

**SECOND AMENDED AND RESTATED
AGREEMENT
BETWEEN
THE CITY OF ROHNERT PARK
AND
ROHNERT PARK DISPOSAL, INCORPORATED

FOR

REFUSE, RECYCLABLE MATERIALS,
COMPOSTABLE MATERIALS AND
STREET SWEEPING SERVICES**

DATED AS OF

NOVEMBER 13, 2012

EFFECTIVE AS OF

JANUARY 1, 2013

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**SECOND AMENDED AND RESTATED AGREEMENT
BETWEEN
THE CITY OF ROHNERT PARK
AND
ROHNERT PARK DISPOSAL, INCORPORATED**

FOR REFUSE, RECYCLABLE MATERIALS, AND COMPOSTABLE MATERIALS SERVICES

THIS SECOND AMENDED AND RESTATED AGREEMENT is made and entered into as of the 13th day of November, 2012, and will become effective January 1, 2013, by and between the City of Rohnert Park ("City") and Rohnert Park Disposal, Inc., a California corporation ("Contractor").

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

Whereas; the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (Act) (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Refuse Handling within their jurisdiction; and,

Whereas; the State of California has found and declared that the amount of Refuse generated in California, coupled with diminishing Disposal Site space and potential adverse environmental impacts from land filling and the need to conserve natural resources, have created an urgent need for state and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act, directed the responsible state agency, and all local agencies, to promote Disposal Site diversion and to maximize the use of feasible waste reduction, re-use, recycling and composting options in order to reduce the amount of Refuse that must be disposed of in Disposal Sites; and,

Whereas; under Section 8.12 of the Rohnert Park Municipal Code, the City has the authority to provide for the Collection and Transportation of Refuse, Recyclable Materials, and Compostable Materials, and City residents and businesses are prohibited from storing, burying, transporting or disposing of Refuse and Compostable Materials; and,

Whereas; pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive right be awarded to a qualified contractor for the Collection of Refuse, Recyclable Materials, and Compostable Materials, and other services related to meeting the diversion goal of 50 percent, and other requirements of the Act; and,

Whereas; the City has declared its intent to maintain reasonable rates for the Collection, Transportation and Recycling, Composting and/or Disposal of Refuse; and,

Whereas; the City desires, having determined that Contractor is qualified to provide for both the Collection of Refuse within the corporate limits of the City and the Transportation of such Refuse to appropriate places of Processing, Recycling, Composting and Disposal, by demonstrated experience, reputation and capacity, that Contractor be engaged to perform such services on the basis set forth in this Agreement; and,

Whereas, the City and Contractor are parties to that certain Refuse, Recyclable Materials, Compostable Materials and Street Sweeping Services Agreement, dated May 29, 2001 ("Original Agreement"); and,

WHEREAS, on July 1, 2008, the Original Agreement was Amended and Restated in its entirety to among other things provide for (i) extending the term; and (ii) the acquisition of new fleet vehicles; and

WHEREAS, on May 25, 2010, the City Council of the City of Rohnert Park further amended the Amended and Restated Agreement in order to, among other things, include an adjustment to the current term, an option to extend the term, include portable toilet service, and require Contractor to make additional payments to the City ("**First Amended and Restated Agreement**"); and

WHEREAS, City and Contractor desire to further amend and restate the First Amended and Restated Agreement in order to, among other things, (i) transfer billing and rate setting responsibility from the City to the Contractor; (ii) clarify that as a result of this transfer, the customer rates for refuse services will not be imposed by an agency upon a parcel or upon a person as an incident of property ownership, but rather the customer rates will be independently established by a private hauler on its willing customers for a voluntary service; (iii) implement a Refuse Rate Index methodology for Refuse rate adjustments and (iv) require the Contractor to pay to the City a Refuse Vehicle Franchise Fee, ("**Second Amended and Restated Agreement**"); and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the parties agree as follows:

ARTICLE 1. DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following terms shall have the following meanings and be capitalized throughout this Agreement:

1.1 AGREEMENT

"**Agreement**" means this First Amended and Restated Agreement between the City and Contractor, for Collection and Transportation of Refuse and Compostable Materials to a City designated Disposal Site or Composting Facility and Collection and Processing of Recyclable Materials, including all exhibits, and any future amendments hereto.

1.2 ALTERNATIVE DAILY COVER (ADC)

"**ADC**" means the use of Compostable Materials to include but not limited to organic materials as an Alternative Daily Cover at a Disposal Site.

1.3 BILLINGS

"**Billings**" means any and all statements of charges for services rendered, howsoever made, described or designated by Contractor, to Owners or Occupants of property, including residential property and commercial, Industrial, and institutional property, serviced by Contractor for the Collection of Refuse, Recyclable Materials, and Compostable Materials.

1.4 BIN(S)

"**Bin(s)**" means a metal container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 1 to 8 cubic yards.

1.5 BIN SERVICE

"**Bin Service**" means that service provided to Commercial Businesses, Multi-Family Complexes, or Single-Family Residences generating large volumes of Refuse and which place that Refuse in a Bin or Bins.

1.6 BULKY ITEM

"**Bulky Item**" means discarded large household appliances, furniture, tires, carpets, mattresses, and similar large items, which require special Handling due to their size, but can be collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned automobiles.

1.7 CART(S)

"**Cart(s)**" means a City-approved plastic container with a hinged lid and wheels serviced by an automated or semi-automated loading truck with varying capacities of twenty (20), thirty (30), sixty (60), or ninety (90) gallons or their equivalents.

1.8 CART SERVICE

"**Cart Service**" means that service provided to Single-Family Residences, Multi-Family Residential Complexes, and Commercial Businesses which places Refuse and/or Recyclable Materials and/or Compostable Materials in Carts.

1.9 CITY

"**City**" means the City of Rohnert Park, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the Term.

1.10 CLEAN RECYCLABLE MATERIALS

"**Clean Recyclable Materials**" means materials collected in individual components such as, but not limited to cardboard, designated paper grades, mixed containers, scrap metal, and designated plastics.

1.11 COLLECTION

"**Collection**" means the removal and transportation of Refuse from the place where it was generated to a Disposal Site and/or the removal and Transportation of Recyclable or Compostable Materials from the place where they were generated to a Processing Facility.

1.12 COMMERCIAL BUSINESS

"**Commercial Business**" means any business property upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and Industrial operations, but excluding businesses conducted upon residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.13 COMPACTOR

"**Compactor**" means a mechanical apparatus that compresses materials. Compactors include but are not limited to 2- to 4-yard Bin Compactors serviced by front-end loader trucks and 6- to 50-yard Debris Boxes serviced by roll-off trucks.

1.14 COMPLAINT

"**Complaint**" means written or orally communicated statements made by members of the public, customers of the Contractor, or officers, employees or agents of City alleging non-performance or deficiencies in performance of Contractor's duties and obligations under this Agreement, or otherwise alleging a violation by Contractor of the provisions of this Agreement.

1.15 COMPOSTABLE CONTAINER

"**Compostable Container**" means a Cart or Bin used by a Generator to store and contain Compostable Materials Collection from a designated location.

1.16 COMPOSTABLE MATERIALS

"**Compostable Materials**" means grass cuttings, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, and dead trees that may not exceed six (6) inches in diameter and four (4) feet in length. Commercial organics are included in Compostable Materials.

No discarded material shall be considered to be Compostable Materials, however, unless it is separated from Refuse and Recyclable Materials.

1.17 COMPOSTING FACILITY

"**Composting Facility**" means a facility designated by the City, which processes Compostable Materials by means of decomposition of Organic Materials.

1.18 CONTRACTOR

"**Contractor**" means Rohnert Park Disposal, Inc., a corporation organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and subcontractors.

1.19 CONSTRUCTION AND DEMOLITION DEBRIS (C&D DEBRIS)

"**Construction and Demolition Debris**" means used or discarded construction materials removed from residential, commercial, or Industrial Premises during the construction or renovation of a structure.

1.20 CURBSIDE

"**Curbside**" means the location of a container for pickup, not more than five (5) feet from the street curb. Where no street curb exists, the location shall be within five (5) feet from the outside edge of the street nearest the property's entrance.

1.21 CUSTOMER RATES

"**Customer Rates**" means Contractor's charges to customers for the provision of services under this Agreement.

1.22 DEBRIS BOX

"**Debris Box**" means an open-top metal container serviced by a roll-off truck with a capacity of 6 to 50 cubic yards.

1.23 DELIVERY

"**Delivery**" means placement of Refuse, Recyclable Materials, or Compostable Materials by a Generator in a container and at a location that is designated for Collection pursuant to the City's Municipal Code.

1.24 DESIGNATED WASTE

"**Designated Waste**" means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be disposed of only in Class II Disposal Sites, or Class III Disposal Sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State of California, in 23 California Code of Regulations Section 2522.

1.25 DISPOSAL (OR DISPOSE)

"**Disposal (or Dispose)**" means the final disposition of Refuse collected by the Contractor at a Disposal Site designated by City. Disposal does not include the use of Compostable Materials as ADC so long as the City and state regulations allow this use as diverted material.

1.26 DISPOSAL SITE(S)

"**Disposal Site(s)**" means the facility or facilities designated by the City for the ultimate Disposal of Refuse collected by the Contractor.

1.27 EXTENDED PRODUCER RESPONSIBILITY

"**Extended Producer Responsibility**" or "EPR" is the extension of the responsibility by producers for the environmental impacts of their products and packaging to the entire product life cycle -- and especially for their take-back, recycling, and disposal. EPR is based on the 'polluter pays' principle.

1.28 EXTRAS

"**Extras**" means services provided to customers in addition to their regular service. Such services and their costs shall be approved by City in advance. A temporary bin provided to a residential customer and extra bags of Refuse placed beside multi-family carts are examples of such Extras.

1.29 FRANCHISE FEE

"**Franchise Fee**" means the fee paid by Contractor to City for the right to hold the exclusive franchise and the use of the public rights of way granted by this Agreement.

1.30 GENERATOR

"**Generator**" means any Person whose act or process produced Refuse, Recyclable, or Compostable Materials.

1.31 GROSS REVENUES

"**Gross Revenues**" means all monetary amounts collected by the Contractor for provision of franchised services under the terms of this Agreement.

1.32 HANDLING

"**Handling**" means Collection and Transportation of Refuse and Compostable Materials to a City designated Disposal Site or Composting Facility and Collection and Processing of Recyclable Materials.

1.33 HAZARDOUS SUBSTANCE

"**Hazardous Substance**" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances," "hazardous materials," "Hazardous Wastes," "toxic waste," "pollutant" or "toxic substances," or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated

statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.34 HAZARDOUS WASTE

"**Hazardous Waste**" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.35 HOUSEHOLD HAZARDOUS WASTE

"**Household Hazardous Waste**" means Hazardous Waste generated at residential Premises within the City.

1.36 INDUSTRIAL

"**Industrial**" means manufacturing or technical productive enterprises.

1.37 INFECTIOUS WASTE

"**Infectious Waste**" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in Health and Safety Code Section 25117.5.

1.38 LEGISLATION

"**Legislation**" means any code, ordinance, resolution, or any other formal enactment of the governing body of the City, which now exists, or which may hereafter be adopted which constitutes law or regulation governing the operation of the Contractor.

1.39 MAXIMUM RATES

"**Maximum Rates**" means the maximum monetary amounts that Contractor may charge a customer, pursuant to Article 8, for providing services under this Agreement.

1.40 MIXED LOADS OF CONSTRUCTION AND DEMOLITION (C&D) MATERIALS

"**Mixed Loads of C&D Materials**" means C&D materials collected by mixed components such as dirt, concrete, asphalt, and rebar, wood, roofing tile, and concrete, or other such C&D materials.

1.41 MULTI-FAMILY RESIDENTIAL COMPLEX

"**Multi-Family Residential Complex**" means any residential complex, other than a Single-Family Residence, used for residential purposes, including but not limited to two to six

(2-6) unit complexes, apartment buildings, mobile home parks, condominiums, and large complexes over six (6) units.

1.42 OCCUPANT

"**Occupant**" means the person who occupies Premises.

1.43 ORGANIC MATERIALS

"**Organic Materials**" means materials that will decompose and/or putrefy. Organic Materials include, but are not limited to, vegetable waste, fruit waste, grain waste, non-recyclable paper waste and yard waste. Additional materials could be included upon mutual agreement.

1.44 OWNER

"**Owner**" means the person with the legal right to the possession of land or building.

1.45 PERSON

"**Person**" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Sonoma, and special purpose districts.

1.46 PREMISES

"**Premises**" means any land or building in the City where Refuse, Recyclable Materials or Compostable Materials are generated or accumulated.

1.47 PROCESSING

"**Processing**" means to prepare, treat, or convert through some special method.

1.48 PROCESSING FACILITY

"**Processing Facility**" means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Salvageable Material for the purpose of making such material available for re-use. Activities that may be undertaken at a Processing Facility include but are not limited to Processing Compostable Materials and Recyclable Materials.

1.49 RECYCLING CONTAINER

"**Recycling Container**" means City-approved Cart or Bin used to place Recyclable Materials at a designated Collection location for Collection for the purpose of Recycling.

1.50 RECYCLABLE MATERIALS (ALSO "RECYCLABLES")

"**Recyclable Materials**" means those discarded materials that the City Code permits, directs and/or requires Generators to set out in Recycling Containers for Collection for the purpose of Recycling. No discarded material shall be considered to be Recyclable Materials, however, unless it is separated from Refuse and Compostable Materials. Recyclable Materials may include newspaper, mixed paper, glass, metal and aluminum cans, plastic bottles (numbers 1-7), corrugated cardboard, cardboard and used motor oil and filters.

1.51 RECYCLING

"**Recycling**" means the process of sorting, cleansing, treating and reconstituting at a Processing Facility those Recyclable Materials that would otherwise be disposed of at a Disposal Site for the purpose of returning such materials to the economy in the form of raw materials for new, re-used or reconstituted products.

1.52 RECYCLING RESIDUE

"**Recycling Residue**" means non-recyclable material removed during the processing of single stream recycling such as wet or food contaminated items, waxed cardboard, plastic film, organic or putrescible wastes, rubber, insulation, garbage or other items not accepted for recycling and placed either inadvertently or intentionally by customers in the single stream collection container.

1.53 REFUSE

"**Refuse**" means all putrescible and non-putrescible solid, semi-solid, and liquid waste that the City Code requires Generators within the City to set out for Collection. Refuse does not include:

- (1) Salvageable Materials set out for Collection in a City-approved container;
- (2) Hazardous Waste or Hazardous Substance;
- (3) Infectious Waste;
- (4) Abandoned automobiles;
- (5) Unacceptable waste; or
- (6) Radioactive waste.

Refuse includes Salvageable Materials only when such materials are commingled with Refuse and included for Collection in a Refuse container. Only discarded materials shall be considered Refuse.

1.54 RELATED PARTY(IES)

"**Related Party(ies)**" means a company that has ownership of 5 percent or more of the voting stock or management control in common with Contractor.

1.55 RE-USE VENDOR

"**Re-Use Vendor**" means a vendor (i.e., St. Vincent de Paul, Goodwill Industries, or other non-profit or for-profit organizations) that will collect used furniture and other re-usable items as an alternative to Disposal.

1.56 ROLL-OFF/COMPACTOR REFUSE SERVICE

"**Roll-Off/Compactor Refuse Service**" means permanent service provided by Contractor under this exclusive Agreement to any Generator requiring a Debris Box or Compactor for the Collection of Refuse.

1.57 ROLL-OFF CONTAINER

"**Roll-Off Container**" means permanent service provided to any Generator requiring a Debris Box or Compactor for the Collection of Refuse.

1.58 SALVAGEABLE MATERIAL

"**Salvageable Material**" means those discarded materials that may be re-used in their existing form or may be re-used after some form of Processing including, but not limited to, composting and Recycling.

1.59 SINGLE-FAMILY RESIDENCE

"**Single-Family Residence**" means a separate unit used for housing a single family.

1.60 SINGLE RECYCLABLE MATERIAL STREAM

"**Single Recyclable Material Stream**" means Recyclable Material including both paper and mixed container material in one Cart, which is separated after Collection by Contractor.

1.61 SMALL COMMERCIAL GENERATOR

"**Small Commercial Generator**" means any Commercial Business, which generates less than 90 gallons of Refuse per week.

1.62 SOURCE SEPARATED CONSTRUCTION AND DEMOLITION (C&D) MATERIALS

"**Source Separated C&D Materials**" means C&D materials collected in individual components such as but not limited to dirt, concrete, wood, asphalt, scrap metals, or other such C&D materials.

1.63 SPECIALTY RECYCLABLE MATERIAL

"**Specialty Recyclable Material**" means material not specified in this Agreement that can be (or may in the future) be recycled by any Person operating under a valid permit issued by the City. Such Specialty Recyclable Material includes but is not limited to scrap metal, construction and demolition debris, high-grade paper, pallets, and plastic film.

1.64 TEMPORARY DEBRIS BOX SERVICE

"**Temporary Debris Box Service**" means temporary service provided at a job site to any residential or commercial Generator requiring a Debris Box for the Collection of Source Separated C&D Materials, Mixed C&D Materials, Compostable Materials, or Clean Recyclable Materials.

1.65 TERM

"**Term**" means the Term of this Agreement, as provided for in Article 3.

1.66 TRANSFER STATION

"**Transfer Station**" means a facility for the temporary Collection and storage of Refuse, Compostable Materials and Recyclable Materials until they are transferred to trucks for Transportation to a specific Disposal Site or Composting Facility designated by City or to Contractor's Processing Facility for Recyclable Materials.

1.67 TRANSPORTATION

"**Transportation**" means the act of transporting or state of being transported to a specific Disposal Site, Composting Facility or Transfer Station designated by City.

1.68 UNACCEPTABLE SPILLAGE

"**Unacceptable Spillage**" means any Refuse, Recyclable, or Compostable Materials spilled or left at established Collection sites by Contractor after Collection, excluding small particles of grass clippings and leaves of the size and volume that may be collected by regular street sweeping operations.

1.69 WHITE GOODS

"**White Goods**" means discarded enamel household appliances of any color, such as refrigerators, stoves, washer/dryers, water heaters, dishwashers, etc., and similar items.

1.70 ZERO WASTE

"Zero Waste is a goal that is both pragmatic and visionary, to guide people to emulate sustainable natural cycles, where all discarded materials are resources for others to use. Zero Waste means designing and managing products and processes to reduce the volume and toxicity of waste and materials, conserve and recover all resources, and not burn or bury them. Implementing Zero Waste will eliminate all discharges to land, water or air that may be a threat to planetary, human, animal or plant health."¹

ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

2.1 CORPORATE STATUS

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

2.2 CORPORATE AUTHORIZATION (OR PARTNERSHIP, ASSOCIATION OR JOINT VENTURE AUTHORIZATION)

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the

¹ Liss, Gary. Zero Waste International Alliance, November 29, 2004
<http://www.precaution.org/lib/06/prn_zw_principles.041129.htm>.

execution of this Agreement. The Person signing this Agreement on behalf of Contractor has authority to do so.

2.3 AGREEMENT WILL NOT CAUSE BREACH

To the best of Contractor's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement, nor the performance of this Agreement by Contractor: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder.

2.4 NO LITIGATION

To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor's performance under this Agreement, which has not been waived by the City in writing.

2.5 NO ADVERSE JUDICIAL DECISIONS

To the best of Contractor's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement and may subject this Agreement to legal challenge.

2.6 ABILITY TO PERFORM

Contractor possesses the business, professional, and technical expertise to manage, handle, treat, store and dispose of the Refuse, Recyclables, and Compostable Materials, and possesses the equipment, facility, and employee resources required to perform this Agreement.

ARTICLE 3. TERM OF AGREEMENT

3.1 EFFECTIVE DATE

The effective date of this Agreement shall be January 1, 2013 ("Effective Date").

3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

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

3.2.1 ACCURACY OF REPRESENTATIONS

The representations and warranties made in Article 2 of this Agreement are true and correct on and as of the Effective Date.

3.2.2 ABSENCE OF LITIGATION

There is no litigation pending on the Effective Date in any court challenging the award or execution of this Amendment or seeking to restrain or enjoin its performance.

