |
| DESCR254                 | AN (254)   | Additional Comments.   |
| PREM_ID                  | AN (10)    | CI_PREM.PREM_ID  |
| CU_LEGACY_SLN            | AN (50)    | Legacy Service Location Number<br>CI_PREM_GEO.GEO_VAL<br>Where GEO_TYPE_CD = 'SLN'<br>(only populate if available)   |
| CU_APN                   | AN (50)    | Current Parcel Number  |
| CU_SVC_ADDRESS           | AN (150)   | Custom Field. Service Address made up of the following fields:<br>Address1  Address2  City  State  Zip               |
| FR_ITEM_TYPE             | AN (8)     | Will be populated if current (Effective Date <= SYSDATE) SP Multi-Item has a single row.                             |
| FR_ITEM_CNT              | NBR (11,2) | Count associated to the ITEM TYPE CODE above   |
| TO_ITEM_TYPE             | AN (8)     | Will be populated if new (Effective Date > SYSDATE) SP Multi-Item has a single row.                                  |
| TO_ITEM_CNT              | NBR (11,2) | Count associated to the ITEM TYPE CODE above   |
| CU_OWNER_NAME            | AN (50)    | Owner's Primary Name.  |
| CU_OWNER_PHONE           | AN (24)    | Owner's Primary Phone Number.  |
| CU_ALERT                 | AN (50)    |  |
| CU_OCCUPANT_NAME         | AN (50)    | Person in Occupant table or Account Relationship for MAIN_CUST_SW = 'Y'. Identify Account from Premise's SA/SP Link. |
| CU_OCCUPANT_PHONE        | AN (24)    | Occupant's Primary Phone Number.   |
| BATCH_CD                 | AN (8)     | PeopleSoft RM Batch Code for extract process   |
| BATCH_NBR                | NUM (10)   | PeopleSoft RM Batch Number that corresponds to the extract   |

## EXHIBIT 13 CONTRACTOR ELECTRONIC INTERFACE REQUIREMENTS

Field Order Completion Upload Background Processes:

The following diagram illustrates the processes involved in the uploading of field order completion, from the Hauler.

The required data from the Hauler, upon completing or closing a Service Order (FA) is reflected below:



| PeopleSoft RM Field Name | Structure | Comments  |
|--------------------------|-----------|---|
| CU_FA_CRE_TYPE           | AN (3)    | If this record corresponds to a Field Activity created by City CSR, the value 'PRM' should be populated. If this record corresponds to a Field Activity created by the Hauler, the value 'HAL' should be populated.   |
| CU_SVC_ORDER_ID          | AN (20)   | If this record corresponds to a Field Activity created by City CSR, the FA_ID field should be populated. If this record corresponds to a Field Activity created by Hauler, the Unique Service Order ID prefixed by either 'GT', 'GW' or 'NC' should be populated. GT → Green Team, GW → Green Waste, NC → NorCal. |
| FA_STATUS_FLG            | AN (2)    | e.g. "C" → <i>Completed</i> "X" → <i>Cancelled</i>  |
| WORK_DTTM                | DATE (26) | Only Populated if the FA_STATUS_FLG = 'C'. The date and time the Service Order was completed  |
| DESCR254                 | AN (254)  | Field Comments  |
| CAN_RSN_CD               | AN (4)    | Only Populated if the FA_STATUS_FLG = 'X'. The record has to correspond to a value configured in PeopleSoft RM.   |

In the event the Service Order is created by the Hauler, the above records will only be processed if a Field Activity record exists in PeopleSoft. Otherwise, an exception record is created in a custom table. The structure of this exception table is discussed in the next section. Completed FA will be processed through the FA Upload staging process.