3.2.3 FURNISHINGS OF INSURANCE AND LETTER OF CREDIT

Contractor has furnished evidence of the insurance and letter of credit required by Sections 9.4 and 9.5.

3.3 TERM

The initial Term of this Agreement began on July 1, 2008 ends at midnight June 30, 2020.

3.4 OPTION TO EXTEND TERM

At Contractor's written request, on or about July 1, 2018, provided the City determines that the Contractor has met the minimum performance and diversion requirements, as set forth in Section 3.5, the City shall within twenty (20) Work Days offer the Contractor in writing a five (5) year extension of this Agreement. Contractor shall provide written notice to City as to whether Contractor accepts or rejects City's offer within twenty (20) Work Days of the date of the offer. If Contractor fails to provide such notice to City within said twenty (20) Work Days, City's offer shall be deemed withdrawn and City shall have no obligation to extend the term of this Agreement beyond June 30, 2020. If the term of this Agreement is extended, the compensation provisions of Article 8 shall not be subject to negotiation. However, the compensation payable to Contractor shall be adjusted annually throughout the extended term as provided in Article 8.

3.4.1 VOIDING OF EXTENSION

In the event City determines that Contractor fails to meet the minimum service and diversion requirements set forth in Section 3.5 or is in breach of any other provisions of this Agreement, Contractor understands and agrees that the service extension set forth in Section 3.4 above is voided and that this Agreement shall terminate on June 30, 2020.

3.4.2 CONDITIONS FOR GRANTING EXTENSION(S)

In order to receive the Agreement term extension offers set forth in Article 3 of this Agreement, the Contractor must meet or exceed the following annual minimum performance and diversion standards in each Contract Year beginning January 1, 2010 as determined by City.

3.4.3 PERFORMANCE STANDARDS.

Assessment of administrative charges, as set forth in Section 11.5 of this Agreement of less than \$50,000 in each Agreement Year beginning January 1, 2010.

3.4.4 MINIMUM DIVERSION STANDARDS.

The City requires the Contractor to achieve a minimum annual diversion rate of forty-five percent (45%) for each Agreement Year. The annual diversion rate will be calculated as "the tons of materials collected by the Contractor under the terms of this Agreement that are sold or

delivered to a recycler or reuser, as required by this Agreement, divided by the total tons of materials collected in the Agreement Year.” The City may determine in its sole discretion that Contractor’s failure to meet the minimum diversion requirements constitutes Contractor’s default of this Agreement or the City may impose administrative charges on Contractor as set forth in Section 11.5 of this Agreement.

ARTICLE 4.

SCOPE OF AGREEMENT

4.1 SCOPE OF AGREEMENT

Subject to Article 4.2, the franchise granted to Contractor shall be exclusive for Refuse, Recyclable Materials, and Compostable Materials generated in the City, except where otherwise precluded by federal, state, and local laws and regulations.

4.2 LIMITATIONS TO SCOPE

The franchise for the Collection and Transportation of Refuse and Compostable Materials to a City designated Disposal Site or Composting Facility and Collection and Processing of Recyclable Materials granted to Contractor shall be exclusive except as to the following materials listed in this section. The City permits the operation of buy back Recycling and re-use centers, and this Agreement shall allow business and residential Generators to transport, donate and sell Recyclable Materials to such centers. The Franchise granted the Contractor shall not preclude the categories of Recyclable Materials or other materials listed below from being delivered to and collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from City, which is otherwise required by law:

A. Other recyclers shall maintain the right to collect Specialty Recyclable Materials, to accept donated Recyclable Materials, and to pay the Generator for Source Separated Recyclable Materials. Specialty Recyclable Materials set out for Collection by other recyclers shall contain no more than 10 percent by weight or volume (whichever is less) residual Refuse commingled in the materials to qualify for the exception under this section. Recyclable material must be, in fact, recycled. It will be the responsibility of Contractor, with City cooperation, to provide enforcement of this provision. If Contractor can document that other recyclers are servicing Collection containers that contain less than 90 percent source separated Specialty Recyclable Materials or Compostable Materials, it shall report the location and the name of the recycler to the City along with Contractor’s evidence of the violation of the exclusiveness of this Agreement;

B. Recyclable Materials which are removed from any Premises by the Generator and which are transported personally by the Owner or Occupant of such Premises (or by his or her employees or a contractor);

- C. Recyclable Materials, which are source separated at any Premises by the Generator and donated to youth, civic, or charitable organizations;
- D. Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et seq., California Public Resources Code;
- E. Compostable Materials removed from a Premise by a gardening, landscaping, or tree-trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service, and for no additional or separate fee, and if such contractor delivers the Compostable Materials to a Compostable Container or Composting Facility and does not dispose of the material as Refuse;
- F. Temporary Debris Box Service (if not included in this exclusive Agreement by City Council after evaluating Requests for Proposals);
- G. Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- H. By-products of sewage treatment, including sludge, sludge ash, grit and screenings; and
- I. Hazardous Waste, Infectious Waste, and Designated Waste, regardless of its source.

This grant to Contractor of an exclusive right and privilege to collect and transport Refuse and Compostable Materials and collect and process Recyclable Materials shall be interpreted to be consistent with state and federal laws, now and during the Term of the Agreement, and the scope of this exclusive right shall be limited by applicable state and federal laws with regard to the matters contained in this Agreement. In the event that future interpretations of current law or new laws, regulations, interpretations or trends limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible.

4.3 COLLECTION OF CITY FACILITIES AND CITY-SPONSORED EVENTS

Contractor shall collect Refuse, Recyclable Materials, and Compostable Materials from City locations identified in Exhibit A, at any new City facilities which are constructed, leased or purchased by City during the Term of this Agreement and at City-sponsored events identified in Exhibit C, in accordance with the schedule contained therein.

4.4 COLLECTION AND TRANSPORTATION OF SALVAGEABLE MATERIALS TO PROCESSING FACILITY

Contractor shall provide specially designed and painted vehicles for Collection and Transportation of Salvageable Materials to the Processing Facility approved by the City. No

Salvageable Materials collected under this Agreement shall be disposed of at a Disposal Site in lieu of diverting the material, without the expressed written approval of the City. If Contractor believes that it cannot re-use or recycle the Salvageable Materials, then it shall prepare a written request for approval to dispose of such material. Such request shall contain the basis for its belief, describe the Contractor's efforts to arrange for the re-use or Recycling of such material, the period required for such Disposal, the incremental costs or cost savings resulting from such Disposal, and any additional information supporting the Contractor's request. The City Council shall consider and inform Contractor in writing of its decision within thirty (30) days. If the City Council approves such request, any difference in the cost of such Disposal from its diversion shall be provided for in an adjustment (either increasing or decreasing) to the Contractor's Payment for Services. Should the City designate another Processing Facility, then Contractor's Payment for Services for the change (either increasing or decreasing Contractor's Payment for Services) in its Transportation and Processing fees.

Contractor shall transport to and dispose of all Refuse collected under this Agreement at the Disposal Site designated by the City (currently the Sonoma County Central Disposal Site) and shall cooperate with the operator of the Disposal Site. If City approves a Disposal Site other than the Sonoma County Central Disposal Site, then Contractor's Payment for Services for the change shall be adjusted (either increased or decreased).

4.5 ZERO WASTE GOALS

Contractor is pursuing construction of a facility that when fully operational, will divert up to 80% of the City's waste stream. This facility, the North Bay Corporation Center for the Environment, will enable the City to transition toward achieving its Zero Waste goals. Once the construction plans are initiated, City and Contractor shall agree to engage in dialogue regarding the destination and processing of all refuse and recyclable materials generated within the City as defined by this Agreement. Contractor commits to working with the City to adopt operations initiatives to achieve Zero Waste concepts including improving "downstream" reuse/recycling of end-of-life products and materials to ensure highest and best use; pursuing "upstream" re-design strategies to reduce the volume and toxicity of discarded products and material; and fostering and supporting use of discarded products and materials to stimulate local workforce development.

ARTICLE 5. COLLECTION SERVICES

5.1 GENERAL

The work to be done by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration and specification of requirements for particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, whether enumerated or not.

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within the City are

provided reliable, courteous and high-quality service at all times. The enumeration and specification of requirements for particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects whether they are enumerated elsewhere in the Agreement or not.

5.2 REFUSE SERVICES

5.2.1 SINGLE-FAMILY RESIDENTIAL REFUSE SERVICE

Contractor shall collect and transport to the Disposal Site designated by City all Refuse from Carts placed at the curb of Single-Family Residences once per week as scheduled.

5.2.2 MULTI-FAMILY COMPLEX REFUSE SERVICE

5.2.2.A MULTI-FAMILY REFUSE CART SERVICE

Contractor shall collect and transport to a Disposal Site designated by City all Refuse from Carts placed at the curb or in Refuse enclosure/area by each Generator within a Multi-Family Complex, not less than once per week as scheduled.

5.2.2.B MULTI-FAMILY REFUSE BIN SERVICE

Contractor shall collect and transport to a Disposal Site designated by City all Refuse from Bins as scheduled with Generator to meet their needs, but not less than once per week.

5.2.3 COMMERCIAL REFUSE SERVICE

5.2.3.A COMMERCIAL REFUSE BIN SERVICE

Contractor shall collect and transport to a Disposal Site designated by City all Refuse from Bins as scheduled with Generator to meet their needs, but not less than once per week.

5.2.3.B COMMERCIAL REFUSE CART SERVICE

Contractor shall collect and transport to a Disposal Site designated by City all Refuse from Carts placed in Refuse enclosure or area by Generator as scheduled with Generator to meet their needs, but not less than once per week.

5.2.4 COMMUNITY CLEAN-UP SERVICES

Contractor shall conduct two (2) one week cleanup events each year, one during the spring, and one in the fall. The dates for cleanups shall be proposed by the Contractor and approved by the City Manager. The Contractor shall pickup authorized cleanup items from all single-family customers at the curbside and properly dispose of such waste. Multi-family Managers, Owners or Homeowner's Associations shall be notified by Contractor (for example, through newspaper ads and/or utility bill inserts) of available cleanup services. Customers that choose to participate in the cleanup shall contact the Contractor to request service. The Contractor shall pickup authorized cleanup items from all multi-family customers at a collection location acceptable to Contractor and the Contractor shall pickup authorized cleanup items from all multi-family customers at a collection location acceptable to Contractor and Manager, Owner or Homeowner's Association.

Contractor will provide notice to single-family living units that the residents may place two (2) cubic yards (14 bags, boxes or regular trash cans) at the curb per event, or one bulky item

or appliance (e.g., water heater or couch) plus seven (7) bags, boxes or cans, or two bulky items or appliances. Waste will be collected on customer's regular trash collection day. As appropriate, items are to be bagged in thirty-five (35) gallon size trash bags, boxed or placed in 32-gallon trash cans provided by customer. Contractor will provide notice to units setting forth that items set at the curb for these cleanups must weigh less than sixty (60) pounds (except bulky items), be less than five (5) feet long and be capable of being easily loaded into standard garbage packer trucks. Cleanup material shall not include dirt, rock, concrete, tires, stumps, mattresses or other items prohibited from disposal; or items not covered by the County Disposal Fee Waiver. No hazardous waste will be collected curbside. Loose material will not be collected. In all circumstances where materials left curbside present a health and safety hazard, Contractor shall immediately notify City staff for disposition.

During cleanup events, residents will be advised to contact the Contractor directly to set up an appointment for the collection of used appliances (e.g., washers, dryers, stoves, refrigerators, freezers, etc.) and bulky items (e.g., couches, mattresses, etc.). In the case of pick up of appliances containing Freon, mercury switches, compressor oil, capacitors or other controlled waste, the City will be responsible for the costs associated with removal of Freon or other controlled waste. The Contractor will coordinate with a licensed entity for the removal of the controlled waste and bill the City for costs. The Sonoma County Waste Management Agency provides ten (10) free disposal days per year to the City so there will be no additional cost to customers. Disposal fees for items not accepted by the County of Sonoma as part of the fee waiver, such as mattresses, will be tracked by the Contractor, billed to the City and passed through to residents via their bi-monthly utility bill. If during the term of this Agreement free disposal days are terminated by the County of Sonoma or a private entity in the event that the landfill is sold, Contractor shall renegotiate the terms and conditions of community clean-up services.

In the case of multi-family complexes, such as apartment buildings, condominiums and townhouses, where solid waste is collected in centralized bins and individual can service is not provided, Contractor shall notify the person or entity responsible for refuse collection at the complex of the semiannual cleanup events. Such notification shall include instructions for requesting cleanup service from Contractor. The type and quantity of material acceptable for these cleanups shall be the same as that described above for single-family customers. Cleanup event is for residential customers and tenants only and not for businesses, commercial accounts or property managers or owners.

Contractor shall assist City staff in publicizing the bi-annual cleanup events through articles in the recycling newsletter, the "Rohnert Park Recycling News", utility billing inserts and the Community Voice. The cost of the billing inserts will be paid by the City as part of their regularly scheduled billing. The cost of ads in the Community Voice will be paid by the Contractor and funded out of the \$25,000 set aside in the City Supplemental Education Fund. In addition to providing clear guidelines for materials collection, the Contractor shall provide residents with recycling and reuse information in order to promote waste reduction and the diversion of these materials from the cleanup waste stream.

5.2.5 OIL COLLECTION

The Contractor shall provide used oil collection for Single-Family Residences and Multi-Family Complexes as part of the Recyclable Materials Collection program. Upon request, the

Contractor will distribute spill-safe containers for the Collection of used motor oil and plastic bags for used oil filters. In the case of Multi-Family Complexes, tenants will be notified by Contractor that tenants may not request oil collection; only the Manager, Owner or Homeowner's Association is authorized to request such service. Contractor shall collect used motor oil and used filters from Single-Family Residences that are placed at the curb. Contractor shall collect used motor oil and used filters from Multi-Family Complexes at a location that is acceptable to the Contractor and Manager, Owner or Homeowner's Association. The Contractor shall provide replacement containers and filter bags to participants upon each Collection of oil and/or filters.

Contractor shall safely store oil and used filters collected at its facility, and arrange for these materials to be properly recycled. Contractor shall provide used motor oil and used filter recycling support through community outreach, educational materials, and their web site

5.3 RECYCLING SERVICES

Contractor shall collect Recyclable Materials as described in Exhibit E for Single-Family Residences and Multi-Family Complexes, and Exhibit F for Commercial Businesses.

Contractor shall instruct Single-Family Residences, Multi-Family Complexes (individual residents and/or complex managers as appropriate), and Commercial Businesses as to preparation of materials; the proper placement of Recycling Carts or Bins; and shall notify customers who fail to follow these instructions with notices placed on containers. Repeated contamination of Recyclable Materials shall be reported to City for intervention and billing as Refuse.

Contractor shall transport Recyclable Materials to a Processing Facility, process and market the Recyclable Materials. The Recyclable Materials may not be disposed of at a Disposal Site, Transfer Station, or any other location in lieu of Recycling the material without the expressed written approval of the City, as specified in Article 4.4. Contractor shall make every effort to process Recyclable Materials in a manner that produces the highest and best re-use of these materials.

5.3.1 SINGLE-FAMILY RESIDENTIAL RECYCLING SERVICE

Contractor shall collect and deliver to a Processing Facility, process and market Recyclable Materials from Carts placed at the curb by Single-Family Residences. The Contractor shall provide scheduled weekly Recycling Collection service, which shall correspond with the Single-Family Residential Refuse Collection day for each resident.

5.3.2 MULTI-FAMILY COMPLEX RECYCLING SERVICE

All Multi-Family Complexes shall receive Recycling service. Each complex shall have the option of Cart Service described in Article 5.3.2.A, Bin Service described in Article 5.3.2.B, or a combination of both types of service. Contractor shall assist each complex by recommending the number and type of containers needed to service occupants and achieve a diversion rate in excess of fifty percent (50%). Contractor shall recommend the most effective locations on site for placement of containers. Contractor shall provide educational materials and signage to reduce contamination.

5.3.2.A MULTI-FAMILY RECYCLING CART SERVICE

Contractor shall collect and deliver to a Processing Facility Recyclable Materials from Carts placed at the curb or in designated Refuse and Recycling area by each resident of Multi-Family Complexes. The Contractor shall provide scheduled weekly Recycling Collection service, which shall correspond with the Multi-Family Complex Refuse Collection day. More frequent collection service shall be provided by Contractor if necessary, to resolve space constraints with smaller containers at Multifamily Complexes.

5.3.2.B MULTI-FAMILY RECYCLING BIN SERVICE

Contractor shall collect and deliver to a Processing Facility, process and market Recyclable Materials from Bins placed in designated areas collected as scheduled with Generator to meet and exceed a fifty percent (50%) diversion rate. Recycling Materials shall be collected weekly at a minimum, and more often as needed.

5.3.3 COMMERCIAL RECYCLING PROGRAM

The contractor shall collect and deliver to a Processing Facility, process and market Recyclable Materials from Bins or Carts collected as scheduled with the Generator, but at least once a week. The Commercial Business Recycling program shall include four components: (1) commercial Recyclable Materials streams, (2) container sizes and Collection options, (3) sufficient business recycling containers provided to all business locations at no additional charge to divert greater than 50% of commercial refuse at each site and (4) education and Recycling support.

5.3.3.A COMMERCIAL RECYCLABLE MATERIAL STREAMS FOR COLLECTION

Contractor shall provide the following specific commercial Recyclable Materials streams to be collected from City businesses:

- Cardboard
- Office Paper
- Mixed paper (including cardboard)
- Mixed containers (glass, plastic, aluminum)

Descriptions of the specific commercial Recyclable Materials to be collected are provided in Exhibit F.

5.3.3.B CONTAINER SIZES AND COLLECTION OPTIONS

Contractor shall provide sufficient containers of varying sizes and Collection options to all of the City's businesses to make business Recycling convenient and effective. Each account will require Recycling services with various containers and Collection options (e.g., centralized Recycling areas around groups of business, Recyclable Materials Carts near trash locations or specific businesses, or Recyclable Materials Bins where space within a trash enclosure allows). Contractor shall offer smaller Recyclable Materials Bins and Carts to address space constraints and convenience at each site, and shall offer more frequent collection than weekly as required by Generator to adequately service such containers.

5.3.4 CHRISTMAS RECYCLING SERVICES

Contractor shall offer to Single Family Residences collection of bundled and/or tied gift boxes, cards, and cardboard placed curbside next to the recycling can on regularly scheduled pickup days for two consecutive weeks following the Christmas Day holiday. The dimension

of bundled and/or tied items shall not exceed 2'W X 2'L X 1'H (i.e., two (2) feet in length, by two (2) feet in width, by one (1) foot in height).

5.4 COMPOSTABLE MATERIALS PROGRAM

Contractor agrees to collect and deliver to the local Composting Facility designated by City, Compostable Materials that Generators separate from Refuse in Compostable Containers for Collection. City shall designate the Composting Facility(s) where Compostable Materials shall be delivered. The Processing Facility may process the material as compost or mix the material with bio-solids and process the material as compost.

Contractor shall collect Organic Materials from Commercial Businesses separated from Refuse on a separate route(s) and deliver to the local Organic Materials Processing Facility designated by City. City shall designate in writing prior to the Effective Date of this Agreement the Organic Materials Processing Facility where Organic Materials shall be delivered.

The City may, at any time, designate a different Processing Facility to receive Compostable Materials or Organic Materials collected under the Agreement. The Contractor shall ensure that the new Processing Facility receives Compostable Materials collected under the Agreement within sixty (60) days of such designation by the City.

Contractor shall be entitled to an adjustment (either an increase or decrease) in its compensation for Transportation in accordance with Section 5.8 if changes in the designated Composting Facility result in increased mileage of more than ten (10) miles one way.

5.4.1 SINGLE-FAMILY RESIDENTIAL COMPOSTABLE MATERIALS WEEKLY SERVICE

Contractor shall collect and transport to the Composting Facility designated by City all Compostable Materials collected from Carts placed at the curb by each Single-Family Residence.

Contractor shall collect and deliver to a Composting Facility Compostable Materials from Carts placed at the curb of Single-Family Residences. The Contractor shall provide scheduled weekly Collection service, which shall correspond with the Single-Family Residential Refuse Collection day.

5.4.2 MULTI-FAMILY RESIDENTIAL COMPLEX AND COMMERCIAL BUSINESS COMPOSTABLE MATERIALS SERVICE

Contractor shall provide Compostable Containers to all Multi-Family Residential Complexes (such as condominiums, mobile home parks and small complexes of two to eight units) that can be serviced by Curbside Refuse and Recycling services, and shall collect and transport to the Composting Facility designated by City all Compostable Materials collected from Carts placed at the curb by each Occupant of such Multi-Family Residential Complex. No extra charge shall apply to such service.

Contractor shall, upon request of a Generator, provide Cart or Bin Compostable Containers to larger Multi-Family Residential Complexes and Commercial Businesses, and shall collect and transport to the Composting Facility designated by City all Compostable Materials from Carts or Bins placed in the designated areas for such Multi-Family Residential Complexes and Commercial Businesses. Separate service fees will apply for Compostable Materials Cart service. Contractor shall provide service as scheduled with Generator, but a minimum of every other week Collection service.

5.4.3 CHRISTMAS TREE PICKUP

Christmas trees shall be collected in one of three ways: (1) Cut up and placed in Compostable Materials Containers on regular Collection day; (2) collection from Debris Boxes at the City corporation yard (residential drop-off location); or (3) the Generator may pay a non-profit organization designated by the City Council to collect the Christmas trees and bring them to the City corporation yard.

Contractor shall supply a Roll-Off Container, to be placed at a location determined by the City, to provide a drop-off service for Christmas trees. The Roll-Off Container shall be serviced on a regular basis and the surrounding area kept free of any debris. Christmas trees shall be recycled in a manner to count as diversion by the California Integrated Waste Management Board. Trees that are flocked and contain tinsel or other decorations shall be collected separately for Disposal. The Debris Box shall be delivered the following business day after Christmas and serviced until mid-January or in cooperation with the Sonoma County Waste Management Agency Drop-Off Programs.

5.4.4 CURBSIDE CHRISTMAS TREE COLLECTION OPTION

Contractor shall offer to Single-Family Residences and Multi-Family Complex residents Curbside Collection of Christmas trees during a two- (2) week period as agreed upon and approved by the City. Christmas trees will be collected on the regular Collection day during the designated week.

5.5 HOUSEHOLD ALKALINE BATTERY RECYCLING PROGRAM

Contractor shall provide collection services for City-sponsored Household Alkaline Battery Recycling Program. Contractor shall collect recycled Household Batteries from all City locations identified in Exhibit B. City staff shall notify Contractor when battery containers become full to request pickup. Upon such notification, Contractor shall collect and deliver batteries to the Public Works Department located at 600 Enterprise Drive. If requested to do so, Contractor shall accommodate requests from City staff for routine and/or more frequent pickups.

The City will arrange for the transportation and disposal of batteries at a facility authorized to manage hazardous waste such as the Sonoma County Waste Management Agency Hazardous Waste facility located at the Sonoma County Central Disposal Site. City staff will report annual disposal, by weight, to the California Integrated Waste Management Board.

5.6 CITY FACILITIES AND EVENTS COLLECTION

Contractor shall provide containers and collection of Refuse, Recyclable Materials and Compostable Materials to all City facilities identified in Exhibit A. Contractor shall also provide collection of Refuse disposed of in City-owned cans located throughout the City. Contractor shall provide Refuse, Recycling Materials and Compostable Materials services for special events as set forth in Exhibit C. The size of the bin or cart and the frequency of Collection shall be determined between the City and Contractor. Compostable Materials services are required only at the Department of Public Works, where all City Compostable Materials are deposited. The services required by this section shall be provided at no charge to the City, but the cost of providing such service shall be an allowable expense under Article 8.

Contractor shall also provide portable toilet service in City's parks and other City facilities on a schedule and frequency as agreed on between the City and Contractor. Contractor shall provide portable toilet service at no cost to the City.

5.7 REMOVAL OF HAZARDOUS WASTE

If Contractor determines that material placed in any container for Collection is Hazardous Waste, Designated Waste, Infectious Waste, or other material that may not legally be disposed of at the Disposal Site or Processing Facility or presents a hazard to the Contractor's employees, the Contractor shall have the right to refuse to accept such material. The Generator shall be contacted by the Contractor and requested to arrange proper Disposal. If the Generator cannot be reached immediately, the Contractor shall, prior to leaving the Premises, leave a tag at least 2" x 6" which lists the phone number for the Sonoma County Waste Management Agency Household Hazardous Waste Program, indicating the reason for refusing to collect the material. If the material could result in imminent danger to people or property, the Contractor shall notify the Rohnert Park Department of Public Safety using the "911" emergency number as soon as possible. The Contractor shall notify the City of any such material left at any Premises for 14 days or more. If the material is delivered to the Disposal Site or a Processing Facility before its presence is detected and the Generator cannot be identified or fails to remove the material after being requested to do so, the Contractor shall arrange for its proper Disposal. The Contractor shall make a good faith effort to recover the cost of Disposal from the Generator, and the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator. The Contractor shall be entitled to include the costs incurred under this section as an operating expense for purposes of compensation under Article 8 and shall include all sums recovered by it from Generators as "Other Income."

5.8 TRANSPORTATION OF REFUSE, RECYCLABLE MATERIALS AND COMPOSTABLE MATERIALS

Contractor shall transport all Refuse and Compostable Materials collected under this Agreement to the Disposal and Processing Facilities designated by the City, and all Recyclable Materials to the City approved Recycling Facility for Processing. Contractor shall maintain accurate records of the quantities of Refuse, Recyclable Materials, and Compostable Materials transported to the Disposal Site, Processing Facility, or Composting Facility and will cooperate with City in any audits, reporting or investigations of such quantities.

Contractor shall cooperate with the operator of the Disposal Site and Processing Facilities with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated sorting or Disposal areas, to participate in diversion and Recycling programs, to allow load checking, to properly handle Hazardous Waste, accommodating maintenance operations and construction of new facilities, and cooperating with its Hazardous Waste Exclusion Program.

5.9 PROCESSING OF REFUSE, RECYCLABLE MATERIALS, AND COMPOSTABLE MATERIALS

Contractor shall dispose of all Refuse collected under this Agreement at the Disposal Site designated by City. Unless and until City otherwise designates a different Disposal Site in writing, the Disposal Site shall be the Sonoma County Central Disposal Site.

If the Contractor expects, during the Term of this Agreement, to be prevented from delivering Refuse to the Disposal Site designated by the City, it shall notify the City immediately. Contractor shall then identify alternative Disposal Sites and evaluate costs and environmental impacts. Such evaluation shall include the Disposal fee, Transportation cost, routes to site, traffic impacts, other environmental impacts, diversion programs, Recycling facilities, permit status, any known permit enforcement proceedings and any other criteria used by the Contractor in recommending alternative Disposal Sites. It shall then present its recommendations and evaluation of alternatives described above to City. City shall either approve the Contractor's recommended Disposal Sites or designate another Disposal Site in writing. Contractor will thereafter dispose of Refuse at the site designated by the City.

Unless and until City otherwise designates a different Recyclable Materials Processing center in writing, the Recyclable Materials Processing center shall be the Timber Cove Recycling Facility on Standish Avenue in Santa Rosa. City reserves the right to redirect Recyclable Materials collected under this Agreement to a Processing Facility determined by the City. If City redirects Recyclable Materials to an alternate Processing Facility, Payment for Services to Contractor shall be adjusted for differences in the cost of Transportation, Disposal, and Processing of the material in accordance with Section 8.6. Contractor shall dispose of all Recycling Residue at a location designated by the City. Unless and until City otherwise designates a different Disposal Site in writing, the Disposal Site shall be the Sonoma County Central Disposal Site. If City redirects Recycling Residue to an alternate Processing Facility, Payment for Services to Contractor shall be adjusted for differences in the cost of Transportation, Disposal, and Processing of the material as determined by City in accordance with Section 8.6.

Unless and until City otherwise designates a different Composting Facility in writing, the Composting Facility shall be the Sonoma County Central Disposal Site. City reserves the right to redirect Compostable and Organic Materials collected under this Agreement to a Composting Facility determined by the City. If City redirects Compostable and Organic Materials to an alternate Composting Facility, Payment for Services to Contractor shall be adjusted for differences in the cost of Transportation, Disposal, and Processing of the materials in accordance with Section 8.6.

5.10 COLLECTION STANDARDS

5.10.1 CARE OF PRIVATE PROPERTY

Contractor shall use due care when Handling Refuse, Recyclable Materials, and Compostable Materials Containers. Containers shall not be thrown from trucks, roughly handled, damaged or broken. Containers shall be returned to the Collection point upright, with lids properly secured. The City may levy fines for repeat occurrences in accordance with Article 11.5 of this Agreement.

Contractor shall ensure that its employees close, and relock if applicable, all gates opened by them in making Collections, unless otherwise directed by the Generator, and avoid crossing landscaped areas and climbing or jumping over hedges and fences for any backyard/side-yard service provided to the elderly and/or disabled.

City shall refer Complaints about damage to private property to Contractor. Contractor shall repair all damage to private property caused by its employees' negligence or willful misconduct, including but not limited to driveways and roads damaged by Contractor's trucks.

5.10.2 LITTER ABATEMENT

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

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, hot load (combustion of material in the truck), accidental damage to a vehicle, or unless approved by the City.

B. Cleanup. During Collection, the Contractor shall clean up litter in the immediate vicinity of any Refuse, Recyclable Materials, or Compostable Materials storage area (including the areas where Collection Bins and Roll-Off Containers are delivered for Collection) whether or not Contractor has caused the litter. Each Collection vehicle shall carry a broom and shovel at all times for the purpose of cleaning litter. Cat litter shall be used for liquid spill cleanups. The Contractor shall discuss instances of repeated spillage, not caused by it, directly with the Generator responsible, and shall report such instances to City. In situations where the Contractor has already attempted to do so without success, the City shall attempt to rectify such situations with the Generator.

C. Covering of Loads. Contractor shall cover all open Debris Boxes at pick-up location prior to transport to the Disposal Site.

5.10.3 HOURS OF COLLECTION

Scheduled Collection of Refuse, Recyclable Materials, and Compostable Materials in residential areas may occur only between the hours of 6:00 a.m. and 6:00 p.m., and in commercial areas, only between the hours of 4:00 a.m. and 6:00 p.m. Commercial customers adjacent to residential structures or areas shall not be serviced prior to 6:00 a.m. Should City receive what is in its sole opinion sufficient Complaints from residential customers regarding the 6:00 a.m. start time, City may direct Contractor to schedule Collection from residential areas commencing at 6:30 a.m., and Contractor shall comply with City's direction within five (5) business days.

5.10.4 NOISE

All Collection operations shall be conducted as quietly as possible and shall conform to applicable federal, state, county and City noise level regulations, including the requirement that the noise level during the stationary compaction process not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet at a height of five (5) feet from the Collection vehicle. The City may conduct random checks of noise emission levels to ensure such compliance. The only exception to this noise rule is for back-up buzzers on the trucks that may exceed the 75 decibels at a distance of 25 feet. All Collection vehicles shall comply with U.S. Environmental Protection Agency (EPA) noise emission regulations and other applicable noise control regulations. Contractor shall, within two (2) working days, resolve any Complaints of excessive noise to the satisfaction of the City.

5.10.5 HOLIDAY COLLECTION SCHEDULE

During the week of the holidays shown on Exhibit H, Collection shall be delayed by one day following the holiday, except when the holiday falls on a Saturday or Sunday. The Contractor shall provide at least a two- (2) week notice to all customers regarding the holiday week schedule changes. Contractor shall publish and distribute a holiday schedule to all Generators at least annually.

5.10.6 PERMANENT CHANGES IN SERVICE DAYS

The Collection day may change with prior written approval from the City. Once approved, Cart Service customers shall be notified four (4) weeks prior to any schedule changes to Refuse, Recycling, and Compostable Materials services. A reminder notice to all affected customers shall be sent during the week prior to the change. Contractor will not permit any customer to go more than seven (7) days without service in connection with a Collection schedule change.

5.10.7 REVIEW OF PLANS SUBMITTED TO BUILDING DIVISION

Upon request of City's Building Official, Contractor shall review building and development plans submitted to the Building Division to ensure compliance with California Assembly Bill 2176, Space for Collection and Loading of Recyclable Materials in Development Projects, and to ensure Contractor has adequate access to trash enclosures and trash collection facilities. Contractor shall provide approval, or plan review comments, no later than five (5) business days from the original receipt of plans from the City.

5.11 VEHICLES

5.11.1 GENERAL

Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Contractor shall have available sufficient back-up vehicles for each type of Collection vehicle used (i.e., side loader, front loader, and roll-off to respond to Complaints and emergencies). Contractor shall maintain detailed records of the dates, hours, operational costs and material Disposal costs incurred when using spare trucks to service the City. All costs for vehicles used solely to service the City shall be tracked by vehicle number, and records retained for the duration of this Agreement.

5.11.2 SPECIFICATIONS

Contractor shall furnish the City with eight (8) new Solid Waste Collection Vehicles ("SWCV") and one (1) Street Sweeper. The Street Sweeper was placed into service in 2007. It is a Model Year 2007. Deployment of the eight (8) new SWCVs and Street Sweeper shall be limited to the City of Rohnert Park. The new SWCVs are to be placed into service no later than October 2008. Contractor is obligated to ensure that all SWCVs shall meet or exceed California Air Resources Board standards under the SWCV Rule. The SWCVs shall be equipped with 2007 engines certified to new; lower smoke standards and they shall run on bio diesel fuel. All vehicles used by Contractor in providing collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to

prevent leakage, spillage, or overflow. Vehicles shall also be equipped with safety features that enable drivers to avoid making contact with other vehicles, their passengers and/or pedestrians.

5.11.3 VEHICLE IDENTIFICATION

Contractor's name, local telephone number, and a unique vehicle identification number for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. Contractor shall not place the City's logo on its vehicles. Contractor shall not use vehicles identified for use in Rohnert Park in any other jurisdiction without prior approval from the City.

5.11.4 INVENTORY

Contractor shall furnish sufficient equipment to provide all service required under this Agreement. Contractor shall furnish the City a written inventory of all vehicles, including Collection vehicles, used in providing service, and shall update the inventory whenever there is a change in vehicles used for City services, but at a minimum annually. The inventory shall list all vehicles by manufacturer and model year; all equipment by ID number, date of acquisition, type, capacity and depreciable life.

5.11.5 CLEANING AND MAINTENANCE

A. General. Contractor shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean, and operable condition at all times.

B. Cleaning. Vehicles used in the Collection of Refuse, Recyclable Materials, and Compostable Materials shall be thoroughly washed and thoroughly steam cleaned on a minimum of one (1) time per week or more frequently if necessary so as to present a clean appearance of both the exterior and interior compartment of the vehicle. City may inspect vehicles at any time to determine compliance with sanitation requirements. Contractor shall make vehicles available to any state or federal agency requesting an inspection, at any frequency it requests.

C. Maintenance. Contractor shall: (i) inspect each vehicle daily to ensure that all equipment is operating properly and vehicles that are not operating properly shall be taken out of service until they are repaired and do operate properly; and (ii) perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to the City upon request.

D. Repairs. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Contractor shall obtain warranty performance. Contractor shall maintain accurate records of repair, which shall include the date/mileage, nature of repair, and the signature of a maintenance supervisor that the repair has been properly performed, and shall make such records available to the City upon request.

E. Storage. Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with City's applicable zoning regulations.

5.11.6 OPERATION

Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles. Contractor shall have the right to refuse unsafe loads and/or loads containing illegal materials.

5.12 CONTAINERS

5.12.1 GENERAL

All Carts, Bins, Roll-Off Containers and Compactors shall be provided to customers as part of services provided by Contractor. Upon termination of the Agreement, the City reserves the right to take ownership of all Carts, Bins, Roll-Off Containers and Compactors, or to request Contractor to collect some or all containers.

Contractor shall provide containers for storage of Refuse, Recyclable Materials, and Compostable Materials, which shall be designed and constructed to be watertight and prevent the leakage of liquids. All containers with a capacity of one cubic yard or more shall meet applicable federal regulations on Refuse Bin safety and be covered with attached lids. All containers shall be painted standard colors and shall prominently display the name and telephone number of the Contractor. Containers shall be designated with specific colors approved by the City to distinguish between Refuse and Recycling containers. Recycling containers shall include labels identifying the type of Recycling Materials to be deposited therein.

5.12.2 REFUSE CART CONTAINERS

5.12.2.A SINGLE FAMILY RESIDENTIAL REFUSE CART SERVICE

Contractor shall supply each Single Family Residence with a choice of one (1) 20-, 30-, 60-, or 90-gallon (or equivalent size) Cart for the Collection of Refuse. Single-Family Residences may receive multiple Refuse Carts for an additional fee.

5.12.2.B MULTI-FAMILY RESIDENTIAL COMPLEXES REFUSE CART SERVICE

Contractor shall supply each Multi-Family Residential Complex resident with a choice of one (1) 20-, 30-, 60-, or 90-gallon (or equivalent size) Cart for the Collection of Refuse. Multi-Family Residents may receive multiple Refuse Carts for an additional fee.

5.12.2.C SMALL COMMERCIAL GENERATOR CART SERVICE

Contractor shall supply each Small Commercial Generator with one (1) 90-gallon Cart (or equivalent size) for the Collection of Refuse, upon request. Small Commercial Generators may receive multiple Refuse Carts for an additional fee.

5.12.3 REFUSE BIN CONTAINERS

Contractor shall supply each Bin Service Generator with a choice of size (1 to 6 yard) and number of Bins for the Collection of Refuse. Large quantity Generators shall be offered the option of selecting a Roll-Off Container or Compactor for Collection of Refuse (for permanent Refuse service only).

5.12.4 RECYCLING CONTAINERS

5.12.4.A SINGLE-FAMILY RESIDENTIAL RECYCLING CART SERVICE

Contractor shall supply each Single-Family Residence with a choice of a 60-, or 90-gallon (or equivalent size) Cart for the Collection of Single Stream Recyclable Materials in one Cart.

5.12.4.B MULTI-FAMILY RESIDENTIAL COMPLEXES RECYCLING CART

Contractor shall supply each Multi-Family Residential Complex resident with a choice of a 60-, or 90-gallon (or equivalent size) Cart for the Collection of Single Stream Recyclable Materials in one container. Multi-family residents may receive multiple Refuse Carts at no additional fee.

5.12.4.C COMMERCIAL RECYCLING CONTAINERS

Contractor shall supply each Commercial Business with the option of Bin and/or Cart Recycling Service. Bin Service Generators shall have the option of size (1 to 6 yard Bins) and number of Bins for the Collection of Recyclable Materials. Cart Service Generators shall have the option of 90-gallon Carts for the Collection of Recyclable Materials.

5.12.5 COMPOSTABLE MATERIALS CART SERVICE CONTAINERS

5.12.5.A SINGLE-FAMILY RESIDENTIAL COMPOSTABLE MATERIALS CART SERVICE

Contractor shall supply each Single-Family Residence with a 90-gallon Cart (or equivalent size) for the Collection of Compostable Materials, and additional containers at no extra cost.

5.12.5.B MULTI-FAMILY RESIDENTIAL COMPLEXES COMPOSTABLE MATERIALS CART SERVICE

Contractor shall provide as an option 90-gallon (or equivalent size) Carts for the Collection of Compostable Materials.

5.12.6 CLEANING, PAINTING, MAINTENANCE

Contractor shall steam clean and repaint all containers (other than Carts) so as to present a clean appearance. All containers shall be maintained in a functional condition.

5.12.7 REPAIR AND REPLACEMENT

5.12.7.A BIN, ROLL-OFF CONTAINER, COMPACTOR REPAIR AND REPLACEMENT

Contractor shall repair or replace all containers damaged by Collection operations within a one- (1) week period.

5.12.7.B CART REPAIR AND REPLACEMENT

Contractor shall replace, not more than once per year without charge, containers that have been stolen or damaged. Additional Carts shall be charged to the Single-Family Residences and Multi-Family Residential Complex residents at a rate approved by the City in writing.

5.12.8 CITY-SPONSORED EVENT CONTAINERS

Contractor shall provide a sufficient number of containers for both Refuse and Recycling at City events.