### For Service Orders created by Haulers:

Haulers are required to transmit data in the following format (Fixed Length format) for Service

## EXHIBIT 13 CONTRACTOR ELECTRONIC INTERFACE REQUIREMENTS

Orders generated in their systems. For the City of San Jose to accurately track and respond to customer requests, it is a requirement for Haulers to transmit the Service Orders in a flat file every fifteen minutes. These files will be deposited within an FTP (File Transfer Protocol) site.

| PeopleSoft RM Field Name | Structure | Comments   |
|--------------------------|-----------|--|
| CU_SVC_ORDER_ID          | AN (20)   | Corresponds to a Field Activity created by Hauler, the Unique Service Order ID prefixed by either 'GT', 'GW' or 'NC' should be populated. GT → Green Team, GW → Green Waste, NC → NorCal.                                    |
| FA_TYPE_CD               | AN (8)    | The Field Activity Type configured in PeopleSoft RM. The Hauler has to cross reference this value from the Service Order code in the Hauler's application.   |
| SP_TYPE_CD               | AN (8)    | The Service Point Type configured in PeopleSoft RM. The Hauler has to cross-reference this value from the Service code (e.g. Garbage, Re-cycling, Yard-Trimming, Street Sweeping) in the Hauler's application.               |
| PREM_ID                  | AN (10)   | Hauler will need to store the PeopleSoft RM Premise ID for each Premise being serviced. This together with the Service Point Type will be used as the primary identifier in locating the SP to create the Field Activity on. |
| CU_LEGACY_SLN            | AN (50)   | Legacy Service Location Number, if PREM_ID is not available.   |
| SCHED_DATE               | DATE (26) | The Schedule Date of Service   |
| SCHED_TIME               |           | The Scheduled Time of Service  |
| FA_STATUS_FLG            | AN (2)    | "P" → Pending  |
| INSTRUCTIONS             | AN (254)  | Hauler CSRs to provide details on the Service to be performed. This is required for e.g. multi-row SFDs and MFDs.  |
| DESCR254                 | AN (254)  | Field Comments   |
| RM_ITEM_TYPE             | AN (8)    | This value will be populated if the existing item is required to be removed/exchanged. Should only be  |

## EXHIBIT 13 CONTRACTOR ELECTRONIC INTERFACE REQUIREMENTS

| PeopleSoft RM Field Name | Structure  | Comments   |
|--------------------------|------------|--|
|                          |            | populated if service corresponds to a single-row SFD or a single-row Yard trimming/ Street Sweeping Service.<br>To be used for removing SP multi-items.<br>DO NOT POPULATE THIS FOR MFD SERVICES.<br>MFD change requests should be reflected in the INSTRUCTIONS FIELD.  |
| RM_ITEM_CNT              | NBR (11,2) | Count associated to the ITEM TYPE CODE above   |
| AS_ITEM_TYPE             | AN (8)     | This value will be populated if a new item is required to be added/exchanged. Should only be populated if service corresponds to a single-row SFD or a single-row Yard trimming/ Street Sweeping Service.<br><br>To be used for adding SP multi-items.<br><br>DO NOT POPULATE THIS FOR MFD SERVICES.<br>MFD change requests should be reflected in the INSTRUCTIONS FIELD. |
| AS_ITEM_CNT              | NBR (11,2) | Count associated to the ITEM TYPE CODE above   |

Each record is processed by invoking the Field Activity, Field Order and SP Multi-Item creation routines. The Hauler's Service Order ID is stored as an Adhoc Characteristic value, which will be used as an identifier when completing the Field Activity.

The CU\_LEGACY\_SLN maybe passed if the PREM\_ID is not available.

A log will be generated for each file processed, and maybe sent to the respective Haulers via e-mail or FTP (automated). The log will contain the status of each Service Order processed. For Service Order with an exception, an exception description will be reflected next to the Service Order. Also the log file will contain the list of Field Activities cancelled in the Application (non Hauler generated) that have not been notified.

For Garbage Service, the RM\_ITEM\_TYPE and RM\_ITEM\_CNT if populated will be evaluated to see if the value matches the current setup in the application. If a mismatch occurs, and exception will be created for the Service Order.