5.13 EDUCATION AND RECYCLING/RE-USE SUPPORT

Throughout the Term of the Agreement Contractor shall use best efforts to engage in activities that support the City's commitment to achieve the transition to Zero Waste. Contractor will work both independently and with City staff to develop and implement effective recycling and reuse programs, produce and distribute useful educational materials that incorporate Zero Waste goals, perform public outreach, provide incentives to businesses and individuals that reward and promote recycling and re-use, partner with organizations that conduct recycle/re-use drop-off events, and advocate for legislated Extended Producer Responsibility (EPR) Programs. Contractor shall adopt their own operations initiatives to achieve zero-waste from refuse collection activities.

5.13.1 NEW CUSTOMER START-UP PACKET

Contractor shall provide an information packet for new customers. Materials printed and distributed shall contain the highest levels of recycled content, with a minimum of 20 percent post-consumer content. Contractor shall include the following items, where applicable, in the packet to new customers:

- An initial mailing describing the specific collection day and holiday service schedule.
- A "how to" brochure explaining the overall Recyclable and Compostable Materials programs and the materials to be collected.
- The most recent semi-annual newsletter.

5.13.2 CONTINUING EDUCATIONAL ACTIVITIES

Throughout the term of this agreement Contractor shall provide information to Single-Family Residences, Multi-Family Residential Complexes, and Commercial Businesses through media including, but not limited to, newsletters, utility billing inserts, flyers, door hangers, notification tags and direct contact. At the request of City staff, Contractor shall generate educational articles for publication in the Community Voice.

The Contractor shall conduct the following activities on a quarterly, semi-annual, annual and/or "as needed" basis through the Term of the contract:

5.13.2.A SINGLE FAMILY RESIDENTIAL CUSTOMERS

- A semi-annual newsletter to be distributed to all residents promoting and explaining the programs and including Recycling education materials.
- Semi-annual utility billings insert promoting and explaining the community cleanup events.
- A corrective actions notice for use in instances where the resident sets out inappropriate materials.

- Semi-annual distribution of non-program related information on source reduction, re-use and Recycling (e.g., junk mail reduction, Household Hazardous Waste events, grass cycling, composting, etc.). Contractor may distribute materials as utility billing inserts as space permits.

5.13.2B MULTI-FAMILY COMPLEX CUSTOMERS

- A semi-annual newsletter to be distributed to all residents promoting and explaining the programs and including Recycling education materials.
- Semi-annual utility billings insert promoting and explaining the community cleanup events.
- A corrective actions notice for use in instances where tenants set out inappropriate materials shall be provided to the Manager or Owner.
- Semi-annual distribution of non-program related information on source reduction, re-use and Recycling (e.g., junk mail reduction, Household Hazardous Waste events, grass cycling, composting, etc.).

5.13.2C COMMERCIAL BUSINESS CUSTOMERS

- Semi-annual printing and distribution of educational materials targeting commercial waste streams (e.g. office paper, other paper and cardboard).
- Printing and maintaining clear container labels describing the contents that shall be placed in the recycling bin.
- Contractor shall attend a minimum of four (4) business association groups (e.g., Chamber of Commerce and other such organizations) to educate businesses on the Recycling programs, answer questions, and provide information for signing businesses up for services.
- Contractor shall provide a semi-annual newsletter to be distributed to all businesses promoting and explaining the programs. The newsletter shall be reviewed and approved by City staff.
- Contractor shall provide a corrective actions notice for use in instances where the business includes inappropriate materials, has contamination of Recyclables, or has inadequate Refuse or Recycling services (e.g., overflow or excessive debris).

5.13.3 RECYCLING VISITS AND EDUCATION

The Contractor shall provide a qualified Recycling Specialist to provide Recycling education to Commercial Businesses, Multi-Family Residential Complexes, and Single-Family Residences. The Recycling Specialist shall devote a minimum of eight (8) hours per week or 416 hours per year solely to the City throughout the term of the contract.

The Recycling Specialist shall work with Commercial Businesses to encourage Recycling services. The Recycling Specialist shall be available to new and existing businesses throughout the Term of the contract for approximately four (4) hours per week. A minimum of 100 of the commercial Generators, including all new accounts, in the City shall be visited annually to receive one-on-one education about Recycling and assistance with implementing some type of Recycling program. Visits shall include, but not be limited to, waste diversion and source reduction analysis; research of markets for specialized materials generated by the Commercial Generator; as well as assistance in internal collection and training efforts. The goal is to reduce waste and increase Recycling. The Contractor shall pursue opportunities to initiate take-back programs in relevant Commercial Businesses. In subsequent years, businesses previously visited will require follow-up visits by Contractor to determine if any improvements on current or additional diversion programs are necessary. Quarterly reports with results shall be submitted by Contractor to the City. Targeted businesses will be determined by Contractor in coordination with City staff each year.

The Recycling Specialist shall also work with Multi-Family Residential Complexes to encourage Recycling services. The Recycling Specialist shall be available to new and existing complexes throughout the Term of the contract for approximately four (4) hours per week. The Recycling Specialist shall assist multi-family building Managers, Owners or Homeowner Associations in adding or changing services; they shall provide one-on-one education about Recycling, offer assistance with implementing or enhancing Recycling programs, and shall work with complexes to ensure that their residents are aware of, and may participate in, the Community Clean-up Events and Christmas Tree Pick-up Program. A minimum of 100 Multi-Family Complexes shall be visited annually.

Direct educational contact with businesses, employees, property managers and tenants is the first priority for the use of required time. The Recycling Specialist activities shall also include, but are not limited to, speaking at Chamber of Commerce events, attending community events, offering Recycling education in the schools, and conducting Recycling training classes throughout the year.

5.13.4 CITY'S SUPPLEMENTAL EDUCATION

A. The City will include an annual budget of \$25,000 in the Contractor's Payment for Services to fund supplemental education program(s). The use of these funds shall not be restricted and may be used for solid waste related programs such as an annual E-Waste event, and a variety of ads and/or concise articles that, upon request by City, are to be written and placed in the Community Voice by Contractor. This annual budget will be added on as a pass-through of diversion fees to the cost presented and will be funded from Refuse rates.

1) Annually, the City and Contractor will agree on one or more supplemental education programs that target large generators of waste. For example, supplemental programs may include, but not be limited to, augmenting source reduction and Recycling practices among those generators known to contribute significant levels of divertable materials to landfills or generators known to contaminate Garbage and/or

Recycling. Contractor shall report progress, problems encountered, actions taken, and recommendations for future actions quarterly.

2) Contractor shall organize and manage an annual E-Waste event with a certified E-waste recycler. Contractor's responsibilities shall include, but not be limited to: (a) initiating contact with a certified E-waste recycler; (b) establishing a date and time for the event that is acceptable to both the City and certified E-waste recycler; (c) working with City staff to secure a location for the event; (d) working with certified E-waste recycler to secure adequate staffing and transportation of E-waste; and (e) coordinating all activities throughout the event to ensure its success. Contractor shall be responsible for ensuring that the total number of pounds collected at the event is reported to the City within 60 days of the event.

3) Contractor shall place ads in the Community Voice for Christmas Tree Collection Services, Christmas Recycling Services, the Curbside Community Clean-up Events, the annual E-waste Event and other events as requested by City. At the request of City staff, Contractor shall generate 2-3 brief educational articles for publication in the Community Voice (e.g., Composting leaves in the fall, proper disposal of medications). The content for these articles may be taken directly from Contractor's bi-annual newsletter if previously published and approved by the City.

B. Annually, the City shall set-aside \$25,000 for special projects that will enhance source reduction and recycling education. The use of these funds shall not be restricted and may be used by the City for solid waste related programs such as to hire an educational contractor to conduct additional education and outreach to support multi-family and commercial Recycling programs. This annual budget will be added on as a pass-through of diversion fees to the cost presented and will be funded from Refuse rates.

C. Annually, the City shall set-aside \$10,000 for enforcement activities. The City will utilize its Code Enforcement Officer to initiate and carry-out corrective measures to address non-compliance with the Rohnert Park Municipal Code; to enforce our contractual obligation to our Contractor that grants them exclusivity in the collection, hauling, and disposal of all refuse, recyclable materials and compostable materials; and to monitor the activities of Contractors granted a franchise for the provision of Temporary Debris Box services. This annual budget will be added on as a pass-through of diversion fees to the cost presented and will be funded from Refuse rates.

5.13.5 COMPOSTABLE MATERIALS SPECIFICATIONS

Contractor shall prepare a flyer describing how to prepare Compostable Materials for Collection. Contractor shall print a sufficient number of flyers to distribute to each new customer. Contractor shall instruct Single-Family Residences, Multi-Family Residential Complexes, and Commercial Businesses as to any necessary preparation and description of acceptable Compostable Materials. Compostable Materials Specifications shall be published in the Contractor's bi-annual newsletter.

5.13.6 RECYCLABLE MATERIALS SPECIFICATIONS

Contractor shall prepare a flyer describing how to prepare Recyclable Materials for Collection. Contractor shall print adequate numbers of flyers and other educational materials to distribute to each new customer. Contractor shall inform Single-Family Residences, Multi-

Family Residential Complexes, and Commercial Businesses as to any contaminants in the Recyclables and describe the acceptable materials that can be included in the Recyclable Materials Containers, by placing notices on containers. Recyclable Materials Specifications shall be published in the Contractor's bi-annual newsletter.

5.13.7 CHRISTMAS TREE COLLECTIONS

Contractor shall notify all service recipients in writing of the dates, time, and places of all Christmas tree Collections. Written notification shall be in the form of an ad placed in the Community Voice. In addition to Christmas Tree Collections, Contractor shall incorporate information about Christmas Recycling Services into the ad (i.e., 5.3.4 Christmas Recycling Services). The ad shall be published one week prior to the Christmas Day holiday.

5.14 PERSONNEL

5.14.1 GENERAL

Contractor shall furnish such qualified drivers, mechanical, supervisory, customer service, clerical, and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.

5.14.2 DRIVER QUALIFICATIONS

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

5.14.3 SAFETY TRAINING

Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for Collection of Refuse, Recyclable Materials, or Compostable Materials or who are otherwise directly involved in such Collection. Contractor shall train its employees involved in Collection to identify, and not to collect, Designated Waste, Hazardous Waste, or Infectious Waste.

5.14.4 NO GRATUITIES

Contractor shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the Collection of Refuse, Recyclable Materials, and Compostable Materials under this Agreement.

5.14.5 EMPLOYEE CONDUCT AND COURTESY

Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work as quietly as possible. If any employee is found not to be courteous, to be driving in a dangerous or reckless manner, or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures.

5.14.6 UNIFORMS

All employees of the Contractor performing field service under this Agreement shall be dressed in clean uniforms with employee's name or numbered badge which also shows

Contractor's name thereon at all times while engaged in the work; no portion of this uniform may be removed while working.

5.14.7 PROVISION OF FIELD SUPERVISION

Contractor shall designate at least one qualified employee as supervisor of field operations. The field supervisor will devote at least 50 percent (50%) of his or her time in the field checking on Collection operations, including responding to Complaints.

5.14.8 CUSTOMER SERVICE REPRESENTATIVES

The customer service representatives shall be trained on specific Rohnert Park service requirements, a minimum of once per quarter. A Rohnert Park information sheet shall be provided to each customer service representative for easy reference to Rohnert Park requirements. Information sheet, training agenda, and associated documentation shall be forwarded to the City each quarter after the training.

5.14.9 CUSTOMER SERVICE/BILLING LIAISON

Contractor shall designate one (1) qualified employee and one (1) alternative to serve as customer service/billing liaison to the City. The liaison will be available during business hours to coordinate billing, customer service, and operational issues with the City.

5.15 STREET SWEEPING SERVICES

Contractor shall provide weekly sweeping of all streets, island gutters, and noses, as well as the bi-weekly sweeping of all City bike paths and public parking lots. Refer to Exhibit I for listings of streets, bike paths, and public parking lots.

Contractor shall amend the Street Sweeping schedule and modify routes upon request by City. Contractor shall coordinate with City staff to ensure that modifications to existing Street Sweeping Services do not adversely impact City Operations, Public Health and/or Public Safety.

5.15.1 GENERAL STREET SWEEPING REQUIREMENTS

- A.** Contractor shall supply street sweeping equipment, including all parts and accessories. Contractor shall be solely responsible for the licensing, operation, maintenance, and repairs of its street sweeping equipment. Contractor shall clean and maintain equipment as described in Section 5.11.5, Cleaning and Maintenance.
- B.** Equipment must be equipped with an efficient water spray system for dust control, and the spray system must be maintained in good operating condition.
- C.** Equipment must be properly registered and insured in accordance with the motor vehicle laws of the State of California.
- D.** All equipment used by the Contractor shall be kept in a neat and clean appearance, maintained in top mechanical condition and properly adjusted, from an operational standpoint and from a safety standpoint. All sweepers shall be equipped with an operational rotating amber dome light and flashing lights.
- E.** A sufficient supply of spare brooms and other parts shall be readily available to ensure the timely and continuous fulfillment of this Agreement.
- F.** Equipment must be capable of removing litter, leaves, and debris.
- G.** Equipment must conform to all federal, state, and local safety and environmental regulations. The City may conduct random checks to insure compliance.

H. Vehicles must be equipped with dual gutter brooms and one suction head capable of sweeping at a minimum a nine-foot path and smaller equipment capable of sweeping bike paths five (5) to eight (8) feet wide.

I. Equipment operators are required to have the proper licenses to operate the equipment.

5.15.2 HOURS OF STREET SWEEPING

Street sweeping in residential areas may occur, only between the hours of 6:00 a.m. and 6:00 p.m., and in commercial areas, only between the hours of 2:00 a.m. and 6:00 p.m. or as otherwise posted.

5.15.3 HOLIDAYS

During the week of the holidays shown on Exhibit H, street sweeping shall be delayed by one day following the holiday, except when the holiday falls on a Saturday or Sunday.

5.15.4 CITY OBLIGATIONS

A. The City will provide adequate hydrant access throughout the City for filling water spray systems.

B. The City will provide and maintain an adequate Disposal Site for dumping debris picked up by the Contractor. The Contractor shall dump street sweeping debris picked up by the Contractor at the City corporation yard located at 600 Enterprise Drive.

5.15.5 CONTRACTOR OBLIGATIONS

A. The Contractor will provide fuel and maintenance for street sweeping equipment.

B. The Contractor must have a supervisor or foreman available to direct street sweeping operations.

C. The Contractor shall amend the street sweeping schedule and modify routes upon request by City.

5.16 CONTINGENCY PLAN

Contractor shall submit to City on or before the Effective Date, a written contingency plan demonstrating Contractor's arrangements to provide uninterrupted service during mechanical breakdowns or other "non-catastrophic" emergencies.

Contractor shall work with City to develop a written plan detailing the manner in which they will operate and provide assistance to City recovery efforts following a natural disaster.

5.17 CITY-DIRECTED CHANGES

City may direct Contractor to perform additional services (including new diversion programs (e.g., food waste composting, billing services, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services, which may entail new Collection methods, targeted routing, different kinds of services and/or new requirements for Generators are included among the kinds of changes, which City may direct. Contractor shall be entitled to an adjustment in its compensation in accordance with Section 8.8 for providing such additional or modified services but not for the preparation of its proposal.

Contractor shall present, within 30 days of a request to do so by City, a proposal to provide additional or expanded diversion services. At a minimum, the proposal shall contain a complete description of the following:

- A. Collection methodology to be employed (equipment, manpower, etc.).
- B. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- C. Labor requirements (number of employees by classification).
- D. Type of materials containers to be utilized.
- E. Provision for program publicity/education/marketing.
- F. Estimated diversion to be achieved by volume or weight as applicable.

Five-year projection of the financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.

Contractor acknowledges and agrees that City may permit other Persons besides Contractor to provide additional Refuse and diversion services not otherwise contemplated. If Contractor and City cannot agree on terms and conditions of such services in one hundred twenty (120) days from the date when City first requests a proposal from Contractor to perform such services, Contractor acknowledges and agrees that City may permit Persons other than Contractor to provide such services.

ARTICLE 6.

OTHER RELATED SERVICES AND STANDARDS

6.1 BILLING

Starting on January 1, 2013, or at a date mutually agreed upon by the parties, the Contractor shall establish the Customer Rates pursuant to the provisions of Article 8, at its sole discretion, for the types of service provided, as well as bill and collect revenues from customers at those rates.

The Contractor shall prepare, mail, and collect payments for all Refuse and Recycling service bills, and shall provide customer service for all account setups and billing-related matters. The Contractor may bill in arrears.

6.1.1 SERVICE BILLING TICKETS

Contractor shall maintain numbered billing tickets for additional fee services, such as, but not limited to, extra pickups, changes in service, Bin swaps, special pickups, or other related service requirements. Service billing tickets shall confirm the service was delivered and the date of change to ensure proper billing.

6.2 GENERAL

Contractor shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with and to meet the reporting and program management needs of Contractor and AB 939 and other federal and state and local laws and regulations and the requirements of this Agreement. To the extent, such

requirements are set out in this and other articles of this Agreement, they shall not be considered limiting or necessarily complete. In particular, this article is intended to only highlight the general nature of records and reports and their minimum content and is not meant to comprehensively define what the records and reports are to be and their content. Further, with the written direction or approval of Contractor, the records and reports to be maintained and provided by Contractor in accordance with this and other articles of the Agreement shall be adjusted in number, format, or frequency.

6.3 RECORDS

6.3.1 GENERAL

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft, and earthquake. Electronically maintained data/records shall be protected and backed up.

Contractor agrees that the accounting and other records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to City and its agents and/or representatives during normal business hours. Contractor shall allow and permit City or City representative to audit its accounting records and all other records required by this Agreement, and to meet with Contractor personnel to verify data. Contractor shall cooperate to the fullest extent with City during such an audit process.

6.3.2 MAINTENANCE OF FINANCIAL AND OPERATIONAL RECORDS

A. General. In order to effectuate the periodic rate review contemplated by Article 8, it is necessary for Contractor to maintain accurate, detailed financial and operational information in a consistent format and to make such information available to the City in a timely fashion.

B. Contractor's Accounting Records. Contractor shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all costs associated with providing services under this Agreement. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied. The purpose, method of calculation and support for all cost allocations shall be documented and maintained.

C. Inspection of Records. The City, its auditors and other agents, shall have the right, during regular business hours, to conduct unannounced on-site inspections of the records and accounting systems of Contractor and to make copies of any documents it deems relevant to this Agreement.

D. Retention of Records. Unless otherwise herein required, Contractor shall retain all records and data required to be maintained by this Agreement for at least five (5) years after the expiration of this Agreement.

Records and data required to be maintained that are specifically directed to be retained shall be retrieved by Contractor and made available to the City.

Records and data required to be maintained that are not specifically directed to be retained that are, in the sole opinion of the City, material to the rate review or to a

determination of the Contractor's performance under this Agreement, shall be retrieved by Contractor and made available to the City upon request.

Records and data required to be maintained that are not specifically directed to be retained and that are not material to a rate review and/or not required for the determination of the Contractor's performance do not need to be retrieved by Contractor. In such a case, however, the City may make reasonable assumptions regarding what information is contained in such records and data, and such assumption(s) shall be conclusive in whatever action the City takes.

6.3.3 REFUSE RECORDS

Records shall be maintained by Contractor for City relating to:

- A. Service recipient services.
- B. Weight and volume by type (e.g., Refuse, Recyclable Materials, and Compostable Materials). Where possible, information is to be separated among Single-Family Residences, Multi-Family Complexes, Commercial Businesses, and City-event services.
- C. Routes.
- D. Facilities, equipment and personnel used.
- E. Facilities and equipment operations, maintenance and repair.
- F. Disposal and Processing Facility weight tickets for Refuse, Recyclable Materials, and Compostable Materials. Residue will be allocated as a percent of all materials processed by Contractor.

Contractor shall maintain records of all Refuse, Residue, Recyclable Materials, and Compostable Materials collected in the City for the period of this Agreement plus five (5) years after its termination. Records shall be in chronological and organized form, and readily and easily interpreted. In the event City requests, Contractor shall provide all records of all Refuse, Residue, Recyclable Materials, and Compostable Materials to City within thirty (30) days of discontinuing service.

6.3.4 RECYCLABLE MATERIALS AND COMPOSTABLE MATERIALS COLLECTION SERVICE RECORDS

Records shall be maintained by Contractor that relate to:

- A. Recyclable Materials and Compostable Materials Collection participation especially as related to determining participation and set-out rates and implementing programs to increase existing participation and to expand diversion (names, addresses, contacts made, etc.);
- B. Recyclable Materials and Compostable Materials sales value;
- C. Weight of material by type; and
- D. End-use markets.

6.3.5 TRANSFER AND DISPOSAL RECORDS

Contractor shall maintain records of transfer, Disposal and Processing of all Refuse, Residue, Recyclable Materials, and Compostable Materials collected by Contractor for the period of this Agreement plus five (5) years after its termination. Records shall be in

chronological and organized form and readily and easily interpreted. In the event City requests, Contractor shall provide all records of transfer and Disposal or Processing of all Refuse, Residue, Recyclable Materials, and Compostable Materials collected by Contractor within thirty (30) days of discontinuing service.

6.3.6 EQUIPMENT RECORDS

Contractor shall maintain equipment records, which show the date purchased, model year, useful life of asset, depreciation method and amount, financing method and rate. For vehicles, records shall include gas, oil, maintenance and repair by vehicle number. Cost allocations and methods will be documented and explained. Repair history, if applicable, for the following types of assets:

- A. Vehicles used exclusively for servicing City
- B. Spare vehicles shared with other jurisdictions
- C. Equipment
- D. Containers purchased for City services
- E. Furniture and fixtures.

6.3.7 OTHER PROGRAMS' RECORDS

Records for other programs shall be tailored to specific needs. In general, they shall include:

- A. Plans, tasks, and milestones; and
- B. Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

6.3.8 CERCLA DEFENSE RECORDS

City views the ability to defend against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Refuse and Residue collected in the City was taken for transfer or Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain, retain, and preserve records, which can establish where Refuse and Residue collected in the City was disposed (and therefore establish where it was not). This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. Contractor shall maintain these records for a minimum of ten (10) years. Contractor shall provide these records to City in an organized and indexed manner rather than destroying or disposing of them.

6.3.9 CUSTOMER SERVICE RECORDS

Contractor shall maintain records for City related to:

- A. Number of calls received;
- B. Length of time to answer and time on hold;
- C. Categories (missed pickups, extra pickups, complaints, damage, compliments, etc.) of calls;
- D. Individual call and resolution log (including initial call date and resolution date);

- E. Training records;
- E. New Recycling account log and increased Recycling services.

6.4 REPORTS

6.4.1 GENERAL

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

- 1) Determine and set rates and evaluate the financial efficacy of operations;
- 2) Evaluate past and expected progress towards achieving the Contractor's diversion goals and objectives;
- 3) Determine needs for adjustment to programs; and
- 4) Evaluate recipient service and Complaints.

Contractor may propose report formats that are responsive to the objectives and audiences for each report. The City shall approve the format of each report. Contractor agrees to submit all reports in a format acceptable to the City.

Quarterly reports shall be submitted within forty-five (45) calendar days after the end of the report quarter. Annual reports shall be submitted no later than June 1st, after the close of each fiscal year ending December 31st.

All reports shall be submitted to:

City of Rohnert Park
130 Avram Ave.
Rohnert Park, CA 94928
Attention: City Manager

6.4.2 QUARTERLY REPORTS

Reports shall be presented by Contractor to show the following information. The attribution of tonnage data to customer types, as described below, shall be done in accordance with Exhibit J.

- A. Refuse Services.** Provide total tonnage by Single-Family Residences, Multi-Family Complexes, and Commercial Businesses. Data for the prior year same quarter will be included for comparison purposes.
- B. Recyclable Materials Services.** Provide tonnage by Single-Family Residences, Multi-Family Complexes, and Commercial Businesses. Data for the prior year same quarter will be included for comparison purposes.
- C. Recyclable Totals.** Indicate by material type the quarterly total of recyclable materials processed and sold.

D. Compostable Materials Service. Provide tonnage by Single-Family Residences, Multi-Family Complexes, and Commercial Businesses. Data for the prior year same quarter will be included for comparison purposes.

E. Customer Service

- 1) Provide number of customer calls by category (e.g., missed pickups, other complaints, compliments, etc.)
- 2) Provide number of resolved calls and number of unresolved calls (over five [5] days). Provide explanations on unresolved calls.
- 3) Include Quarterly Customer service training logs

F. Curbside Cleanup/Christmas Tree/Special Services. Provide tonnage by service type (Cleanup and Christmas Tree Collection Services). Include the following information:

- 1) Disposal tonnage.
- 2) Diversion tonnage.

G. Education Quarterly Activities

- 1) Describe materials distributed and total number of locations visited.
- 2) Provide list of group names of meetings attended.
- 3) Provide list of Commercial Business and Multi-Family Complexes contacted.

H. Notification Activities. Provide a listing and sample of all notices, newsletters, publications activities that were conducted during the quarter.

I. Pilot and New Programs. For each pilot and/or new program, provide activity related and narrative reports on goals and milestones and accomplishments. Describe problems encountered, actions taken, and any recommendations to facilitate progress.

J. Summary Assessment. Provide a summary assessment of the overall Refuse, Recyclable Materials, and Compostable Materials program from Contractor's perspective relative to financial and physical status of program. The physical status is to relate to how well the program is operating for efficiency, economy, and effectiveness relative to meeting all the goals and objectives of this Agreement including particularly the Contractor's diversion goals. Provide recommendations and plans to improve. Highlight significant accomplishments and problems.

6.5 ANNUAL REPORTS

6.5.1 ANNUAL REPORT REQUIREMENTS

The annual report shall be in the form of the quarterly reports and shall provide the same type of information as required pursuant to Article 6.4.2 of this Agreement, summarized for the preceding four quarters. In addition, Contractor's annual financial reports/statements shall be included. The annual report shall also include a complete inventory of equipment used to provide all services.

6.5.2 FINANCIAL INFORMATION

On or before June 1st after the close of each fiscal year ending December 31, Contractor shall deliver to the City four (4) copies of the audited financial statement of Contractor operations under this Agreement for the Contractor's preceding fiscal year. If the Contractor provides services not provided for under this Agreement, then its financial statements shall include a supplemental combining schedule showing Contractor's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement separate from other operations included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied and fairly reflecting the results of operation and Contractor's financial condition. Annual financial statements shall be audited in accordance with Generally Accepted Auditing Standards (GAAS) by a Certified Public Accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy, and that the CPA opinion on Contractor's annual financial statements shall be unqualified, and that the supplemental schedule be prepared on a compiled basis.

6.5.3 RELATED PARTY ENTITIES

Because financial transaction between Related Party companies may not be "arm's length," it is important to the City to ensure that such transactions are necessary and reasonable. Contractor agrees that all financial transactions with all Related Party entities shall be approved in advance in writing by City and disclosed annually (coinciding with Contractor's annual audited financial statements referred to in Section 6.5.2) to the City in a separate disclosure letter to the City. This letter shall include, but not be limited to, the following information: A general description of the nature of each transaction, or type of (for many similar) transactions, as applicable. Such description shall include for each (or similar) transaction the amounts, specific Related Party entity, basis of amount (how amount was determined), and description of the allocation methodology used to allocate any common costs. Amounts shall be reconciled to the Related Party entity disclosures made in Contractor's annual audited financial statements referred to in this section.

Contractor intends to obtain those services from those related parties identified below and City hereby approves these transactions:

<u>Service</u>	<u>Related Party</u>
Processing and Marketing of Recyclables	Timber Cove Recycling

Exhibit K contains the basis for payments to the Related Parties for the services described above and the method by which those payments may be adjusted during the Term of this Agreement.

Prior to Contractor entering into other Related Party transactions, the Contractor shall seek and receive approval from the City describing the nature of the services and the basis for payments to the Related Party. Unless agreed to in writing and in advance, any costs from Related Parties shall be disallowed.

6.5.4 OPERATIONAL INFORMATION. Contractor shall provide the following information:

- A. Routes by Service Type**
 - 1) Number of routes per day
 - 2) Types of vehicles
 - 3) Crew size per route
 - 4) Number of full time equivalent (FTE) routes
 - 5) Number of accounts per route
 - 6) Total hours per service type
 - 7) Average cost per route
- B. Personnel**
 - 1) Organizational chart
 - 2) Job classifications and number of employees (e.g., administrative, customer service representatives, drivers, supervisors, educational staff)
 - 3) Wages by job classification
 - 4) Number of full time equivalents (FTE) positions for each job classification
 - 5) Number of hours per job classification
- C. Productivity Statistics**
 - 1) Number of accounts per service type
 - 2) Number of set-outs per service type
 - 3) Tons per route per day
- D. Maintenance**
 - 1) Average cost per service type
- E. Operational Changes**
 - 1) Number of routes
 - 2) Staffing
 - 3) Supervision
 - 4) Collection services
- F. Equipment**
 - 1) Usage of vehicles for City – City vehicles and spares
 - 2) Equipment inventory for City
 - 3) Container inventory

6.6 DIVERSION PROGRAMS

Contractor shall build on the diversion, education and other required programs or actions required by this Agreement, in order to surpass the diversion requirements of the California Integrated Waste Management Act of 1989 (Act) (California Public Resources Code Section 40000 et seq.). Contractor shall meet with the City quarterly, or more or less frequently upon City's request, to describe the progress of each active diversion program. Contractor shall document the results of the programs on a quarterly basis, including at a minimum the tonnage diverted by material type and other such information requested by the Contractor and/or City necessary to evaluate the performance of each program.

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

6.7 RIGHT TO INSPECT RECORDS

The City shall have the right to inspect or review the income tax returns, payroll tax reports, specific documents or records required pursuant to this Agreement, or any other similar records or reports of the Contractor that City Manager or City Council shall deem, in their sole discretion, necessary to evaluate annual reports, rate review applications provided for in this Agreement, and the Contractor's performance provided for in this Agreement. City shall attempt to maintain the confidentiality of the records and information provided in this paragraph, consistent with the necessity of supporting any recommendations to the City Council. Should City receive a Public Records Act request for this information, it shall notify Contractor and Contractor may take whatever legal action may be available to it to prevent these documents and this information from becoming public.

6.8 INSPECTION BY CITY

The designated representatives of the City shall have the right to observe and review Contractor operations and enter its place(s) of business for the purposes of such observation and review at all reasonable hours with reasonable notice.

6.9 PUBLIC/CUSTOMER SERVICE AND ACCESSIBILITY

6.9.1 OFFICE LOCATION

Contractor shall maintain a business office in the City, or such other location as the City approves, for purposes of carrying out its obligations under this Agreement, such approval not being unreasonably withheld. If the office is located outside of the City, Contractor must ensure that telephone calls to it from locations within the City are billed as "local calls" by all telephone companies.

6.9.2 OFFICE HOURS

Contractor's office shall be open to the public from 8 a.m. to 5 p.m. Monday through Friday. The office may be closed on Saturdays, Sundays, and designated holidays as described in Exhibit H.

6.9.3 AVAILABILITY OF REPRESENTATIVES

A representative of the Contractor shall be available from 8 a.m. to 5 p.m. Monday through Friday to communicate with the public in person and by telephone. A message machine shall be available for residents to leave a message during non-business hours. Calls shall be returned within twenty-four (24) hours, and messages left on Friday, Saturday, or Sunday shall be returned no later than the end of the next business day.

6.9.4 TELEPHONE

Contractor shall maintain a telephone system in operation at its office from 8 a.m. to 5 p.m. Contractor shall install telephone equipment sufficient to handle the volume of calls typically experienced on the busiest days. If Generators are unable with reasonable effort to reach Contractor's office by phone, or are subject to waiting time "on hold" of more than two (2) minutes prior to reaching a customer service representative, City may require that Contractor install additional telephone lines or hire additional customer service representatives. Penalties may be levied for repetitive Complaints regarding waiting time longer than two (2) minutes in accordance with Section 11.5. The phone system shall have the capability of transferring incoming calls to the City billing department and allow for the City billing department to transfer calls back to the Contractor's customer service center.

Customers will call one number for all issues related to Refuse, Recyclable Materials, and Compostable Material services. The Contractor shall handle all calls regarding services including, but not limited to, missed pickups, Complaints, changes in services, Bin repair, and other such service-related issues. The City billing department will handle all calls regarding billing, account setup, and changes in ownership issues.

6.10 CUSTOMER CONTACTS

Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Generator contacts. Contractor shall record in a separate log all contacts, noting the name and address of contact, date and time of contact, nature of contact issue, and nature and date of resolution. The Contractor shall retain this contact log for the Term. In addition, Contractor shall compile a summary statistical table of the contact log, satisfactory to the City, and submit the table to City each quarter.

Contractor shall respond to all contact issues from Generators within twenty-four (24) hours, weekends and holidays excluded. In particular, if a contact issue involves a failure to collect Refuse from a Premises, required by this Agreement, Contractor shall collect the Refuse in question within such 24-hour period, provided it has been delivered for Collection in accordance with the Rohnert Park Municipal Code Chapter 8.12.

6.11 TITLE TO REFUSE

Once Refuse, Recyclable Materials, and/or Compostable Materials are placed in containers and properly placed at the Collection location, ownership and the right to possession shall transfer directly from the Generator to Contractor by operation of this Agreement. Subject to Contractor's objective to meet the AB 939 diversion goals and City's right to direct Contractor to process and dispose of Refuse at a particular licensed site or to dispose of Refuse at a particular licensed Disposal Site, Contractor is hereby granted the right to retain, recycle, process, dispose of, and otherwise use such Refuse, or any part thereof, in any lawful fashion or for any lawful purpose desired by Contractor. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or re-use the Refuse, which it collects. Refuse, or any part thereof, which is deposited at a Disposal Site, transformation site, Transfer Station, or Processing Facility shall become the property of the Owner or operator of the facility, once deposited there by Contractor. City may obtain ownership or possession of Refuse placed for Collection upon written notice of its intent to do so; however, nothing in this Agreement shall be construed as giving rise to any

inference that City has such ownership or possession unless such written notice has been given by City to Contractor.

6.12 NON-DISCRIMINATION

Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap, or medical condition in violation of any applicable federal or state law.

6.13 REPORT OF ACCUMULATION OF REFUSE; UNAUTHORIZED DUMPING

Contractor shall direct its drivers to note (1) the addresses of any Premises at which they observe that Refuse, Recyclable Materials, and Compostable Materials is accumulating and is not being delivered for Collection; and (2) the address, or other location description, at which Refuse has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within five (5) working days of such observation.

ARTICLE 7.

FRANCHISE FEE, AB 939 AND OTHER FEES

7.1 FRANCHISE FEE

In consideration of the rights provided Contractor herein, Contractor shall pay the City a Franchise Fee. This fee may be adjusted by City by resolution.

The Franchise fee shall be comprised of two components:

- (i) An exclusive rights fee of thirteen and one-half percent (13.5%) for the privilege of being awarded the exclusive rights to provide refuse services in Rohnert Park established under this Agreement, and an AB 939 compliance and diversion fee of three and one-half percent (3.5%) to offset the expenses incurred by the City for preparing, adopting, and implementing the Source Reduction and Recycling and Household Hazardous Waste Elements (SRRE and HHWE, respectively) required by AB 939. The total franchise fee amount for this section (i) is seventeen percent (17%).
- (ii) A refuse vehicle franchise fee of eight and one-half percent (8.5%) to offset the expenses incurred by the City for repairing and maintaining the City's public streets caused by normal and ongoing use of Contractor's collection vehicles.

For purposes of calculating the franchise fee amount for component (i) above, Gross revenue shall be reduced by the amount of component (ii). For purposes of calculating the franchise fee amount for component (ii) above, Gross Revenue shall be reduced by the amount of component (i).

7.2 CONTRACTOR'S PAYMENT FOR RATE ADJUSTMENTS AND AMENDMENTS

Contractor shall be responsible for all costs associated with preparing amendments to the Agreement. Contractor shall also be responsible for all costs associated with analysis of customer rates and Contractor maximum compensation as determined to be necessary by the

City and the Contractor. The analysis will be performed through the City's own forces or by a qualified firm selected by the City.

7.3 CONTRACTOR'S PAYMENTS TO CITY

Contractor shall make payment to City of a Franchise Fee as provided for in Section 7.1, and such other fees as may be specified in this Article 7. The Franchise Fees shall be placed in the General Fund, provided however, that the fees attributable to the refuse vehicle franchise fee shall be placed in an earmarked fund to be used to repair and maintain the City's public streets.

Payment to City shall be due, on the fifteenth (15th) day of the month, following the month the revenues are collected. In the event that the 15th falls on a Saturday, Sunday, holiday observed by the City, Contractor shall make payment on the next business day. Each such payment shall be accompanied by an accounting, which sets forth Contractor's Gross Revenues collected during the preceding month.

7.4 AUDIT OF PAYMENTS

No acceptance by City of any payment shall be construed as an accord that the amount is in-fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against Contractor for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recompilation by City. If, after the audit, such recompilation indicates an underpayment, Contractor shall pay to City the amount of the underpayment and shall reimburse City for all reasonable costs and expenses incurred in connection with the audit and recompilation within ten (10) work days of receipt of written notice from City that such is the case. If, after audit, such recompilation indicates an overpayment, City shall notify the Contractor in writing of the amount of the overpayment, less costs and expenses incurred in connection with the audit and recompilation. Contractor may offset the amounts next due following receipt of such notice by the amount specified therein.

ARTICLE 8.

CONTRACTOR'S PAYMENT FOR SERVICES

8.1 GENERAL

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

Contractor will not look to City for payment of any sums under this Agreement. Contractor will perform the responsibilities and duties described in this Agreement in consideration of the right to charge and collect from customers for services rendered at rates established by Contractor, which shall not exceed the maximum rates fixed by City from time to time.

8.2 CONTRACTOR'S BILLING OBLIGATION

In consideration of and as compensation for the services provided under this Agreement, the Contractor shall, in its sole discretion, establish, charge and collect Customer Rates, which shall not exceed the Maximum Rates, for all Collection services starting January 1, 2013, or at a date mutually agreed on by the City and Contractor. Contractor agrees to cooperate fully with the City during the transition to Contractor billing and collection of payments. Thereafter, Contractor shall prepare and mail bills for services provided by Contractor as provided for in this Article and shall receive customer payments according to this Article. Notwithstanding the any other provision of this Agreement, the Contractor shall not bill or charge for City Collection service. Contractor may charge customers an amount up to but not exceeding the Maximum Rates as provided for in the attached Exhibit O to this Agreement and as may be adjusted under the terms of this Agreement. Contractor is under no obligation to charge the Maximum Rates. Contractor shall impose no other charges for services provided to customers.

8.2.1 PARTIAL MONTH SERVICE

If, during a month, a customer is added to or deleted from Contractor's service area, the Contractor's Billing shall be pro-rated based on the weekly Refuse rate (the weekly service rate shall be the Refuse rate established in Exhibit O divided by four (4) times the number of actual weeks in the month that service was provided to the Premises.

8.2.2 PRODUCTION OF INVOICES FOR SINGLE-FAMILY RESIDENCES

For single-family residences, the Contractor shall produce an invoice, in a form and format that is approved by the City Manager, for services received under this Agreement in advance but no less than four (4) times per year. The Contractor's invoice shall be remitted to the customer no earlier than the twentieth (20th) day of the month proceeding the period for which service is being billed. As part of regular billing services provided by the Contractor, the City may provide educational and other material to Contractor for inclusion in the invoices provided by Contractor to single-family customers for Collection services.

8.2.3 PRODUCTION OF INVOICES FOR MULTI-FAMILY COMPLEXES AND COMMERCIAL BUSINESSES

For multi-family complexes and commercial businesses, Contractor shall produce an invoice, in a form and format that is approved by the City Manager, for services received under this Agreement, monthly for services performed during the prior month. Contractor's invoice shall be remitted to the customer no later than the (10th) day of the month following the period for which service is being billed. As part of regular billing services provided by Contractor, the City may provide educational and other material to Contractor for inclusion in the invoices provided by Contractor to commercial customers for Collection services.

8.2.4 METHODS OF PAYMENT

Contractor shall provide the means for customers to pay bills through the following methods: cash, checks, credit cards, internet payment service or automatic withdrawal from bank account.