### Exceptions:

All exceptions will be inserted into the following table, and can be queried by the Haulers. The above components will not be created for 'Pending' records reflected in the exception table.

## EXHIBIT 13 CONTRACTOR ELECTRONIC INTERFACE REQUIREMENTS

| PeopleSoft RM Field Name | Structure | Comments  |
|--------------------------|-----------|---|
| DISTRIBUTOR_ID           | AN (10)   | Hauler's ID   |
| CU_FA_CRE_TYPE           | AN (3)    | If this record corresponds to a Field Activity created by City CSR, the value 'PRM' should be populated. If this record corresponds to a Field Activity created by the Hauler, the value 'HAL' should be populated.   |
| CU_SVC_ORDER_ID          | AN (20)   | If this record corresponds to a Field Activity created by City CSR, the FA_ID field should be populated. If this record corresponds to a Field Activity created by Hauler, the Unique Service Order ID prefixed by either 'GT', 'GW' or 'NC' should be populated. GT → Green Team, GW → Green Waste, NC → NorCal. |
| FA_STATUS_FLG            | AN (2)    | "P" → Pending, "X" → Cancelled, "C" → Completed. The value from the inbound file.   |
| CRE_DTTM                 | AN (26)   | Exception creation Date/Time  |
| DESCR254                 | AN (254)  | Exception description   |

### Cancel Reasons Currently in System:

Customer Request (used for rescheduling Large Item Collections, etc.)

SA Start/Stop cancelled (sale of house did not go through)

## **EXHIBIT 14 APPROVED PRODUCTS**

CONTRACTOR shall ensure that all products produced from Organic Waste collected pursuant to this Agreement shall meet the requirements of the State of California for recycled products such that they can be counted by CITY towards its landfill diversion rate under the California Public Resources Code (PRC) § 41780 *et seq.* The following products are approved for production if they meet the PRC requirements.

### **Compost**

“Compost” means Organic Waste that has been in a controlled decomposition process for a period of not less than twelve (12) weeks, including the U.S. EPA time-temperature relationship defined as PFRP (Process to Further Reduce Pathogens).

### **Wood and Fiber Mulch**

“Wood and fiber mulch” means products generated from the carbon fraction of Organic Waste by composting the Organic Waste to eliminate weed seeds, and processing the Organic Waste into a material that can be used by contractors and landscapers to mulch areas for the control of weeds or erosion.

### **Green Soil Amendment**

"Green Soil Amendment" means material produced from the immature unders from the initial Organic Waste pre-screening or grinding process that are not placed into windrows for composting but can be used as a weed control product, or as an amendment to soil via disking or land application. Land application does not include use as a cover material for a landfill operation.

### **Top Soil Additive**

“Top soil additive” means a material made from fines blended with soils where the fines are generated from stockpiled overs from the composting process (e.g., tree trimmings) that are placed in windrows and periodically turned and screened to produce the fines.

### **Co-Generation Fuel**

“Co-generation fuel” means material that is produced by regrinding and screening overs from the pre-processing of incoming materials or from the post-processing of finished products and that is sold to the co-generation market as fuel.

### **Animal Bedding**

“Animal bedding” means material that is generated from the carbon fraction of Organic Waste by composting the material to eliminate weed seeds and then producing a material suitable for use as bedding in horse stables and dairies.

**EXHIBIT 15  
LARGE CIVIC SERVICE UNITS**

CONTRACTOR shall provide Yard Trimmings Collection Service to those Large Civic Service Units listed

| Department | Facility Name      | Facility Address | Facility Street  | Facility Zip | Service District |
|------------|--------------------|------------------|------------------|--------------|------------------|
| PRNS       | Almaden Lake Park  | 6099             | Winfield Blvd.   | 95123        | C                |
| GSA        | South Service Yard | 4420             | Monterey Highway | 95111        | C                |

PRNS = Parks, Recreation and Neighborhood Services

GSA = General Services

**CITY may add or delete Large Civic Service Units in CONTRACTOR's Service District upon written notice to CONTRACTOR.**