8.2.5 DELINQUENT SERVICE ACCOUNTS

The Contractor shall report to the City Manager, on a monthly basis, all Single-Family customers who have received Collection service and whose account is over sixty (60) days past due, and all Multi-Family Complexes and Commercial Business customers whose account is over thirty (30) days past due. The Contractor shall add an administrative late charge of fifteen percent (15%) per month for amounts due and remaining up unpaid for period of sixty (60) days after the end of the billing period. The Contractor shall retain ten percent (10%) percent of the Administrative late charge and shall remit the remaining five percent (5%) of the of the administrative late charge to the City within 30 days of receipt of any such Administrative late charge. The Contractor may take such action as is legally available to collect or cause collection of such past due amounts, including ceasing the provision of Collection services to any customer due to non-payment following the procedures as set forth in Article 8.2.6 below, but in no event shall cause a lien to be placed on the customer's property. City shall not be liable for and Contractor shall release City from paying for any customer's bill or delinquency charges.

8.2.6 DISCONTINUANCE OF SERVICE

If the Contractor elects to discontinue Collection services for failure to pay for said services, the Contractor shall, prior to discontinuance: (1) provide the customer with thirty (30) days prior written notices of the intent to discontinue service, and (2) provide the City with fifteen (15) days prior written notice of the intent to discontinue service to said customer. The Contractor shall not, however, discontinue service until resolution of any good faith disputes concerning amount due to Contractor. A list of discontinued customers shall be provided to the City's code enforcement officer.

8.2.7 REVIEW OF BILLINGS

The City Manager, or his designee, may require that Contractor to review its billings to customers. The purpose of the review is to determine that the amount Contractor is billing each customer is correct in terms of the level of service (*i.e.* frequency of collection, size of container, location of container) being provided to such customer by Contractor. Contractor shall review customer accounts not less than every other year, unless City shall direct Contractor to do so more frequently, and submit to City a written report of that review annually on the anniversary of the effective day of this Agreement, unless otherwise directed by City Manager. The intent of this section is for City to have the right to receive reports that will cover the entire list of customers every other year. The scope of the review and the reviewer's work plan shall be submitted to City for approval prior to submission of the first report.

In the event, of an overcharge, Contractor shall refund to Customers overcharges, including advance payments for services that Customer subsequently canceled, within thirty (30) Days of Contractor's receipt of Customer payment or Contractor's discovery of the overcharge.

8.2.8. NOTIFICATION OF BILLING CHANGES

On or about November 15, 2012, Contractor shall work with the City to develop and distribute educational information related to the transition of billing, customer service functions, and rate setting obligations from the City to the Contractor. On or about June 15, 2014 and each subsequent June 15th thereafter, Contractor shall notify customers of projected changes in Maximum Rates.

8.3. APPLICATION TO ADJUST MAXIMUM RATES

Beginning on May 1, 2014, and annually thereafter, Contractor may, subject to compliance with all provisions of this Article, submit an application for an adjustment in Contractor's Maximum Refuse Rates as set forth in Exhibit O to this Agreement. Such adjustment in Contractor's Maximum Refuse Rates would be effective July 1, 2014, and each July 1st thereafter.

8.3.1 RRI ADJUSTMENT APPLICATION

Beginning on July 1, 2014, and annually thereafter during the term of this Agreement, Contractor may submit an application to the City to adjust Contractor's Maximum Refuse Rates, which are set forth in on Exhibit O of this Agreement, by the REFUSE RATE INDEX ("RRI") adjustment set forth below. If Contractor elects to submit an application for an adjustment to Contractor's Maximum Refuse Rates, such application shall be submitted to the City both in written form and electronic form, showing current Maximum Refuse Rates, the RRI indices, changes in the RRI indices, the amount of any such adjustment to the Maximum Refuse Rates, and a complete schedule of the Contractor's proposed Maximum Refuse Rates.

The RRI adjustment shall be the sum of the weighted percentage change in the Annual Average of each RRI index number between the base calendar year, which shall be the prior preceding calendar year beginning January 1st and ending December 31st as contained in the most recent release of the source documents listed in Exhibit M, ("REFUSE RATE INDEX") which is attached to and included in this Agreement. Therefore, the first RRI adjustment will be based on the percentage changes between the Annual Average of the RRI indices for the calendar year starting on January 1, 2013 and ending on December 31, 2013. The RRI shall be calculated using the RRI methodology included in Exhibit N.

In any year that Contractor fails to submit an adjustment application there shall be no adjustment of the Refuse Rates. In any year that the calculation of the RRI results in a negative number, there shall be no adjustment of the Refuse Rates. Instead the negative RRI number shall be added to the result of the subsequent years RRI calculation and the result shall be the RRI adjustment for that subsequent year.

8.3.2 ADJUSTMENT FOR BILLING SERVICES

To compensate Contractor for its direct costs associated with providing billing services, Contractor may include a one-time additional one-half percent (0.5%) adjustment as part of Contractor's application for an adjustment to Maximum Refuse Rates to take affect July 1, 2014.

8.3.3 FINANCIAL INFORMATION

On or before May 1, 2014, and annually thereafter during the term of this Agreement, as part of its application for an adjustment in Contractor's Maximum Refuse Rates, Contractor shall deliver to City financial information for the specific services performed under this Agreement for the preceding Agreement year. Such financial information shall be in the format as set forth in Exhibit M (Refuse Rate Index), or as may be further revised by City from time to time.

If Contractor fails to submit the financial information in the required format by May 1st, it is agreed that Contractor shall be deemed to have waived its Application for an adjustment in

Contractor's Maximum Refuse Rates for that year. Notwithstanding the foregoing, Contractor's failure to provide the financial information shall not preclude City from applying the RRI using the prior year's financial data, or pro forma data if no prior year financial data is available, if that application would result in a negative RRI. If Contractor's failure to submit the financial information required under this Section 8.3.3 is the result of extraordinary or unusual circumstances as demonstrated by Contractor to the satisfaction of the City Manager, City, at its sole discretion, may consider the request for the annual RRI rate adjustment.

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

As of June 15, 2014, and annually thereafter during the term of this Agreement, the City Manager, or his or her designee, shall notify Contractor that Contractor's application for an adjustment in Contractor's Maximum Refuse Rates is complete and deemed to be calculated correctly and Contractor may adjust it's the Contractor's Maximum Refuse Rates to take place on the subsequent July 1st. In the event that the City Manager, or his or her designee, finds that the Contractor has not correctly calculated its adjustment in Contractor's Maximum Refuse Rates, the City Manager, or his or her designee, shall notify Contractor of any such calculation errors and Contractor may resubmit it application, but any delay in adjustments due to Contractor's calculation errors shall not be made retroactive on Contractor's Maximum Refuse Rates.

8.4 CITY OR CONTRACTOR REQUESTED DETAILED RATE REVIEW

The City or the Contractor may request a Detailed Rate Review to be conducted following the procedures as specified in Exhibit N. However, a Detailed Rate Review shall not be conducted more than once every three (3) Agreement years. A request for a Detailed Rate Review shall be made in writing at least six months prior to the July 1st rate adjustment period for the year in which the results for the Detailed Rate Review are to be applied. The Contractor shall pay the cost for the Detailed Compensation Review, and the cost of such a Detailed Rate Review is an allowable pass-through cost.

ARTICLE 9. INDEMNITY, INSURANCE, FAITHFUL PERFORMANCE

9.1 HAZARDOUS SUBSTANCE INDEMNIFICATION

Contractor shall defend with counsel selected by City and indemnify, protect and hold harmless, the City, its officers, directors, employees, volunteers, and agents (collectively, "City Parties") from and against any and all claims, damages (including but not limited to special, consequential, natural resources, and punitive damages), injuries, costs, (including without limit any and all response, remediation, and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and

expenses (including without limit attorneys' expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity [collectively, "Damages"]), or of any kind whatsoever paid, incurred or suffered by, or asserted against City Parties, arising from or attributable to the acts or omissions of Contractor whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit damages arising from or attributable to any operations, repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or Hazardous Waste or other waste collected under this Agreement. This indemnity afforded City shall only be limited to exclude coverage for intentional wrongful acts and sole negligence of City, and as provided below. The foregoing indemnity is intended to operate as an Agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify City Parties from liability. This provision is in addition to all other provisions in this Agreement and is intended to survive the end of the Term of this Agreement. Nothing in this paragraph shall prevent City Parties from seeking indemnification or contribution from Persons or entities other than Contractor for any liabilities incurred by City Parties or the Contractor. As determined in the sole discretion of the City, Contractor shall be required to secure, from its parent company, the indemnification required by this section.

9.2 AB 939 INDEMNIFICATION

Contractor shall, by implementing in a timely and effective manner, the diversion, education and other required programs or actions required by this Agreement, comply with the diversion requirements for Rohnert Park of the California Integrated Waste Management Act of 1989 (Act) (California Public Resources Code Section 40000 et seq.) to attain 50 percent diversion of Refuse from disposal into landfills by the end of the year 2003. In addition to all other relief provided Contractor and City under this Agreement, Contractor agrees to defend, indemnify, and hold harmless, the City Parties from and against all fines and/or penalties imposed by the California Integrated Waste Management Board for operations during the Term of this Agreement in the event the source reduction and Recycling goals or any other requirement of the Act are not met by the Contractor with respect to the waste stream collected under this Agreement and such failure is due to the failure of Contractor to meet its obligations under this Agreement and/or for delays in providing information that prevents Contractor or City from submitting reports required by AB 939 in a timely manner.

9.3 PROPOSITION 218 INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless, the City Parties from and against all claims, damages, injuries, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest fines, charges, penalties and expenses (including reasonable attorneys' and expert witness fees, expenditures for investigation and administration), and costs of any kind whatsoever paid, imposed upon, endured, or suffered by or assessed against the City Parties resulting in any form from the City's establishment of Maximum Rates for service and/or the Contractor's establishment of Customer Rates under this

Agreement or in connection with the application of California Constitution, Article XIIC and Article XIID to the imposition, payment or collection of rates and fees.

9.4 INSURANCE

9.4.1 MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- A. Insurance Services Office form number CG 0001 covering Commercial General Liability or Comprehensive General Liability Insurance.
- B. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto" and endorsement form if applicable.
- C. Workers' Compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance.
- D. Employee Blanket Fidelity Bond.

9.4.2 MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

- A. Comprehensive General Liability: \$10,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- B. Automobile Liability: \$10,000,000 combined single limit per accident for bodily injury and property damage.
- C. Workers' Compensation and Employer's Liability: Workers' Compensation limits of the statutory level required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 per accident.
- D. Employee Blanket Fidelity Bond in the amount of \$50,000 per employee, covering dishonesty, forgery, alternation, theft, disappearance, and destruction (inside or outside).

9.4.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, and employees; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

9.4.4 OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

- A. **General Liability and Automobile Liability Coverage**
 - 1) The City, its officials, employees, and volunteers are to be covered as additional insureds as respects (1) liability arising out of activities performed by or on behalf of the Contractor; (2) products and completed operations of the Contractor; (3) Premises owned, leased or used by the Contractor; or (4) automobiles owned, leased, hired or borrowed by the Contractor. The coverage

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

2) The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

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

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

B. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, and volunteers for losses arising from work performed by the Contractor for the City.

C. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

9.4.5 ACCEPTABILITY OF INSURERS

With the exception of Workers' Compensation Insurance covered by State Fund, the insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of "A" or better.

9.4.6 VERIFICATION OF COVERAGE

Contractor shall furnish Contractor's insurance agent a copy of these specifications and City approved endorsement, and direct the agent to provide the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The endorsements shall be submitted to City on forms (Exhibit L) provided by the City or on other forms that conform to the City's requirements and are approved the City. Issuance of documentation indicates the Contractor's insurance complies with these provisions. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies and endorsements at any time.

9.4.7 REQUIRED ENDORSEMENTS

A. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

1) "Thirty (30) days' prior written notice shall be given to the City of Rohnert Park in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of Rohnert Park

130 Avram Avenue
Rohnert Park, CA 94928"

2) The Workers' Compensation policy is to be endorsed with a Waiver of Subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City Parties for losses paid under the terms of this policy which arise from the work performed by the named insured for the City.

B. The Commercial General Liability Business and Automobile Liability policies shall contain endorsements in substantially the following form:

1) "Thirty (30) days' prior written notice shall be given to the City of Rohnert Park in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of Rohnert Park
130 Avram Ave.
Rohnert Park, CA 94928

2) "The City of Rohnert Park, its officers, employees, and agents are additional insureds on this policy." The City requires form CG 20 10 11 85.

3) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Rohnert Park, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

4) "Inclusion of the City of Rohnert Park as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one party had been named as an insured."

9.4.8 DELIVERY OF PROOF OF COVERAGE

Contractor will renew the required coverage annually as long as City Parties face liability exposure pursuant to this Agreement. This obligation shall survive termination of this Agreement for the statute of limitations period for any such exposure. Any Claims Made Policies shall be extended to meet the coverage requirements of this contract and shall survive termination of this Agreement and provide for coverage up to the statute of limitations for any such exposure and/or loss. Termination of Contractor's obligation pursuant to this Section 9.4.8 shall be effective only upon City's written notice to Contractor notifying Contractor of such termination or upon expiration of the statute of limitations period applicable to such exposure, whichever is first to occur. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing the contractually required coverage. Proof that such coverage has been ordered shall be submitted by Contractor to City prior to expiration. Annually a coverage binder or letter from Contractor's Insurance Agent including the contractually required Certificate of Insurance and/or Additional

Insured Endorsement, must be provided to City within thirty (30) days prior to expiration of coverage and/or renewal of coverage. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies, and shall have all required endorsements. If the City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

9.4.9 OTHER INSURANCE REQUIREMENTS

A. In the event any services are delegated to a subcontractor, the Contractor shall require such subcontractor to provide statutory Workers' Compensation insurance and Employer's Liability insurance for all of the subcontractor's employees engaged in the work in accordance with Article 5. The liability insurance required by Section 9.4.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 9.4.

B. The Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim is made by any third person against the Contractor or any subcontractor on account of any occurrence related to this Agreement, the Contractor shall promptly report the facts in writing to the insurance carrier and to the City.

If Contractor fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due the Contractor.

The Commercial, General, and Automobile Liability insurance required by Section 9.4.2 shall be written on an "occurrence," rather than a "claims made" basis, if such coverage is obtainable. If it is not obtainable, Contractor must arrange for a 36-month "tail coverage" to protect the City from claims filed after the expiration or termination of this Agreement relating to incidents, which occurred prior to such expiration or termination.

9.5 FAITHFUL PERFORMANCE

Simultaneously with the execution of this Agreement, Contractor shall provide the City a set-aside irrevocable letter of credit in a form acceptable to the City, payable to the City, securing the Contractor's faithful performance of its obligations under this Agreement. The principal sum of the letter of credit shall be One Million Dollars (\$1,000,000).

ARTICLE 10.

CITY'S RIGHT TO PERFORM SERVICE

10.1 GENERAL

In the event that the Contractor, for any reason whatsoever, fails, refuses or is unable to collect, transport, or dispose of any or all Refuse and/or collect and process Recyclable Materials or Compostable Materials which it is required by this Agreement to collect and transport, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Refuse and/or Recyclable Materials or Compostable Materials

should accumulate in the City to such an extent, in such a manner, or for such a time that City Manager, in his or her sole discretion, should determine that such accumulation endangers or menaces the public health, safety, or welfare, then the City shall have the right, but not the obligation, upon twenty-four (24) hours' prior written notice to Contractor during the period of such emergency as determined by City Manager: (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take possession of any or all of Contractor's land, equipment, and other property used or useful in the Collection and Transportation of Refuse and Recyclable Materials or Compostable Materials, and to use such property to collect and transport any Refuse, Recyclable Materials, or Compostable Materials generated within the City which Contractor would otherwise be obligated to collect and transport pursuant to this Agreement.

Notice of the Contractor's failure, refusal, or neglect to collect and transport Refuse, Recyclable Materials, or Compostable Materials may be given orally by telephone to the Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification may be sent to Contractor within twenty-four (24) hours of the oral notification.

Contractor further agrees that in such event:

- A. It will fully cooperate with City in transfer of possession of property to the City for City's use.
- B. It will, if City so requests, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil, and other service, and provide such other service as may be necessary to maintain said property in operational condition.
- C. City may immediately engage all or any personnel necessary or useful for the Collection and Transportation of Refuse, Recyclable Materials, or Compostable Materials including, if City so desires, employees previously or then employed by Contractor, Contractor further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Refuse, Recyclable Materials, or Compostable Materials Collection and Transportation operations and for the billing and collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance of service is caused by any of the reasons listed in Section 11.6, the City shall pay to Contractor the fair market rental value of the equipment and facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which City has rendered bills in advance of service, for the class of service involved.

Except as otherwise expressly provided in the previous paragraph, the parties acknowledge that the City's exercise of its rights under this Article 10 (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of City to Contractor; and (3) does not exempt Contractor from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that Contractor is not required to indemnify City against claims and damages arising

from the sole negligence of City Parties in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

10.2 DURATION OF CITY'S POSSESSION

City has no obligation to maintain possession of Contractor's property and/or continue its use in collecting and transporting Refuse, Recyclable Materials, or Compostable Materials for any period of time and may, at any time, in its sole discretion, relinquish possession to the Contractor.

The City's right to retain temporary possession of Contractor's property, and to provide Refuse Collection services, shall continue until Contractor can demonstrate to the City's satisfaction that it is ready, willing, and able to resume such services or 180 days, whichever occurs first.

ARTICLE 11. DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

Each of the following shall constitute an event of default ("Event of Default") hereunder:

A. Contractor fails to perform its obligations under this Agreement, or future amendment to this Agreement, and (1) if the failure or refusal of Contractor to perform services as described in Section 5.2, Refuse Service; Section 5.3, Recycling Services; Section 5.4, Compostable Materials Program; or Section 5.5, City Facilities and Event Collection, as required by this Agreement, is not cured within two (2) business days after receiving notice from the City specifying the breach; or (2) in the case of any other breach of the Agreement, the breach continues for more than thirty (30) calendar days after written notice from the City for the correction thereof, provided that where such breach cannot be cured within such thirty- (30) day period, Contractor shall not be in default of this Agreement if Contractor shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.

B. Any representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

C. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance, or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and holidays.

D. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator,

assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing.

E. A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor.

F. Contractor fails to provide reasonable assurances of performance as required under Section 11.7.

G. Contractor delivers Refuse to a Disposal Site or Compostable Materials to a Composting Facility other than the specific facilities designated by City, unless Contractor receives written notice from City of a permanent change in designated facility, or City has expressly directed Contractor in writing to temporarily transport Refuse or Compostable Materials to an alternate site due to an inability of City designated facility to accept materials.

11.2 RIGHT TO TERMINATE UPON DEFAULT

Upon the occurrence of an Event of Default by Contractor, the City shall have the right to unilaterally terminate this Agreement upon further ten (10) days' prior notice to Contractor without the need for any hearing, suit or legal action.

11.3 POSSESSION OF PROPERTY UPON TERMINATION

In the event of termination for default, the City shall have the right to take possession of any and all of Contractor's land, equipment, and other property used or useful in the Collection and Transportation of Refuse, Recyclable Materials, or Compostable Materials and the billing and collection of fees for these services and to use such property. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of Refuse, Recyclable Materials, or Compostable Materials Collection services, which may include the award of an Agreement to another company. If the City retains possession thereof after the period of time for which Contractor has already received revenue from the bills issued in advance of providing service for the class of service involved, the Contractor shall be entitled to the reasonable rental value of such property (which shall be offset against any damages due the City for the Contractor's default).

11.4 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE

The City's right to terminate the Agreement under Section 11.2 and to take possession of the Contractor's properties under Section 11.3 are not exclusive, and the City's termination of the Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any

and all other legal and equitable rights and remedies, which the City may have, including the City's right to recovery on the faithful performance bond (described in Section 9.5 of this Agreement) in the Event of Default.

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

11.5 LIQUIDATED DAMAGES

11.5.1 GENERAL

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

11.5.2 SERVICE PERFORMANCE STANDARDS; LIQUIDATED DAMAGES FOR FAILURE TO MEET STANDARDS

The parties further acknowledge that consistent, reliable Refuse, Recyclable Materials, and Compostable Materials Collection service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if City reasonably determined that Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an Event of Default under this Section 11.5.2, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages that would be incurred by City considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth in the Schedule of Performance Adjustments, Exhibit G.

City may reasonably determine the occurrence of events giving rise to liquidated damages through (1) the observation of its own employees or representative, or (2) investigation of customer Complaints.

Liquidated damages will only be assessed after Contractor has been given the opportunity but failed to rectify the damages as described in this Agreement. Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. City may review (and receive copies at Contractor's expense) all information in the possession of Contractor relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with City. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of whether to assess liquidated damages shall be made by the City Council and shall be final.

11.5.3 AMOUNT

City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor fails to abide by the terms and provisions of this Agreement.

11.5.4 TIMING OF PAYMENT

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

11.6 EXCUSE FROM PERFORMANCE

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other "acts of God," war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor is not an excuse from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events. In the case of labor unrest or job action directed at a third party over whom Contractor has no control, the inability of Contractor to make Collections due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of Contractor's employees while making Collections or to make reasonable accommodations with respect to container placement and point of delivery, time of Collection, or other operating circumstances to minimize any confrontation with pickets or the number of Persons necessary to make Collections shall, to that limited extent, excuse performance and provided further that the foregoing excuse shall be conditioned on Contractor's cooperation in making Collection at different times and in different locations.

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

In the event that either party validly exercises its rights under this section, the parties hereby waive any claim against each other for any damages sustained thereby.

The partial or complete interruption or discontinuance of Contractor's services caused by one or more of the events described in this article shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, (1) the existence of an excuse from performance will not affect the City's rights under Section 10.1; and (2) if Contractor is excused from performing its obligations hereunder for any of the causes listed in this section for a period of thirty (30) days or more, other than as the result of third party labor disputes where service cannot be provided for reasons described earlier in this section, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' prior notice to Contractor, in which case the provisions of Section 11.3 will apply.

11.7 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

If Contractor (1) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing, or other concerted job action; (2) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (3) is the subject of a civil or criminal judgment or order for violation of an environmental law, and the City Manager determines in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City Manager determines in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an Event of Default for purposes of Section 11.1.

ARTICLE 12.

OTHER AGREEMENTS OF THE PARTIES

12.1 RELATIONSHIP OF PARTIES

The parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Refuse Collection and Disposal services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents. Neither Contractor, nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits, Workers' Compensation

benefits, or any other benefits, which accrue to City employees by virtue of their employment with the City.

12.2 COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all applicable laws, permits, and licenses of the United States, the State of California, and the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the Term.

12.3 GOVERNING LAW

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

12.4 JURISDICTION

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of Sonoma County in the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Sonoma County.

12.5 GUARANTY OF CONTRACTOR'S PERFORMANCE

The letter of credit described in Section 9.5 in a form acceptable to the City shall guarantee Contractor's performance of this Agreement. The Guaranty is being provided concurrently with Contractor's execution of this Agreement.

12.6 ASSIGNMENT

Neither party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section, "assignment" shall include but not be limited to (i) a sale, exchange, or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange, or other transfer of 10 percent (10%) or more of the outstanding common stock of Contractor or parent company or holding company to a Person other than a direct family member or trust that exclusively benefits family members; (iii) any reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which Contractor, parent company, or holding company or any of its shareholders is a party which results in a change of ownership or control of 10 percent (10%) or more of the value or voting rights in the stock of Contractor or a parent company, or holding company; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. For purposes of this section, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Refuse management operations in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

- A) Contractor shall undertake to pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- B) Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- C) Contractor shall furnish City with satisfactory proof that (i) the proposed assignee has at least ten (10) years of Refuse management experience on a scale equal to or exceeding the sale of operations conducted by Contractor under this Agreement; that (ii) in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any federal, state or local contractor having jurisdiction over its waste management operations due to any significant failure to comply with federal, state, or local waste management laws and that the assignee has provided the City with a complete list of such citations and censures; that (iii) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; that (iv) the proposed assignee conducts its Refuse management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of waste, including Hazardous Waste as identified in Title 22 of the California Code of Regulations; and (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall any proposed assignment be considered by City if Contractor is in default at any time during the period of consideration.

Should City grant the proposed assignment, it is expressly understood that there shall be no increase in costs to the services provided of any kind resulting directly or indirectly from the assignment or the acquisition of the Contractor.

12.7 SUBCONTRACTING

Contractor shall not engage any subcontractors for Collection, Processing, or Disposal of Refuse, Recyclable Materials, and Compostable Materials without the prior written consent of the City.

12.8 BINDING ON SUCCESSORS

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

12.9 TRANSITION TO NEXT CONTRACTOR

At the point of transition, Contractor will take direction from the City and subsequent Contractor(s) to assist in an orderly transition, which will include Contractor providing route lists and billing information. Contractor will not be obliged to sell Collection vehicles to the next Contractor. Depending on Contractor's circumstances at the point of transition, the Contractor at its option may enter into negotiations with the next Contractor to sell (in part or all) Collection vehicles.

In connection therewith, Contractor acknowledges that the provisions of Public Resources Code Sections 49520-49523 have no application to this Agreement and agrees, to the extent such sections may have application, to waive whatever rights they may afford.

12.10 PARTIES IN INTEREST

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors, and permitted assigns.

12.11 WAIVER

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

12.12 CONTRACTOR'S INVESTIGATION

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

12.13 CONDEMNATION

The City fully reserves the rights to acquire the Contractor's property utilized in the performance of this Agreement by purchase or through the exercise of the right of eminent domain.

12.14 NOTICE

All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes, or contemplates all, except as provided in Section

10.1, be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City: City Manager
 City of Rohnert Park
 130 Avram Ave.
 Rohnert Park, CA 94928

If to Contractor: James Ratto, President
 Rohnert Park Disposal, Inc
 P.O. Box 1916
 Santa Rosa, CA 95402

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

12.15 REPRESENTATIVES OF THE PARTIES

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, the Director of the Department of Public Works and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of the Contractor in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Contractor. The City may rely upon action taken by such designated representative as actions of the Contractor unless they are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

12.16 CITY FREE TO NEGOTIATE WITH THIRD PARTIES

The City may investigate all options for the Collection and Disposal of Refuse after the expiration of the Term. Without limiting the generality of the foregoing, the City may prior to the expiration of the Term, solicit proposals from Contractor and from third parties for the provision of Collection services, Disposal services, Recycling services, Compostable Materials Collection and composting, and any combination thereof, and may negotiate and execute Agreements for such services which will take effect upon the expiration or earlier termination under Section 11.2 of this Agreement and/or the Recycling Agreement.

ARTICLE 13.
MISCELLANEOUS AGREEMENTS

13.1 ENTIRE AGREEMENT

This Agreement, including the exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

13.2 SECTION HEADINGS

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

13.3 REFERENCES TO LAWS

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

13.4 INTERPRETATION

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

13.5 AMENDMENT

This Agreement may not be modified or amended in any respect except in writing signed by the parties.

13.6 SEVERABILITY

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

13.7 COUNTERPARTS

This Agreement may be executed in counterparts each of which shall be considered an original.

13.8 EXHIBITS

Each of exhibits identified as Exhibit "A" through "O" is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first above written.

CITY OF ROHNERT PARK, A California Municipal Corporation

By: [Signature]
Name: Gabriel A. Gonzalez
Its: City Manager

ATTEST:

By: [Signature]
JoAnne M. Buerger, City Clerk



APPROVED AS TO FORM:

[Signature]
City Attorney

ROHNERT PARK DISPOSAL, INC., a California corporation ("Contractor")

By: [Signature] 12/13/18
Name: JAMES R. SALVENDY
Title: Vice President

By: [Signature]
Name: Louis Rott
Title: Secretary

EXHIBIT A

CITY SERVICE LOCATIONS

Contractor shall provide containers and collection of Refuse, Recyclable Materials and Compostable Materials to all City facilities identified herein. Contractor shall also provide collection of Refuse contained in City-owned cans located throughout the City. Servicing of all City facilities and cans shall be provided at no additional charge to the City.

If the City purchases, builds or disposes of any facilities or if the City adds or removes cans during the term of this Agreement, such facilities and/or cans shall be added or deleted from City facilities/cans to be serviced by Contractor, with no change in payment, upon notification of Contractor by City.

Contractor shall regularly evaluate and monitor City collection needs and provide education to maximize diversion. The level of Recycling and Compostable Materials services provided by Contractor shall enable the City to exceed a 50% diversion rate and transition toward Zero Waste.

EXHIBIT B

CITY FACILITIES

<i>Location</i>	<i>Address</i>
1 Alicia Park/Scout Hut	295 Santa Alicia
2 Alicia Pool	300 Arlen Drive
3 Animal Control	301 J. Rodgers Lane
4 Benecia Pool	7469 Bernice
5 Benecia Park	7450 Santa Barbara Drive
6 Boys & Girls Club	7450 Santa Barbara Drive
7 Burton Avenue Recreation Center	7421 Burton Avenue
8 C.O.T.S. Shared Housing	345 Arlen Avenue
9 C.O.T.S. Shared Housing	7982 Santa Barbara Drive
10 C.O.T.S. Shared Housing	7668 Beverly Drive
11 C.O.T.S. Shared Housing	309 Burton Avenue
12 City Hall	6750 Commerce Boulevard
13 City Hall <New Building>	130 Avram
14 City Hall Annex <Finance Department/Senior Center>	6800 Hunter Drive
15 Colegio Vista Park	1200 Southwest Boulevard
16 Community Center	5401 Snyder Lane
17 Dorotea Park	895 Santa Dorotea Circle
18 Eagle Park	1115 Emily Avenue
19 Fire Station <N.O.A.H.>	435 Southwest Boulevard
20 Foxtail Golf Club	100 Golf Course Drive
21 Golis Park	1450 Golf Course Drive
22 Honeybee Park/Pool	1170 Golf Course Drive
23 Ladybug Park/Pool/Recreation Ctr.	8517 Liman Way
24 Magnolia Park/Pool	1401 Middlebrook Drive
25 Performing Arts Center	5409 Snyder Lane
26 Public Safety <Main>	500 City Center Drive
27 Public Safety <North>	5200 County Club Drive
28 Public Safety <South>	1312 Maurice Avenue
29 Public Works	600 Enterprise Drive
30 Rainbow Park	1345 Rosana Way
31 Sonoma County Library	6250 Lynne Conde Way
32 Sports Center	5405 Snyder Lane
33 Sunrise Park	5201 Snyder Lane
34 Teen Center	450 City Center Drive
35 City Cans	Various Locations Throughout City

BATTERY BUCKET LOCATIONS

Location of Participant	Address	Contact Name	Phone	Exact Location of Yellow Bucket
City Hall/ Community Development	6750 Commerce Blvd.	Beth Lidster	(707) 588-2226	On low table in lobby
Senior Center	6800 Hunter Drive, Suite A	Vicki A. Wilkerson	(707) 585-6790	In multi purpose room
City Finance Department	6800 Hunter Drive, Suite B	Theresa Granucci	(707) 585-6750	On front counter
Callinan Sports & Fitness Center	5405 Snyder Lane	Guy Miller	(707) 588-3499	In locker room
Community Center	5401 Snyder Lane	Wendy Audiss	(707) 588-3446	On front counter
Public Safety Building	500 City Hall Drive	Jim Herold	(707) 584-2693	On front counter
Animal Shelter	301 J. Rodgers Lane	Mickey Zeldes	(707) 584-1582	On front counter
Public Works	600 Enterprise Drive	Carol Mendenhall	(707) 588-3300	On front counter

EXHIBIT C

CITY-SPONSORED EVENTS

Contractor shall provide appropriately sized containers or roll-off boxes for both refuse and recycling at other public participation events which may be subsequently scheduled by the City during the term of the contract.

EXHIBIT D

ANNUAL CLEANUPS

Contractor shall conduct two (2) one week Community Clean-Up Events each year, one during the spring, and one in the fall. The dates for cleanups shall be proposed by the Contractor and approved by the City Manager. The Contractor shall pickup authorized cleanup items from all single-family customers at the curbside and properly dispose of such waste. The Contractor shall pickup authorized cleanup items from all multi-family customers at a collection location acceptable to Contractor and Manager, Owner or Homeowner's Association. Clean-up events are for residential customers and tenants only.

Re-use (when possible)

- Furniture, appliances (refrigerators, freezers, or air conditioners)
- Clothes, toys, and other re-usable items

Recycling

- Clean cardboard, newspapers, compostable materials, wood waste, recyclable container materials (e.g., glass, plastic, aluminum) and scrap metals

Refuse

- Materials that cannot be recycled shall be disposed of as Refuse
- Sonoma County Central Disposal Site currently offers free disposal to City

EXHIBIT E

RESIDENTIAL RECYCLABLE MATERIALS TO BE COLLECTED (SINGLE-FAMILY RESIDENTIAL AND MULTI-FAMILY RESIDENTIAL COMPLEXES)

The Single Recyclable Materials Stream shall include:

- Newspaper
- Corrugated cardboard
- Mixed paper
- Junk mail
- Phone books
- Magazines
- Office Paper
- Computer paper
- Envelopes
- Post-it Notes
- Catalogs
- Manuals
- Colored Paper
- Stationary
- Shredded Paper
- NCR Paper

Glass

- Glass - household food and beverage bottles and jars

Metal

- Aluminum cans
- Metal cans – household food and beverage containers
- Empty aerosol cans
- Lids from Jars

Plastic

- Milk containers
- Plastic containers – household food and beverage containers

Cartons/Boxes/Bags

- Paper Egg Cartons / Brown paper cartons
- Milk cartons
- Cereal boxes
- Shoe Boxes
- Cracker boxes
- Tissue Boxes
- Frozen Food boxes
- Juice Cartons

EXHIBIT F

COMMERCIAL RECYCLABLE MATERIALS TO BE COLLECTED

The Single Recyclable Materials Stream shall include:

- Newspaper
- Corrugated cardboard
- Mixed paper
- Junk mail
- Phone books
- Magazines
- Office Paper
- Computer paper
- Envelopes
- Post-it Notes
- Catalogs
- Manuals
- Colored Paper
- Stationary
- Shredded Paper
- NCR Paper

Glass

- Glass - household food and beverage bottles and jars

Metal

- Aluminum cans
- Metal cans – household food and beverage containers
- Empty aerosol cans
- Lids from Jars

Plastic

- Milk containers
- Plastic containers – household food and beverage containers

Cartons/Boxes/Bags

- Paper Egg Cartons / Brown paper cartons
- Milk cartons
- Cereal boxes
- Shoe Boxes
- Cracker boxes
- Tissue Boxes
- Frozen Food boxes
- Juice Cartons

EXHIBIT G

SCHEDULE FOR PERFORMANCE ADJUSTMENTS LIQUIDATED DAMAGES FOR FAILURE TO MEET STANDARDS

COLLECTION RELIABILITY

1	For each failure to notify the appropriate authorities of reportable quantities of Hazardous Waste per Article 5.6:	\$500.00
2	For failure to maintain the collection schedule on the scheduled day (unless non-collection was warranted pursuant to this Agreement):	\$25.00/can
3	For each failure over five (5) annually to commence service to a new customer within four (4) working days after order received and account number established:	\$150.00
4	For each failure over fifteen (15) annually to collect refuse, recyclable materials or compostable materials which has been properly set out for collection from an established service recipient account on the scheduled collection day and not collected within a period described in this Agreement:	\$150.00
5	For each failure to collect refuse, recyclable materials or plant materials which has been properly set out for collection, from the same service recipient on two (2) consecutive scheduled pickups:	\$150.00
6	For each failure to prepare for or properly conduct special collections as described in Article 5.2 including advertising and press releases:	\$250.00

COLLECTION QUALITY

7	For each occurrence over five (5) annually of unreasonable leaking or spilling Solid Waste or Recyclable Materials and failure to pick up or clean up such material immediately:	\$300.00
8	For each occurrence over twelve (12) annually of failure to replace cans in original position, upright, with lids in or on cans:	\$150.00
9	For each failure over twenty-four (24) annually of not closing gate, crossing planted areas or other damage to private property:	\$300.00
10	For each occurrence over five (5) annually of collecting Refuse, Recyclable Materials, and Plant Materials during unauthorized hours:	\$300.00
11	For each occurrence over twelve (12) of excessive noise:	\$300.00
12	For each failure over twelve (12) annually of not tagging containers which are left:	\$150.00

13	For each occurrence over five (5) annually of failure to clean collection vehicles one time per week, as described in Article 5.10.5B:	\$150.00
14	For each failure to power wash public Solid Waste and recyclable materials receptacles, lids and metal liners twice a year:	\$150.00/can
15	For each occurrence over five (5) annually of damage to property that is not repaired in 30 days:	\$250.00

REPORTING

Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily Performance Adjustment shall be:

16	Monthly Reports:	\$100.00/day
17	Quarterly Reports:	\$200.00/day
18	Semi-Annual Reports:	\$300.00/day
19	Annual Reports:	\$300.00/day
20	Failure to report any complaint or request on customer telephone call log:	\$50.00/incident

CUSTOMER RESPONSIVENESS

21	For each occurrence of unreasonably discourteous behavior:	\$500.00
22	For each failure to respond to and initiate a remedy to a complaint within eight (8) working hours after notification by the City:	\$300.00
23	For each failure to answer the telephone or answering machine during the hours specified in Article 6.10.3:	\$300.00
24	For each failure to respond to service requests/calls within 24 hours as specified in Article 6.10.3:	\$300.00
25	For each failure to collect missed collections in a timely manner:	\$300.00
26	For each occurrence over five (5) annually for complaints regarding waiting on hold for more than two (2) minutes as specified in Article 6.10.4:	\$150.00

EDUCATION RESPONSIBILITIES

Failure to distribute any required public educational materials, failure to provide a Recycling Specialist working solely on City public education tasks for the specified number of days or hours, or failure to complete specific tasks in accordance with the duties and time schedule prescribed in Article 5, shall result in the following Performance Adjustments:

27	For each day of failure during the initial three month period from July 1, 2001, to September 30, 2001, to provide a full time education coordinator (8 hours per work day, 40 hours per week) solely for City of Rohnert Park delivering all the required multifamily and commercial public education services specified in Article 5:	\$200.00/day
28	For each day of failure, October 1, 2001 and thereafter, to provide eight (8) hours per week of Recycling Specialist time devoted solely to City of Rohnert Park public education and/or failure to deliver all the ongoing commercial and multifamily public education services specified in Article 5:	\$300.00/day
29	For failure to initially notify each Single Family Residence about the used oil and filter Recycling program, and/or each failure to provide semi-annual education materials on used oil recycling to all Single Family Residences:	\$300.00/for each event
30	For each failure to distribute required quarterly education materials or semi-annual newsletters to all Single Family Residences, Commercial/Multifamily building owners, Multifamily Tenants and Commercial Businesses:	\$500.00/for each event
31	For each failure to distribute required initial education materials or "how to recycle" brochures to all Single Family Residences, Commercial/Multifamily building owners, Multifamily Tenants and Commercial Businesses per Article 5:	\$500.00/for each event
32	For failure to visit at least 100 Commercial Generators annually and provide one-on-one recycling education, technical aid or help in achieving 50% diversion:	\$15.00 per business

MISCELLANEOUS

33	Failure to perform any of the obligations set forth in this Agreement not specifically stated above and not corrected or proceeding in good faith to correct within twenty-four (24) hours upon 24 hour Notification by City:	\$150.00/for each
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EXHIBIT H

CONTRACTOR HOLIDAY LIST

Holidays Contractor's Office May Be Closed:

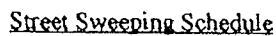
- New Year's Day
- Presidents Day
- Memorial Day
- Fourth of July
- Labor Day
- Thanksgiving Day
- Christmas Day

Holidays Delivery Service May Be Observed:

- New Year's Day
- Fourth of July
- Labor Day
- Thanksgiving Day
- Christmas Day

Some commercial accounts may require Collection on the observed holidays.

STREET SWEEPING MAPS AND SCHEDULES



Mondays: F-section, commercial areas.

Tuesdays: H-section, G-section, J-section, islands in commercial areas.

Wednesdays: D-section, E-section, S-section.

Thursdays: C-section, R-section, east B-section, L-section, M-section.

Friday's: A-section, west B-section.

For information, call City of Rohmert Park Public Works Department: 588-3300.

EXHIBIT J

ALLOCATION METHODOLOGY FOR REPORTING OF TONNAGE DATA

Tons will be allocated as required under the contract by calculating contracted service volumes by service type and multiplying the calculated percentage by type by the total tons being allocated.

Example

Front-Loader Route

Multi-Family Bins:	50 Yards per Month/"Contracted"
Commercial Bins:	<u>200</u> Yards per Month/"Contracted"
Total	250 Yards per Month/"Contracted"
Total Tons	80 Disposed by Front-Loaders
Multi-Family	20% (50 Yards/250 Yards) x 80 Tons = 16
Commercial	80% (200 Yards/250 Yards) x 80 Tons = 64

EXHIBIT K

BASIS FOR RELATED PARTY PAYMENTS

Single Stream Recyclables Processing and Marketing Fee\$85.00/Ton

Annual Adjustment at 80% of the Change in the "San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index [Urban Wage Earners; 1982-84 = 100]" between the monthly index in February of one year and February of the following year.

EXHIBIT L

CITY INSURANCE ENDORSEMENT FORMS



CERTIFICATE OF LIABILITY INSURANCE

NOVATOISP3

DATE (MM/DD/YYYY)
9/26/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Wells Fargo Insurance Services USA, Inc.
1039-A N. McDowell Blvd.
Petaluma, CA 94954
707-769-2900

CONTACT NAME: Sandra Moreno

PHONE (A/C No. Extn): 707-773-1896

E-MAIL ADDRESS: sandra.moreno@wellsfargo.com

FAX (A/C No.): 707-773-1920

INSURED
Rohnert Park Disposal, Inc.
P.O. Box 1916

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Wesco Insurance Company

25011

INSURER B: Liberty Insurance Underwriters, Inc.

19917

INSURER C: United States Fire Insurance Company

21113

INSURER D: Great American Insurance Company

16691

INSURER E:

INSURER F:

Santa Rosa, CA 95402

COVERAGES

CERTIFICATE NUMBER: 4909607

REVISION NUMBER: See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ BI/PD Ded. \$5,000		WPP106358100	07/01/2012	07/01/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY ☐ PER ☐ LOC ☐					
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☒ Comprehensive ☒ Collision Ded.		WPP106358100	7/1/2012	7/1/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Collision Ded. \$5,000
B	☒ UMBRELLA LIAB EXCESS LIAB ☒ OCCUR DED ☐ RETENTION \$		EXCSF1837878	07/01/2012	07/01/2013	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A	4087051209	10/01/2012	10/01/2013	☒ N.C. STATUTORY LIMITS ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	\$15Mxs\$5M Excess		TUE030406300	07/01/2012	07/01/2013	\$15,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CA 20 48 02 99, CG 20 26 07 04 RE: Garbage contract with the City of Rohnert Park to pick up refuse and recycling from residential and commercial during policy term. The City of Rohnert Park, its officials, officers, employees and volunteers are additional insured under the general liability and auto liability per attached endorsements. Insurance is primary on both general liability and auto liability.

CERTIFICATE HOLDER

CANCELLATION

City of Rohnert Park
6800 Hunter Dr.
P.O. Box 1489
Rohnert Park CA 94927

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

The ACORD name and logo are registered marks of ACORD

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ACORD 25 (2010/05)

POLICY NUMBER: WPP106358100

COMMERCIAL AUTO
CA 20 48 02 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 07/01/2012	Countersigned By: 
Named Insured: Novato Disposal Service Inc	(Authorized Representative)

SCHEDULE

Name of Person(s) or Organization(s): Any person or organization with whom or with which you have agreed in writing in a contract or agreement that such person(s) or organization(s) shall be included as an additional insured on your policy. Such insurance as is afforded by this policy for the benefit of the additional insured(s) shown shall be primary insurance, and any other insurance maintained by the additional insured(s) shall be excess and noncontributory as respects any claim, loss or liability allegedly arising out of the operations of the Named Insured; however, this insurance will not apply to any claim, loss or liability which is determined to be solely the result of the additional insured's negligence or solely the additional insured's responsibility

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

POLICY NUMBER: WPP106358100

COMMERCIAL GENERAL LIABILITY
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
Any person or organization with whom or with which you have agreed in writing in a contract or agreement that such person(s) or organization(s) shall be included as an additional insured on your policy. Such insurance as is afforded by this policy for the benefit of the additional insured(s) shown shall be primary insurance, and any other insurance maintained by the additional insured(s) shall be excess and noncontributory as respects any claim, loss or liability allegedly arising out of the operations of the Named Insured; however, this insurance will not apply to any claim, loss or liability which is determined to be solely the result of the additional insured's negligence or solely the additional insured's responsibility.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) OR Organization(s)	Location And Description of Completed Operations
Any person or organization with whom or with which you have agreed in writing in a contract or agreement that such person(s) or organization(s) shall be included as an additional insured on your policy. Such insurance as is afforded by this policy for the benefit of the additional insured(s) shown shall be primary insurance, and any other insurance maintained by the additional insured(s) shall be excess and noncontributory as respects any claim, loss or liability allegedly arising out of the operations of the Named Insured; however, this insurance will not apply to any claim, loss or liability which is determined to be solely the result of the additional insured's negligence or solely the additional insured's responsibility.	All locations at which you are performing operations for any person or organization with whom or with which you have agreed in writing in a contract or agreement that such person(s) or organization(s) shall be included as an additional insured on your policy for your waste hauling operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II -- Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part by "your work" at the location designated and described in schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard."

Exhibit M

City of Rohnert Park, CA

REFUSE RATE INDEX

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

1. The expenses of providing Collection services in the service area for the designated 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 providing Collection services in the service area shall be broken down into one of the following six cost categories: Labor; Fuel; Vehicle Replacement; Maintenance, Disposal, 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 are used to calculate the adjustment for each cost category of the Refuse Rates. The change in each index is calculated on a twelve-month average period (January 1st to December 31st). The twelve-month average index from January 1, 2013 to December 31, 2013 will serve as the "First Year Index".

<u>Cost Category</u>	<u>Index</u>
Labor:	Series ID: ceu6056210008 Production Workers-Waste Collection.
Fuel:	California No 2 Diesel Ultra Low Sulfur (0-15 ppm) http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp .
Vehicle Replacement:	Series ID: pcu3362113362111 Truck, bus, car and other vehicles bodies, for sale separately.
Vehicle Maintenance:	Series ID: pcu333924333924 Parts and attachments for Industrial work trucks.
Disposal Fee	The per ton tip fee charged at the Disposal Facility multiplied by the actual number of tons disposed at the Disposal Facility.

Exhibit M

City of Rohnert Park, CA

REFUSE RATE INDEX

All Other: Series ID: cuur0000sa0 seventy-five percent (75%) of Consumer Price Index, All Urban Consumers, All Items.

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.

RRI Financial Statement Format

Operating Costs

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

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

List all employee benefit accounts including health insurance costs, workmen's compensation premiums, and retirement plan costs.

Fuel List all fuel costs.

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.

Disposal: List all disposal costs for disposal of refuse.

Exhibit M

City of Rohnert Park, CA

REFUSE RATE INDEX

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; office supplies; postage; trade association dues and subscription; advertising; and miscellaneous other expenses.

Exhibit N Detailed Rate Review Methodology

1. Request for Detailed Rate Review

At least six months prior to a normally scheduled July 1st RRI adjustment, the City or the Contractor may request that a Detailed Rate Review be conducted. In the event that either the City or the Contractor requests a Detailed Rate Review, the Detailed Rate Review shall be based on the audited financial statements for the preceding complete fiscal year.

Contractor shall assemble and submit such information as necessary to support assumptions made with regard to forecasts used to develop their Refuse rates. Contractor shall provide all information from related party entities regarding any material transactions between Contractor and those related party entities. Service Rates shall be adjusted based on the forecasted annual cost of operations, profit, and forecasted pass-through expense reviewed as set forth below.

a. Forecasted annual cost of operations. The forecasted annual cost of operations shall consist of the sum of:

- Forecasted labor-related costs
- Forecasted vehicle-related costs
- Forecasted other costs
- Forecasted depreciation expense

Each of these sums shall be reviewed based on the following:

- i. **Determination of actual costs.** Contractor's financial statement will be reviewed to determine Contractor's costs for each of the foregoing categories during the fiscal year involved. City will use the audited financial statements to determine that costs have actually been incurred and have been assigned to the appropriate category.
- ii. **Adjustment of actual costs.** City may adjust the actual costs in two ways: (1) to exclude any non-allowable costs, set out below, and (2) to exclude and/or reduce any costs that were not reasonably and necessarily incurred in the performance of the services provided in accordance with this Agreement.

Costs that may be deemed non-allowable include, but are not limited to, the following:

- i. Payments to directors and/or owners of Contractor unless paid to reasonably compensate for services actually rendered.

Exhibit N Detailed Rate Review Methodology

- ii. Promotional, entertainment, and travel expenses, unless authorized in advance by City.
- iii. Payments to repair damage to property of City or other parties, including the City or County for which Contractor is legally liable.
- iv. Fines or penalties of any nature.
- v. Liquidated damages assessed under this Agreement.
- vi. Federal or state income taxes.
- vii. Charitable or political donations.
- viii. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which City and Contractor are adverse parties, unless Contractor is the prevailing party in said proceedings.
- ix. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or other wrongdoing, are in issue and occasions in part the attorney's fees and expenses claimed, provided, however, such attorney's fees will be allowed to the extent Company can demonstrate they were reasonable and necessary and a cost of doing business, and were not the result of any intentional or willful misconduct by Contractor or its employees; and attorney's fees and expenses incurred by Contractor in a court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate strict liability for City arising from the action of its citizens or ratepayers (such as in a CERCLA lawsuit).
- x. Payments to related party entities for products or services, in excess of the fair market value for those products or services. For purposes of this Agreement, related party expenses are those resulting from transactions between Contractor and another contractor (contractors) that has (have) common ownership or management control. Except as otherwise provided below the amount of these transactions shall be based on the actual cost to the related party and shall include no profit. To demonstrate the actual cost to the related company, Contractor shall provide, at a minimum, the invoice for the good or service, the receiving document, the corresponding canceled check and the basis for the transaction. Whenever possible, materials shall be delivered directly to Contractor or the related party entity, as appropriate. Because the following types of related party transactions have existed, they have been specifically addressed below:
 - 1. Management Fees: Contractor pays management fees to North Bay Corporation, a related party. The management fee compensates North Bay Corporation for its management team's time spent in managing the operations and administering the Company (including the time of Mr. James Ratto). For purposes of determining Company's compensation in accordance with this

Exhibit N Detailed Rate Review Methodology

Agreement, a management fee of \$134,400 annually shall be stipulated and the North Bay Corporation management team, including Mr. James Ratto, shall not otherwise be compensated for these same services. This stipulated amount shall not be adjusted during the term of this Agreement or any extension period.

2. Site Rent: Contractor operates from facilities leased from related parties. For determining Contractor's compensation in accordance with this Agreement, a lease amount of \$84,000 annually shall be stipulated.

3. Equipment Rental: Company leases equipment from related parties, and is entitled to compensation for depreciation and interest expense related to this equipment.

For purposes of this Agreement, Company shall be entitled to compensation for equipment depreciation whether leased or purchased by the Company, based on the following useful lives:

5 Years: Computers and software, office equipment, All used or refurbished Collection vehicles.

7 Years: All new Collection vehicles.

10 years: Bins, Carts, and Debris Boxes.

Contractor shall be required to provide to City (or City's representative) documentation of the original cost of the equipment.

For purposes of this Agreement, Contractor shall be entitled to compensation for interest expense on equipment leases assuming financing of one hundred percent (100%) of the original cost and based on the Prime Rate of the Bank of America NT & SA in effect at the time the equipment was first leased.

4. Employee Health Insurance: Contractor purchases employee health insurance for both itself and related parties and is entitled to compensation for Contractor's cost of this insurance. Because the premium is allocated among several companies, Contractor's compensation shall be calculated by dividing the premium by the total number of employees covered and multiplying the quotient by the number of Contractor employees. If Contractor provides ongoing administration of the health insurance program for itself and related parties, the full cost of such administration shall be distributed among the parties and the Contractor on the basis of the number of employees covered. To determine the amount of compensation due the Contractor, Contractor shall submit to City

Exhibit N

Detailed Rate Review Methodology

(or City's designated representative) a copy of the insurance broker's invoice, the corresponding canceled check and the calculations described above, including corresponding documentation supporting the values used (e.g., total employees covered).

5. Automotive Liability Insurance: Contractor purchases automotive liability insurance for both itself and related parties and is entitled to compensation for Contractor's cost of this insurance. Because the premium is allocated among several companies, Company's compensation shall be calculated by prorating the premium among related parties and Contractor on the basis of the actual total liability premiums paid for vehicles of each company. To determine the amount of compensation due Contractor, Contractor shall submit to City (or City's designated representative) a copy of the insurance broker's invoice, the corresponding canceled check and the calculations described above, including corresponding documentation supporting the values used (e.g., total vehicles covered).
 6. Fuel Expense: Contractor purchases fuel for both itself and related parties and is entitled to compensation for Contractor's cost of fuel. To determine the amount of compensation due Contractor, Contractor shall submit to City (or City's designated representative) a copy of the fuel invoices, the receiving documents, the corresponding canceled checks, calculations supporting the amount of fuel expense claimed by Contractor.
- b. Forecasts of Costs. Allowed Costs of operations for the Contractor's prior fiscal year will be used to evaluate the forecasted cost for upcoming year. The review will evaluate forecasted labor-related costs, vehicle-related costs, and other costs, including pass-through expenses as outlined below.
 - c. Depreciation Expense. Depreciation expense will be calculated by dividing the actual purchase price of the assets by the number of years in the Term of the Agreement. The result is the forecasted depreciation expense for the rate year.
 - d. Profit. Profit or return to Contractor shall be determined by City applying an operating ratio so as to provide for reasonable costs of service and adequate rate of return to Contractor. The rate of return or profit shall be reasonably sufficient to allow for financial soundness of Contractor's operations within the service area of this Agreement, when operated under efficient and economical management, and to provide a return to Contractor over the term of the Agreement commensurate with the level of business risk, the competitive market place and the necessity to provide the public with reasonable rates. For purposes of this Agreement, the City-determined operating ratio shall be 90% as of the date of the execution of this Agreement.

Exhibit O-1

City of Rohnert Park, CA

CONTRACTORS MAXIMUM REFUSE RATES

JANUARY 1, 2013 – JUNE 30, 2014

SINGLE-FAMILY RESIDENCE CART COLLECTION

A. SINGLE-FAMILY RESIDENTIAL CART COLLECTION SERVICE – MONTHLY RATE

Refuse Cart Sizes (gallons)	20	32	68	95
MONTHLY REFUSE RATE	\$7.46	\$13.66	\$21.36	\$33.34

B. SINGLE-FAMILY RESIDENTIAL EXTRA COLLECTION – MONTHLY RATE

Cart Sizes (gallons)	20	32	68	95
Each Additional Refuse Cart	\$7.46	\$13.66	\$21.36	\$33.34
Extra Additional Green Waste Cart Over 2 Carts	\$14.97			

C. ADDITIONAL SERVICES AND RATES

On-Premise Collection	\$16.67 added to all carts sizes per month
Extra Bag Collection	\$5.27 Per bag/occurrence
Additional Cart Exchange (1 free exchange over contract term)	\$19.03 each additional cart/occurrence
Additional Cart Replacement (1 free exchange over contract term)	\$95.13 each additional cart/occurrence
Recycling Only Collection (1 – 95 gallon recycling cart)	\$7.61 per month
Collecting Contaminated Cart	\$22.87 each contaminated cart
Extra Collection Trip	\$5.72 each cart/trip
Cart Cleaning	\$25.00 per cart
7 Day Clean Up – 3 Cubic Yard Bin	\$118.29 each bin and includes disposal charge
7 Day Clean Up – 4 Cubic Yard Bin	\$153.30 each bin and includes disposal charge
7 Day Clean Up – 4 Cubic Yard Bin	\$223.31 each bin and includes disposal charge

Exhibit O-2

City of Rohnert Park, CA

CONTRACTORS MAXIMUM REFUSE RATES

JANUARY 1, 2013 – JUNE 30, 2014

MULTI-FAMILY AND COMMERCIAL COLLECTION

A. CARTS AND BINS – MONTHLY RATES

Container Size	Collection Frequency					
	1X Week	2X Week	3X Week	4X Week	5X Week	6X Week
20 Gallon	\$7.46	\$14.92	\$22.38	\$29.84	\$37.30	\$44.76
32 Gallon	\$13.66	\$27.32	\$40.98	\$54.64	\$68.30	\$81.96
68 Gallon	\$21.36	\$42.72	\$64.08	\$85.44	\$106.80	\$128.16
95 Gallon	\$33.34	\$66.68	\$100.02	\$133.36	\$166.70	\$200.04
1 CY	\$71.28	\$142.56	\$213.84	\$285.12	\$356.40	\$427.68
1.5 CY	\$106.90	\$218.12	\$333.69	\$453.80	\$578.68	\$708.28
2 CY	\$142.56	\$290.83	\$444.91	\$605.06	\$771.57	\$944.36
3 CY	\$213.82	\$436.23	\$667.39	\$907.58	\$1,157.34	\$1,416.56
4 CY	\$285.10	\$581.65	\$889.85	\$1,210.11	\$1,543.15	\$1,888.75
6 CY	\$427.66	\$872.48	\$1,334.76	\$1,815.15	\$2,314.71	\$2,833.11

B. DEBRIS BOXES AND COMPACTORS – PER PULL, PLUS PER TON DISPOSAL COST

Boxes		Compactors				
20 CY	30 CY	20 CY	26 CY	30 CY	32 CY	40CY
\$255.08	\$317.31	\$405.69	\$527.39	\$608.53	\$608.53	\$811.39

C. ADDITIONAL SERVICES

Push Rates - Per Month	\$25.00 in 25 foot increments after the 1 st 25 feet	
Cart or Bin Cleaning Each Occurrence	\$25.00/cart	\$50.00 each bin
Collection of Contaminated Bin	\$22.87 Plus \$71.28/cubic yard	
Collection of Blocked Bin	\$18.41 per bin	
Collection of Overflowed Bin	\$34.92 per cubic yard	
Extra Collection of Bin	\$71.28 per cubic Yard	
Bin Exchange (1 free over contract term)	\$12.68 each a occurrence	
Bin Replacement (1 free over contract term)	\$63.42 each a occurrence	

Exhibit O-2 City of Rohnert Park, CA CONTRACTORS MAXIMUM REFUSE RATES JANUARY 1, 2013 – JUNE 30, 2014 MULTI-FAMILY AND COMMERCIAL COLLECTION	
Cart Exchange (1 free over contract term)	\$19.03 each a occurrence
Cart Replacement (1 free over contract term)	\$95.13 each a occurrence
D. Disposal Charges	
Disposal Site: Sonoma County Landfill/Transfer System	\$112.00 Per Ton
Note: All debris boxes and compactors are pull rates only; disposal will be based on actual disposal costs; the total maximum customer rate will be the total cost for the collection, disposal, Franchise Fee, Refuse Vehicle Franchise Fee, and AB 939 Compliance and Diversion Fee.	

Exhibit O-3

City of Rohnert Park, CA

**CONTRACTORS MAXIMUM REFUSE RATES
JANUARY 1, 2013 – JUNE 30, 2014**

EMERGENCY SERVICE RATES - EMPLOYEES

Labor Position	Hourly Rate
Driver	\$35.82
Utility	\$35.82

Exhibit O-4

City of Rohnert Park, CA

**CONTRACTORS MAXIMUM REFUSE RATES
JANUARY 1, 2013 – JUNE 30, 2014**

EMERGENCY SERVICE RATES - EQUIPMENT

Labor Position or Equipment Type	Hourly Rate
Frontloader	\$62.44
Split Body	\$62.44
Side Loader	\$62.44
Roll Off	\$46.83
Street Sweeper	\$46.83
Cart Delivery	\$39.03
Bin Delivery	\$39.03
Pickup	\$31.21